L158

Deeks, Ashley S

From: Robinson, John G
Sent: Tuesday, February 06, 2007 9:15 AM
To: Dorosin, Joshua L; Deeks, Ashley S; Noyes, Julieta V (DRL); Petersen, Robert B; Opstrup, Kevin R
Cc: Robinson, John G
Subject: Portugal opens criminal investigation into alleged CIA flights

Report: Portugal opens criminal investigation into alleged CIA flights

LISBON - Portugal's attorney general is opening a criminal investigation into claims that CIA flights, some of them allegedly carrying terror suspects, made stopovers in the country, a senior official said Monday, according to a news report. The investigation had "*many leads*" to pursue after a Portuguese deputy at the European Parliament presented a dossier of allegations, Deputy Attorney General **Candida Almeida** said, according to state-owned news agency Lusa. *"Before, we had no indications* (of a crime), *but the complaints we have received show areas we might explore,"* Almeida was quoted as saying.

Officials at the attorney general's office were not immediately available for comment. Authorities often use the Lusa agency to make official announcements. Ana Gomes, a European Parliament deputy, met with the attorney general last week and said she gave him evidence that dozens of CIA planes had landed in Portugal, some of them flying to or from the U.S. military prison for terror suspects at Guantanamo Bay. Gomes said she collected statements from witnesses who claimed to have seen handcuffed prisoners at an airport in Portugal's mid-Atlantic Azores Islands. She also alleged that local authorities knew Portugal was being used for CIA flights. Last week, Foreign Minister Luis Amado said authorities had not unearthed any evidence of CIA flights and would not investigate the matter further. (AP, 2/5)

John G. Robinson
U.S. Dept. of State
EUR/ERA (Rm. 5424)
2201 C St. NW
Washington, DC 20520
Tel.: (202) 647-3913
Fax: (202) 647-9959

This email is UNCLASSIFIED based on the definitions provided in E.O. 12958.

L161

HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

HUMAN RIGHTS WATCH

www.hrw.org

Josh D/
Ashley/
Bob H:
Plz work w/ CIA on a response. I think we should respond.

Facsimile

To: President George W. Bush	From: Human Rights Watch
Fax Number: 202-456-0200	Phone Number:
cc:	Date: February 26, 2007
Pages: 4 (including cover page)	Re:

MESSAGE

Dear Sir,

Please find attached a letter to the President, requesting information about people who were previously held in secret detention facilities operated by the Central Intelligence Agency (CIA).

Sincerely,
HUMAN RIGHTS WATCH

Cc: Condoleezza Rice, United States Secretary of State
John M. McConnell, United States Director of National Intelligence
Gen. Michael V. Hayden, Director of the Central Intelligence Agency
John B. Bellinger, III, Legal Adviser to the Secretary of State of the United States

RELEASED IN FULL

L/61A

HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

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www.hrw.org

February 26, 2007

President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Bush:

I am writing to request information about people who were previously held in secret detention facilities operated by the Central Intelligence Agency (CIA). Specifically, I ask that you disclose the identities, fate, and current whereabouts of all prisoners held for any period of time at facilities operated or controlled by the CIA since 2001. In addition, for any such prisoners who were transferred to the custody of another government, I ask that you disclose the date and location of the transfer.

I would like first to express Human Rights Watch's strong concern over the CIA's use of secret prisons to hold people suspected of involvement in terrorism. By holding such people in unacknowledged, incommunicado detention, the United States violated fundamental human rights norms, in particular, the prohibition on enforced disappearance.[1]

Human Rights Watch recognizes that some terrorism suspects may have committed serious crimes that merit the sanction of incarceration. The decision to imprison such persons must be taken in accordance with legal processes, however. If such persons are indeed implicated in terrorist crimes, they should be charged and prosecuted, not subject to enforced disappearance.

I would note that, to date, your administration has concealed nearly all information regarding persons imprisoned by the CIA since 2001. In a televised speech in early September 2006, you did acknowledge that the CIA had been secretly detaining suspected terrorists in facilities outside of the United States. But while you announced that 14 people who had previously been in CIA detention had been

[1] See International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly on December 20, 2006, opened for signature on February 6, 2007. Although the newly adopted convention has yet to enter into force, its definition of enforced disappearance is consistent with definitions contained in a number of earlier international instruments. Human Rights Watch notes that the United States was not among the 57 countries that signed the convention.

transferred to the US detention facilities at Guantanamo Bay—saying that with those transfers there were no more people in CIA custody—you said nothing about the fate or whereabouts of other persons who were believed to have been detained by the CIA.

It is beyond dispute that more than 14 people were imprisoned by the CIA at some point prior to September 2006. Indeed, in April 2006, just a few months before your speech, Director of National Intelligence John Negroponte publicly acknowledged that the CIA was holding some three dozen persons in detention.

Given the close secrecy surrounding the CIA's detention practices, Human Rights Watch does not believe that it has information about every person who, since 2001, has been held in CIA detention. But based on accounts from former detainees, press articles, and other sources, Human Rights Watch has put together a list of 16 people whom we believe were once held in CIA prisons and whose current whereabouts are unknown. We have also compiled a separate list of 22 people who were possibly once held in CIA prisons and whose current whereabouts are also unknown.

The following people—whose name, nationality, and place and date of arrest are provided, where known—are believed to have once been held in secret CIA prisons:

1. Ibn al-Shaykh al-Libi (Libyan) (Pakistan, 11/01)[2]
2. Mohammed Omar Abdel-Rahman (aka Asadallah) (Egyptian) (Quetta, Pakistan, 2/03)
3. Yassir al-Jazeeri (Algerian) (Lahore, Pakistan, 3/03)
4. Suleiman Abdalla Salim (Kenyan) (Mogadishu, Somalia, 3/03)
5. Marwan al-Adeni (Yemeni) (approximately 5/03)
6. Ali Abd al Rahman al Faqasi al Ghamdi (aka Abu Bakr al Azdi) (Saudi) (Medina, Saudi Arabia, 6/03)
7. Hassan Ghul (Pakistani) (northern Iraq, 1/04)
8. Ayoub al-Libi (Libyan) (Peshawar, Pakistan, 1/04)
9. Mohammed al Afghani (Afghan born in Saudi Arabia) (Peshawar, Pakistan, 5/04)
10. Abdul Basit (probably Saudi or Yemeni) (arrested before 6/04)
11. Adnan (arrested before 6/04)
12. Hudeifa (arrested before 6/04)
13. Mohammed Naeem Noor Khan (aka Abu Talaha) (Pakistani) (Lahore, Pakistan, 7/04)
14. Muhammad Setmarian Naser (Syrian/Spanish) (Quetta, Pakistan, 11/05)
15. Unnamed Somali (possibly Shoeab as-Somali)
16. Unnamed Somali (possibly Rethwan as-Somali)

[2] By some accounts, al-Libi was transferred from CIA custody to Libya in early 2006, but this has not been confirmed.

In addition, the following people may have once been held in secret CIA prisons:

1. Abd al-Hadi al-Iraqi (presumably Iraqi) (1/02)
2. Anas al-Liby (Libyan) (Khartoum, Sudan, 2/02)
3. Retha al-Tunisi (Tunisian) (Karachi, Pakistan, early- to mid-2002)
4. Sheikh Ahmed Salim (aka Swedan) (Tanzanian) (Kharadar, Pakistan, 7/02)
5. Saif al Islam el Masry (Egyptian) (Pankisi Gorge, Georgia, 9/02)
6. Amin al-Yafia (Yemeni) (Iran, 2002)
7. _ al-Rubaia (Iraqi) (Iran, 2002)
8. Aafia Siddiqui (Pakistani) (Karachi, Pakistan, 3/03)
9. Jawad al-Bashar (Egyptian) (Vindher, Balochistan, Pakistan, 5/03)
10. Safwan al-Hasham (aka Haffan al-Hasham) (Saudi) (Hyderabad, Pakistan, 5/03)
11. Abu Naseem (Tunisian) (Peshawar, Pakistan, 6/03)
12. Walid bin Azmi (unknown nationality) (Karachi, Pakistan, 1/04)
13. Ibad Al Yaquti al Sheikh al Sufiyan (Saudi) (Karachi, Pakistan, 1/04)
14. Amir Hussein Abdullah al-Misri (aka Fazal Mohammad Abdullah al-Misri) (Egyptian) (Karachi, Pakistan, 1/04)
15. Khalid al-Zawahiri (Egyptian) (South Waziristan, Pakistan, 2/04)
16. Musaab Aruchi (aka al-Baluchi) (Pakistani) (Karachi, Pakistan, 6/04)
17. Qari Saifullah Akhtar (Pakistani) (arrested in the UAE, 8/04)
18. Mustafa Mohamed Fadhil (Kenyan/Egyptian) (eastern Punjab, Pakistan, 8/04)
19. Sharif al-Masri (Egyptian) (Pakistan border, 8/04)
20. Osama Nazir (Pakistani) (Faisalabad, Pakistan, 11/04)
21. Osama bin Yousaf (Pakistani) (Faisalabad, Pakistan, 8/05)
22. Speen Ghul (from Africa) (Pakistan)

Human Rights Watch is extremely concerned about the fate of these people. One possibility is that the CIA may have transferred some of them to foreign prisons where for practical purposes they remain under CIA control. Another worrying alternative is that prisoners were transferred from CIA custody to places where they face a serious risk of torture, in violation of the fundamental prohibition on returns to torture. We note that some of the missing prisoners are from Algeria, Egypt, Libya, and Syria, countries where the torture of terrorism suspects is common.

Enforced disappearance violates both international human rights law and international humanitarian law. It has long been recognized that enforced disappearance is a "continuous crime until the fate or whereabouts of the disappeared person becomes known."[3] We note, therefore, that persons "disappeared" in US custody who have since been transferred elsewhere remain the

[3] See, for example, Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, E/CN.4/2006/56, December 27, 2005, para. 10.

legal obligation of the United States so long as their fate or whereabouts remain unknown.

I would also like to point out that refusing to reveal the whereabouts of these people is extraordinarily cruel to their families. To take one small but telling detail, the wife of a man who has not been seen since he was believed to have been taken into CIA custody told Human Rights Watch that she has continually lied to her four children about her husband's absence. She explained that she could not bear telling them that she did not know where he was: "[W]hat I'm hoping is if they find out their father has been detained, that I'll at least be able to tell them what country he's being held in, and in what conditions."

As you may know, the CIA's detention program has inflicted great harm on the reputation, moral standing, and integrity of the United States. By revealing information about the fate and whereabouts of people formerly held in CIA custody, you could begin to repair the damage this abusive program has caused.

Sincerely,

Joanne Mariner, Director
Terrorism and Counterterrorism Program
Human Rights Watch

Cc: Condoleezza Rice, United States Secretary of State
John M. McConnell, United States Director of National Intelligence
Gen. Michael V. Hayden, Director of the Central Intelligence Agency
John B. Bellinger, III, Legal Adviser to the Secretary of State of the United States

Brooks, Maren C

From: Rubin, Eric S
Sent: Friday, July 20, 2007 3:16 PM
To: P_Officers
Subject: Fw: EXECUTIVE ORDER: INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3 AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION OPERATED BY THE CENTRAL INTELLIGENCE AGENCY

----- Original Message -----
From: Bellinger, John B(Legal)
To: Burns, Nicholas R
Cc: Rubin, Eric S; Beecroft, Robert S; Wittenstein, Edward M
Sent: Fri Jul 20 14:31:14 2007
Subject: FW: EXECUTIVE ORDER: INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3 AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION OPERATED BY THE CENTRAL INTELLIGENCE AGENCY

From: bounce-451177-255175@list.whitehouse.gov [mailto:bounce-451177-255175@list.whitehouse.gov] On Behalf Of White House Press Releases
Sent: Friday, July 20, 2007 2:08 PM
To: Bellinger, John B(Legal)
Subject: EXECUTIVE ORDER: INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3 AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION OPERATED BY THE CENTRAL INTELLIGENCE AGENCY

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release July 20, 2007

EXECUTIVE ORDER

- - - - - - -

INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3

AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION

OPERATED BY THE CENTRAL INTELLIGENCE AGENCY

By the authority vested in me as President and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107-40), the Military Commissions Act of 2006 (Public Law 109-366), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. General Determinations. (a) The United States is engaged in an armed conflict with al Qaeda, the Taliban, and associated forces. Members of al Qaeda were responsible for the attacks on the United States of September 11, 2001, and for many other terrorist attacks, including against the United States, its personnel, and its allies throughout the world. These forces continue to fight the United States and its allies in Afghanistan, Iraq, and elsewhere, and they continue to plan additional acts of terror throughout the world. On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby reaffirm that determination.

(b) The Military Commissions Act defines certain prohibitions of Common Article 3 for United States law, and it reaffirms and reinforces the authority of the President to interpret the meaning and application of the Geneva Conventions.

Sec. 2. Definitions. As used in this order:

(a) "Common Article 3" means Article 3 of the Geneva Conventions.

(b) "Geneva Conventions" means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(c) "Cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

Sec. 3. Compliance of a Central Intelligence Agency Detention and Interrogation Program with Common Article 3. (a) Pursuant to the authority of the President under the Constitution and the laws of the United States, including the Military Commissions Act of 2006, this order interprets the meaning and application of the text of Common Article 3 with respect to certain detentions and interrogations, and shall be treated as authoritative for all purposes as a matter of United States law, including satisfaction of the international obligations of the United States. I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section. The requirements set forth in this section shall be applied with respect to detainees in such program without adverse

distinction as to their race, color, religion or faith, sex, birth, or wealth.

(b) I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:

(i) the conditions of confinement and interrogation practices of the program do not include:

(A) torture, as defined in section 2340 of title 18, United States Code;

(B) any of the acts prohibited by section 2441(d) of title 18, United States Code, including murder, torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, taking of hostages, or performing of biological experiments;

(C) other acts of violence serious enough to be considered comparable to murder, torture, mutilation, and cruel or inhuman treatment, as defined in section 2441(d) of title 18, United States Code;

(D) any other acts of cruel, inhuman, or degrading treatment or punishment prohibited by the Military Commissions Act (subsection 6(c) of Public Law 109-366) and the Detainee Treatment Act of 2005 (section 1003 of Public Law 109-148 and section 1403 of Public Law 109-163);

(E) willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the

acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to

perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or

(F) acts intended to denigrate the religion, religious practices, or religious objects of the individual;

(ii) the conditions of confinement and interrogation practices are to be used with an alien detainee who is determined by the Director of the Central Intelligence Agency:

(A) to be a member or part of or supporting al Qaeda, the Taliban, or associated organizations; and

(B) likely to be in possession of information that:

(1) could assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or

(2) could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces;

(iii) the interrogation practices are determined by the Director of the Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee with whom they are used; and

(iv) detainees in the program receive the basic necessities of life, including adequate food and water, shelter from the elements, necessary clothing, protection from extremes of heat and cold, and essential medical care.

(c) The Director of the Central Intelligence Agency shall issue written policies to govern the program, including guidelines for Central Intelligence Agency personnel that implement paragraphs (i)(C), (E), and (F) of subsection 3(b) of this order, and including requirements to ensure:

(i) safe and professional operation of the program;

(ii) the development of an approved plan of interrogation tailored for each detainee in the program to be interrogated, consistent with subsection 3(b)(iv) of this order;

(iii) appropriate training for interrogators and all personnel operating the program;

(iv) effective monitoring of the program, including with respect to medical matters, to ensure the safety of those in the program; and

(v) compliance with applicable law and this order.

Sec. 4. Assignment of Function. With respect to the program addressed in this order, the function of the President under section 6(c)(3) of the Military Commissions Act of 2006 is assigned to the Director of National Intelligence.

Sec. 5. General Provisions. (a) Subject to subsection (b) of this section, this order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(b) Nothing in this order shall be construed to prevent or limit reliance upon this order in a civil, criminal, or administrative proceeding, or otherwise, by the Central

Intelligence Agency or by any individual acting on behalf of the Central Intelligence Agency in connection with the program addressed in this order.

GEORGE W. BUSH

THE WHITE HOUSE,

July 20, 2007.

# # #

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INITIALS		
APPR:	PZE	...
DRAFT:	PET	...
CLR 1:	JBE	...
CLR 2:	RWA	...
CLR 3:	SAM	...
CLR 4:	KVO	...
CLR 5:	KVO	...
CLR 6:	CWA	...
CLR 7:	SMC	...
CLR 8:	___	...

CONFIDENTIAL

EUR/ERA:PETER CHASE:HLB
10/16/07 202-647-3474
C:PZELIKOW

L:JBELLINGER D:RWALLER(SUBS) P:SAMADEO(SUBS)
R:KVOLKER EUR:KVOLKER C:CWARD PA: SEAN MCCORMACK

L173

IMMEDIATE ALDAC

E.O. 12958: DECL: OADR

TAGS: PREL, PHUM

SUBJECT: SECRETARY'S STATEMENT ON ALLEGED U.S. DETENTION OR TRANSPORTATION OF TERRORIST SUSPECTS

Classified By: COUNSELOR PHILIP ZELIKOW, REASONS 1.4 (B) AND (D)

1. (C) Over the course of the last few weeks, the EU, Council of Europe and several European countries have requested U.S. clarifications following media accusations that the United States has violated law in holding detainees or transporting them through the territory of European nations.

2. (C) On December 5, the Secretary of State issued a statement that responds to these requests. On behalf of the administration, the Secretary's statement is a robust explanation of U.S. thinking on the issue of detainees and renditions in the context of the global war on terror. We seek to focus discussion where it belongs - on the responsibility of all democratic governments, European as

well as American, to take all appropriate law enforcement and intelligence measures to protect our citizens from attack. Some government ministers and spokespersons have accepted an overly-simplistic, populist critique of the United States as a rogue actor. It is not. For example, appropriate renditions are a vital tool in fighting transnational terrorism and are permissible under international law.

3. (C) The Secretary's statement serves as a call on European governments, commentators and publics to step up to the hard choices we face together as allies in the fight against terrorism. Cooperation in this fight is a sovereign choice. It is a two way street. Responsible governments cannot endorse it privately to protect their citizens while publicly distancing themselves from this necessity.

4. (U) The U.S. also understands the concerns European governments and publics may have in light of various reports about U.S. conduct. The Secretary thus also provided firm assurances about the content and conduct of U.S. policy.

5. (SBU) For use only in appropriate backgrounding: The Secretary's statement is in part an effort to foster greater understanding and promote a genuine dialogue on these issues. An emotional and ill-informed discussion should evolve into a constructive exchange among allies and friends that share common goals. For example, the statement acknowledges publicly that:

-- the US is in fact conducting renditions. As she notes, under the right circumstances, renditions are permissible under international law, and are in fact a vital tool in combating international terrorism;

-- US intelligence agencies have handled the gathering of intelligence from a very small number of extremely dangerous detainees, including individuals who planned the

9/11 and other attacks. The Secretary summarizes U.S. policy on these matters.

6. (U) The text of the Secretary's statement follows in paragraph eight. Paragraph seven contains suggested public diplomacy actions posts should take to actively change the nature of the public debate about this issue. Posts are encouraged to direct questioners to the full statement.

7. (C) Public Diplomacy Actions: Ambassadors and appropriate members of their country teams should seek every opportunity to shape the public discussion about the issue of U.S. detention or transportation of terrorist suspects in ways that highlight the points made in the Secretary's statement and that turn the public discussion toward understanding of how the U.S. actions are legal, respect the sovereignty of other nations, and contribute to the safety of people everywhere who are threatened by terrorists. Posts should ensure that the Secretary's complete statement is widely available and accurately presented in your local media. As appropriate, seek opportunities to address the media to highlight the statement, drawing on the talking points and themes in paragraph four and the statement itself. The goal of your public diplomacy activities is to ensure that the media, particularly prominent commentators on detainee issues, recognize the serious effort the U.S. has made to respond thoughtfully to public concerns, while they should also reflect on the very hard choices we all must face.

8. (U) The Secretary's Statement:

We have received inquiries from the European Union, the Council of Europe, and from several individual countries about media reports concerning U.S. conduct of the war on terror. I wish to respond now to those inquiries, as I depart today for Europe.

The United States and many other countries are waging a war against terrorism. For our country this war often

takes the form of conventional military operations in places like Afghanistan and Iraq. Sometimes this is a political struggle, a war of ideas. It is a struggle waged also by our law enforcement agencies. Often we engage the enemy through the cooperation of our intelligence services with their foreign counterparts.

We must track down terrorists who seek refuge in areas where governments cannot take effective action, including where the terrorists cannot in practice be reached by the ordinary processes of law. In such places terrorists have planned the killings of thousands of innocents - in New York City or Nairobi, in Bali or London, in Madrid or Beslan, in Casablanca or Istanbul. Just two weeks ago I visited a hotel ballroom in Amman, viewing the silent, shattered aftermath of one of those attacks.

The United States, and those countries that share the commitment to defend their citizens, will use every lawful weapon to defeat these terrorists. Protecting citizens is the first and oldest duty of any government. Sometimes these efforts are misunderstood. I want to help all of you understand the hard choices involved, and some of the responsibilities that go with them.

One of the difficult issues in this new kind of conflict is what to do with captured individuals who we know or believe to be terrorists. The individuals come from many countries and are often captured far from their original homes. Among them are those who are effectively stateless, owing allegiance only to the extremist cause of transnational terrorism. Many are extremely dangerous. And some have information that may save lives, perhaps even thousands of lives.

The captured terrorists of the 21st century do not fit easily into traditional systems of criminal or military justice, which were designed for different needs. We have had to adapt. Other governments are now also facing this challenge.

We consider the captured members of al Qaeda and its affiliates to be unlawful combatants who may be held, in accordance with the law of war, to keep them from killing innocents. We must treat them in accordance with our laws, which reflect the values of the American people. We must question them to gather potentially significant, life-saving, intelligence. We must bring terrorists to justice wherever possible.

For decades, the United States and other countries have used "renditions" to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice.

In some situations a terrorist suspect can be extradited according to traditional judicial procedures. But there have long been many other cases where, for some reason, the local government cannot detain or prosecute a suspect, and traditional extradition is not a good option. In those cases the local government can make the sovereign choice to cooperate in a rendition. Such renditions are permissible under international law and are consistent with the responsibilities of those governments to protect their citizens.

Rendition is a vital tool in combating transnational terrorism. Its use is not unique to the United States, or to the current administration. Last year, then Director of Central Intelligence George Tenet recalled that our earlier counterterrorism successes included "the rendition of many dozens of terrorists prior to September 11, 2001."

-- Ramzi Youssef masterminded the 1993 bombing of the World Trade Center and plotted to blow up airliners over the Pacific Ocean, killing a Japanese airplane passenger in a test of one of his bombs. Once tracked down, a rendition brought him to the United States, where he now serves a life sentence.

-- One of history's most infamous terrorists, best known as "Carlos the Jackal," had participated in murders in Europe and the Middle East. He was finally captured in Sudan in 1994. A rendition by the French government brought him to justice in France, where he is now imprisoned. Indeed, the European Commission of Human Rights rejected Carlos' claim that his rendition from Sudan was unlawful.

Renditions take terrorists out of action, and save lives.

In conducting such renditions, it is the policy of the United States, and I presume of any other democracies who use this procedure, to comply with its laws and comply with its treaty obligations, including those under the Convention Against Torture. Torture is a term that is defined by law. We rely on law to govern our operations. The United States does not permit, tolerate, or condone torture under any circumstances. Moreover, in accordance with the policy of this administration:

-- The United States has respected -- and will continue to respect -- the sovereignty of other countries.

-- The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture.

-- The United States does not use the airspace or airports of any country for the purpose of transporting a detainee to a country where he or she will be tortured.

-- The United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured.

International law allows a state to detain enemy combatants for the duration of hostilities. Detainees may

only be held for an extended period if the intelligence or other evidence against them has been carefully evaluated and supports a determination that detention is lawful. The U.S. does not seek to hold anyone for a period beyond what is necessary to evaluate the intelligence or other evidence against them, prevent further acts of terrorism, or hold them for legal proceedings.

With respect to detainees, the United States government complies with its Constitution, its laws, and its treaty obligations. Acts of physical or mental torture are expressly prohibited. The United States government does not authorize or condone torture of detainees. Torture, and conspiracy to commit torture, are crimes under U.S. law, wherever they may occur in the world.

Violations of these and other detention standards have been investigated and punished. There have been cases of unlawful treatment of detainees, such as the abuse of a detainee by an intelligence agency contractor in Afghanistan or the horrible mistreatment of some prisoners at Abu Ghraib that sickened us all and which arose under the different legal framework that applies to armed conflict in Iraq. In such cases the United States has vigorously investigated, and where appropriate, prosecuted and punished those responsible. Some individuals have already been sentenced to lengthy terms in prison; others have been demoted or reprimanded.

As CIA Director Goss recently stated, our intelligence agencies have handled the gathering of intelligence from a very small number of extremely dangerous detainees, including the individuals who planned the 9/11 attacks in the United States, the attack on the U.S.S. Cole, and many other murders and attempted murders. It is the policy of the United States that this questioning is to be conducted within U.S. law and treaty obligations, without using torture. It is also U.S. policy that authorized interrogation will be consistent with U.S. obligations under the Convention Against Torture, which prohibit cruel, inhuman, or degrading treatment. The intelligence

so gathered has stopped terrorist attacks and saved innocent lives - in Europe as well as in the United States and other countries. The United States has fully respected the sovereignty of other countries that cooperate in these matters.

Because this war on terrorism challenges traditional norms and precedents of previous conflicts, our citizens have been discussing and debating the proper legal standards that should apply. President Bush is working with the U.S. Congress to come up with good solutions. I want to emphasize a few key points.

-- The United States is a country of laws. My colleagues and I have sworn to support and defend the Constitution of the United States. We believe in the rule of law.

-- The United States government must protect its citizens. We and our friends around the world have the responsibility to work together in finding practical ways to defend ourselves against ruthless enemies. And these terrorists are some of the most ruthless enemies we face.

-- We cannot discuss information that would compromise the success of intelligence, law enforcement, and military operations. We expect other nations share this view.

Some governments choose to cooperate with the United States in intelligence, law enforcement, or military matters. That cooperation is a two-way street. We share intelligence that has helped protect European countries from attack, helping save European lives.

It is up to those governments and their citizens to decide if they wish to work with us to prevent terrorist attacks against their own country or other countries, and decide how much sensitive information they can make public. They have a sovereign right to make that choice.

Debate in and among democracies is natural and healthy. I hope that debate also includes a healthy regard for the responsibilities of governments to protect their citizens.

Four years after 9/11, most of our populations are asking us if we are doing all we can to protect them. I know what it is like to face an inquiry into whether everything was done that could have been done. So now, before the next attack, we should all consider the hard choices that democratic governments must face. We can all best meet this danger if we work together.

YY

L65

NotesTele

UNCLAS GENEVA 02441
CABLX:
ACTION: PSA
INFO: PA USIS RMA PSAH PC LA IRM IEA DCM AMB

DISSEMINATION: PSA
CHARGE: PROG

APPROVED: PSA:JDELAURENTIS
DRAFTED: PSA:EJRYLEY
CLEARED: PSA:SMBARRIOS

VZCZCGVI068
PP RUEHC RUCNDT
DE RUEHGV #2441/01 2460732
ZNR UUUUU ZZH
P 020732Z SEP 04
FM USMISSION GENEVA
TO RUEHC/SECSTATE WASHDC PRIORITY 2149
INFO RUCNDT/USMISSION USUN NEW YORK 0219
BT
UNCLAS SECTION 01 OF 02 GENEVA 002441

STATE FOR IO/SHA, DRL/MLA, L/HRR

E.O. 12958: N/A
TAGS: PHUM, UNHRC-1
SUBJECT: COMMUNICATION FROM THE WORKING GROUP ON ENFORCED DISAPPEARANCES

1. Mission received the following letter dated August 25, 2004 from the Chairman of the Working Group on Enforced or Involuntary Disappearances, Stephen J. Toope, addressed to Ambassador Moley. The letter concerns reports the Working Group has received regarding alleged secret detention centers under United States' authority in various parts of the world and invites the USG to submit written information by October 15 and/or send a representative to appear in person at the next Working Group session November 8-15, 2004.

2. Text of letter and annex follows:

Begin text.

25 August 2004

Dear Mr. Ambassador,

I should like to communicate to you, on behalf of the Chairman of the Working Group on Enforced or Involuntary Disappearances, the following letter addressed to you:

"Dear Mr. Ambassador,

I have the honour to write to you on behalf of the Working Group on Enforced or Involuntary Disappearances, which held its seventy-third session from 16 to 20 August 2004, at the United Nations Office in Geneva.

In the course of the session, the Working Group decided to inform your Government of reports it had received about developments in your country having an influence on the phenomenon of disappearances or the solution of the cases not

yet clarified, and/or on the implementation of the Declaration on the Protection of All Persons from Enforced Disappearances. A summary is provided as an Annex to this letter.

I would like to take this opportunity to remind your Government that the Working Group will hold its seventy-fourth session from 8 to 15 November 2004, at the Untied Nations Office in Geneva. It would therefore be very much appreciated if any written information that your Government wishes to submit for the Working Group's consideration, could be received, if possible, by 15 October 2004.

In conformity with its usual practice, the Working Group is prepared to receive representatives of interested Governments during the first three days of its session. Should your Government wish to be represented at the forthcoming session, I would appreciated your contacting the Group's secretariat at the Untied Nations Office of the High Commissioner for Human Rights in Geneva (tel. 022-917-9176), in order to schedule an appointment with the Group.

I remain
Dear Mr. Ambassador,

Yours sincerely

Stephen J. Toope
Chairman
Working Group on Enforced or Involuntary Disappearances"

I remain,
Dear Mr. Ambassador,

Yours sincerely,
//////////////////////
Tanya Smith
Secretary a.i.
Working Group on Enforced or Involuntary Disappearances

ANNEX
WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

General allegations

United States of America

The Working Group received information from non-governmental organizations concerning the reported non-compliance by the Government of the United States of America with provisions of the Declaration on the Protection of All persons from Enforced Disappearance.

Reports were received by the Working Group regarding secret detention centers under United States' authority in various parts of the world, in which an unknown number of persons are detained. Reports assert that there was inadequate provision of notice to families about the capture of detainees and their conditions, legal status and rights. It is also reported that it is unclear in many circumstances which U.S. agency is ultimately responsible for the arrest or the conditions of confinement of the detainees in these

B5

facilities.

