

Statement of Deputy Secretary of Defense Gordon England

Future of Military Commissions in light of the Supreme Court decision
in Hamdan v. Rumsfeld

Before the Senate Armed Services Committee

August 2, 2006

Chairman Warner, Senator Levin, Members of the Committee,

It is an honor to appear here today with my friends and colleagues, especially the Honorable Alberto Gonzales.

I do thank this Committee for the invitation to meet with you to discuss the implications of the Supreme Court's Hamdan decision. As we work together to develop the additional legislation our Nation needs, let me provide some perspective from the Department of Defense about the broader national security context for these discussions and decisions.

This is a critical time for America. We are in a real and deadly war against terrorist adversaries who are determined to destroy our way of life – and that of our friends and allies. On 9/11, terrorists attacked the World Trade Center and the Pentagon, and took the lives of other heroic Americans on Flight 93. The terrorists killed 3000 people of 60 different nationalities that day. They would have killed many more, if they had had the means to do so, and they are still trying. These terrorists are relentless, they oppose the very notion of freedom and liberty, and they are committed to using every possible means to achieve their ends.

America did not choose this fight – and we don't have the option of walking away. Only if America continues to provide global leadership in the fight against these terrorists can we succeed.

The security challenges this Nation faces in the wake of 9/11 are both complex and, in some respects, fundamentally new, and in many ways the Nation is still grappling with how best to address them. The terrorists our forces detain are not common criminals. At the same time, they are not lawful enemy combatants – among other things, they do not fight as members of the armed forces of sovereign states, they do not have a regular command structure, they do not wear uniforms, they do not carry their arms openly, and they do not obey the laws of war.

The Supreme Court's Hamdan ruling provides the opportunity for the Executive and Legislative Branches to work together to solidify a legal framework for the war we are in, and for future wars.

A major part of America's effort in the war on terror is the fearless warfighting by our courageous men and women in uniform in Iraq and Afghanistan, but in fact, Iraq and Afghanistan are only part of a larger struggle. The perceptions and views of people of all nations are critical to the success of our campaign against al Qaeda and its affiliates. People will listen to our words – and watch our actions – and decide, and their decisions could be very important in tipping the scales.

We also need to be conscious that any new rules put in place today may live on for many years to come. Just as the global context has changed markedly over the last 50 years, we need to consider how well the rules deemed most applicable today will endure.

It is profoundly important that we come together as a US Government – that we send a unified signal to the rest of the world about this Nation’s determination, commitment, and resolve to push forward in the war on terror. We must be clear in our thoughts, candid in our words, and rock solid in our resolve.

The legal framework we construct together should take the law of war, not domestic civilian criminal standards of law and order, as its starting point.

I propose the following seven criteria against which any proposed legislation should be measured:

- All measures adopted should reflect American values and standards.
- Persons detained by the Armed Forces should always be treated humanely, without exception.
- Our men and women in uniform must have the ability to continue to fight and win wars, including this war on terror. The Nation must maintain the ability to detain and interrogate suspected terrorists, to continue to detain dangerous combatants until the cessation of hostilities, and to gather and protect critical intelligence.
- War criminals need to be prosecuted – in a full and fair trial.
- Our Soldiers, Sailors, Airmen, Marines and Coast Guardsmen need adequate legal protections, as do the civilians who support them.
- The rules must be clear and transparent to everyone.
- We should be mindful of the impact of our legislation on the perceptions of the international community.

I do thank this Committee for taking time to thoughtfully consider this very important set of issues. And I do thank you for your strong, unwavering support for the brave men and women serving every day, at home and abroad, to protect and defend this truly great Nation.