MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushered in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.

2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:

a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.

b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to
exercise that authority at this time. Accordingly, I
determine that the provisions of Geneva will apply to
our present conflict with the Taliban. I reserve the
right to exercise this authority in this or future
conflicts.

c. I also accept the legal conclusion of the Department of
Justice and determine that common Article 3 of Geneva
does not apply to either al Qaeda or Taliban detainees,
because, among other reasons, the relevant conflicts
are international in scope and common Article 3 applies
only to "armed conflict not of an international
character."

d. Based on the facts supplied by the Department of
Defense and the recommendation of the Department of
Justice, I determine that the Taliban detainees are
unlawful combatants and, therefore, do not qualify as
prisoners of war under Article 4 of Geneva. I note
that, because Geneva does not apply to our conflict
with al Qaeda, al Qaeda detainees also do not qualify
as prisoners of war.

3. Of course, our values as a Nation, values that we share with
many nations in the world, call for us to treat detainees
humanely, including those who are not legally entitled to
such treatment. Our Nation has been and will continue to
be a strong supporter of Geneva and its principles. As
a matter of policy, the United States Armed Forces shall
continue to treat detainees humanely and, to the extent
appropriate and consistent with military necessity, in
a manner consistent with the principles of Geneva.

4. The United States will hold states, organizations, and
individuals who gain control of United States personnel
responsible for treating such personnel humanely and
consistent with applicable law.

5. I hereby reaffirm the order previously issued by the
Secretary of Defense to the United States Armed Forces
requiring that the detainees be treated humanely and,
to the extent appropriate and consistent with military
necessity, in a manner consistent with the principles
of Geneva.

6. I hereby direct the Secretary of State to communicate my
determinations in an appropriate manner to our allies, and
other countries and international organizations cooperating
in the war against terrorism of global reach.