Reports further specify that the most sensitive and high-profile detainees are not being held in Guantanamo because it is believed that detainees there will eventually be monitored by the U.S. courts. It is stated that terrorism suspects are detained by the Untied States in "undisclosed locations," presumably outside the United States, with no access to the ICRC, no notification to families, no oversight of any sort of their treatment, and in most cases no acknowledgment that they are even being held. Information was provided on 13 specific alleged detainees, apprehended in places such as Pakistan, Indonesia, Thailand, Morocco, and the United Arab Emirates, who have reportedly disappeared in U.S. custody.

B5

American authorities have also apparently refused to disclose the names of men secretly detained during the past few years within the United States. Families have not been informed on the arrested persons' locations. Reports state that some of these detainees have now been released or deported.

End text.

3. Mission transmitted a copy of the letter by fax to IO/SHA, Attention Director.

Cassel
BT
#2441
NNNN

SECRET

Wright, Elizabeth B

L95

From: Dolan, JoAnn
Sent: Thursday, May 05, 2005 5:38 PM
To: Wright, Elizabeth B
Subject: FW: Clearance (SECRET) [redacted] B1
[redacted] -Due in S/ES by 3PM, 5/5. thanks.

Importance: High

RELEASED IN PART
B1, 1.4(D)

-----Original Message-----
From: Dolan, JoAnn
Sent: Thursday, May 05, 2005 5:38 PM
To: Dorosin, Joshua L; SWCI; Carpenter, Jonathan J(P); Degnan, Kelly C(P); Waller, Robert P(D); Ward, Celeste J(C); McLean, Lori A (C); Pollack, Margaret J(SA-1)
Cc: Bellinger, John B (L Bureau)
Subject: Clearance (SECRET) [redacted] Due in S/ES by 3PM, 5/5. thanks.
Importance: High

Attached memo was due in S/ES at 3:00 today and must go up tonight as Secretary departs tonight. It is due at NSC tomorrow.

LEGAL-#122095-v1 -AM_on_Draft_P...

LEGAL-#122097-v1 -Memo_to_Hadle...

-----Original Message-----
From: Sarkis, Saadia E
Sent: Wednesday, May 04, 2005 3:41 PM
To: TTL-L
Cc: TTL-S; TTL-D; P Officers; C; TTL-SP; SES 4; SES-Line Only; TTL-SCT; TTL-SWCI; TTL-SA; TTL-PM; TTL-NEA
Subject: (SECRET) [redacted] Due in S/ES by 3PM, 5/5. thanks. B1

L, please coordinate State's response under cover of an Action Memo to S covering a memorandum from the Secretary to NSA Hadley. Pls clear with D, P, C, S/WCI and others as appropriate. Many thanks.

DUE IN S/ES BY 3:00 PM, THURSDAY, MAY 5

CC: S,D,P,C,S/P,S/ES,NEA,SA,PM,SCT, SWCI

200508934

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: JOHN S BLODGETT
CLASSIFICATION: SECRET REASON: 1.4(D)
DECLASSIFY AFTER: 5 MAY 2015
DATE/CASE ID: 17 AUG 2009 200706444

L115

NotesTele (49)

C O N F I D E N T I A L OSLO 01694

Laser1:
INFO: PAS CONS

CXOSLO:
ACTION: P/E
INFO: RSO AMB DAO RAO ODC DCM

RELEASED IN PART
B1, 1.4(B), 1.4(D)

DISSEMINATION: POLO
CHARGE: PROG

APPROVED: DCM:CWWEBSTER
DRAFTED: POL\ECON:HAMMERMIKE
CLEARED: DAO:JSTEVENS, RAO:GSIMS PAO:JE-B

VZCZCNYI332
OO RUEHC RUEHCP RUEHRK RUEHSM RUEAIIA RUEAWJA
RUEKJCS RHEHNSC RUEKJCS RUEAHLC RUCNFB
DE RUEHNY #1694/01 3201606
ZNY CCCCC ZZH
O 161606Z NOV 05
FM AMEMBASSY OSLO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3117
INFO RUEHCP/AMEMBASSY COPENHAGEN IMMEDIATE 1935
RUEHRK/AMEMBASSY REYKJAVIK IMMEDIATE 0595
RUEHSM/AMEMBASSY STOCKHOLM IMMEDIATE 2697
RUEAIIA/CIA WASHDC IMMEDIATE
RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE
RUEKJCS/JOINT STAFF WASHDC IMMEDIATE
RHEHNSC/NSC WASHDC IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE
RUEAHLC/HOMELAND SECURITY CENTER WASHINGTON DC PRIORITY
RUCNFB/FBI WASHINGTON DC PRIORITY
BT
C O N F I D E N T I A L SECTION 01 OF 03 OSLO 001694

COPENHAGEN FOR LEGATT

E.O. 12958: DECL: 11/16/2015
TAGS: MARR, PREL, PTER, PGOV, NO
SUBJECT: NORWEGIAN QUESTIONS REGARDING DETAINEE FLIGHTS

REF: A. STATE 115990 B. OSLO 842 C. OSLO 829

Classified By: DCM Christopher W. Webster, Reason 1.4 b and d.

1. (U) This is an action request -- see para 4.

2. [redacted] B1

NotesTele (49)

[redacted] B1

[redacted] an article in the leftist weekly "Ny Tid" that alleges that an aircraft with the tail number N50BH owned by Crystal Jet Aviation of Albany, New York, is operated by the USG to transport detainees and landed in Norway. [redacted] B1

[redacted] End note).

[redacted] B1

5. (U) Post has also received press inquiries and only plans to confirm that the MFA has indeed asked for information regarding possible detainee flights.

Comment

NotesTele (49)

[redacted] B1

Translation of one of the Articles on Alleged Detainee Flight

8. (U) Norwegian News Agency (NTB) report dated November 16, 2005
(begin text of informal Embassy translation)

CIA Plane was at Gardermoen (Oslo,s main airport) for 12 hours

An American airplane that is suspected of having been on an assignment for the CIA, and which landed at Gardermoen, was at the airport for twelve hours.

&The plane came at 0740 and departed at 1922,8 communications director Ove Narvesen at Avinor tells NTB.

He explains that there were two passengers on board in addition to the crew, but otherwise doesn't know anything about the plane's stay or the purpose of the visit by the passengers to Norway.

NotesTele (49)

On Friday, the weekly Ny Tid broke the story about the landing at Gardermoen on July 20 of this year. The plane in question is one of several that are discussed in the American media in connection with the CIA's transport of prisoners to Guantanamo Bay in Cuba and to third countries where prisoners are said to have been tortured.

The issue has come on the agenda in several European countries the past few days and is the subject of considerable attention.

The plane has the tail number &N50BH8 and is owned by the company Cyrstal Jet Aviation based in Albany, New York. The same plane is now the subject of an investigation in Sweden, where the plane is said to have landed at several locations during recent years.

Ministry of Foreign Affairs Meeting

The (Norwegian) Foreign Ministry was reported to be meeting Wednesday afternoon with the U.S. Embassy to clarify the circumstances around the landing of the plane at Gardermoen during the summer when it allegedly was on a mission for the CIA.

&We will ask about the circumstances concerning the landing,8 the Ministry's spokeswomen, Anne Lene Dale Sandsten, told NTB.

&If it was an official flight, they should have known about it,8 she responded to a question as to whether the Embassy knew about the landing.

Dale Sandsten says that from the Foreign Ministry's point of view, there is no reason to believe that anything is out of order.

&But there is a certain level of media interest,8 she added regarding the background on the meeting.

She references that earlier this year the Foreign Ministry discussed a similar case after a similar American layover at Sola in Stavanger on June 1 had been reported.

&At that point the Americans explained that there had not been prisoners on board,8 she says.

NotesTele (49)

No Information on Passengers

Information Director Robert Haast at the Civil Air Authority explains that his office does not know who was on board the plane on July 20. According to regulations, it is possible that his office would be informed about this.

&If it is an official flight, the Civil Air Authority should be informed of who is on board. That did not happen in this case,8 Haast tells NTB.

&If a civilian company carries out an operation for the government in a country, for example transport of a head of state, information is provided to the Civil Air Authority via an application to the Foreign Ministry.8

&If a civilian air company carries out an operation for the police or intelligence service, it is evaluated on a case-by-case basis. But in most instances it would not be viewed as an official flight,8 says Haast. End translation.
Visit Oslo's Classified website:
http://www.state.sgov.gov/p/eur/oslo/index.cfm

ONG
BT
#1694
NNNN

L 118

Pekala, Mark A

RELEASED IN PART
B5

From: Allegrone, Kathleen H
Sent: Wednesday, November 23, 2005 10:04 AM
To: Pekala, Mark A; Graffy, Colleen P
Subject: Spanish -- MFA Communique on the CIA planes/DCM mentioned

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From: Clements, Gary A
Sent: Wednesday, November 23, 2005 9:30 AM
To: Allegrone, Kathleen H
Cc: EUR-WE-Spain-DL
Subject: FW: MFA Communique on the CIA planes/DCM mentioned

Kathy,
I have calls in to post [redacted] B5
[redacted] A question to
Adam Ereli last week from a reporter [redacted]
[redacted]
Gary

From: Hall, Morgan C
Sent: Thursday, November 17, 2005 1:31 PM
To: Manzanares, Bob; Allegrone, Kathleen H; Propp, Kenneth R; Terrill, Damon A; EUR-WE-Spain-DL
Cc: Fitzpatrick, Kathleen M; Zuniga, Ricardo F; Keener, Geraldine F
Subject: RE: MFA Communique on the CIA planes/DCM mentioned

Here is a quick translation of the Spanish MFA Communique issued yesterday:

Government of Spain Official Statement

Wednesday, 16 of November 2005

With regard to the news that has appeared in recent days concerning the possible use of Spanish airports for the transfer of prisoners or detainees in international flights, the Government communicates the following:

1. - The Government has asked the Minister of Foreign Affairs to appear before the Congress of Deputies to provide a detailed report on all aspects related to this subject.

2. - In March of this year, after the appearance of the news in some media outlets, the Director General of Foreign Policy for Europe and North America, