

**STATEMENT OF
MAJOR GENERAL CHARLES J. DUNLAP, JR.
THE DEPUTY JUDGE ADVOCATE GENERAL
UNITED STATES AIR FORCE**

**BEFORE THE
HOUSE ARMED SERVICES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING THE SUPREME COURT'S DECISION
IN *HAMDAN v. RUMSFELD***

September 7, 2006

Thank you, Chairman Hunter, Ranking Member Skelton, and members of the committee. Major General Rives, The Judge Advocate General of the Air Force, is currently overseas. Accordingly, I appreciate the opportunity to appear before you today as this committee carefully considers the authority of the United States to prosecute suspected terrorists, consistent with the Supreme Court's decision in *Hamdan v. Rumsfeld*, 548 U.S. ____, 126 S.Ct. 2749, (2006).

I start from a premise that legislation is appropriate. As the Supreme Court noted again in *Hamdan*, the President's powers, especially in wartime, are at their greatest when specifically authorized by Congress. While different approaches are feasible, I believe our Nation will be best served by a fresh start to the military commission process.

The United States is more than a nation of laws, it is a country founded upon strong moral principles of fairness to all. Moreover, our country -- to the delight of our adversaries -- has been heavily criticized because of the perception that the pre-*Hamdan* military commission processes were unfair and did not afford "all the judicial guarantees which are recognized as indispensable by civilized peoples."

Now is the time to correct that perception and clearly establish procedures and rules that meet that standard. It will do more than merely correct legal deficiencies; it will help affirm the United States as the leading advocate of the rule of law.

The Uniform Code of Military Justice (10 USC §801 *et. seq.*) (UCMJ) and the Manual for Courts-Martial (MCM) provide superb starting points for the development of a revised commission process. There will, of course, necessarily be differences between current courts-martial procedures and the rules and procedures for military commissions.

However, many of the processes and procedures in the UCMJ and MCM can be readily adapted to meet the needs of military commissions and at the same time meet the requirements Common Article 3 of the Geneva Conventions. The proposal submitted to Congress by the President reflects an attempt to adapt the UCMJ to the military commission process. I support many of its provisions.

A revised approach to military commissions is not only the right thing to do; it also serves the pragmatic military purpose of helping us win the war on Global War on Terrorism.

Success in this war requires the cooperation of many nations around the world. Addressing the Supreme Court's concerns about military commissions will reaffirm our position on the moral and legal high ground. A process fully compliant with Common Article 3 will enhance our standing internationally and empower our allies to embrace the legal reasoning and architecture behind our prosecution of military commission cases. Doing so is plainly in our warfighting interests.

I look forward to discussing these issues with the committee this morning. Thank you, Mr. Chairman.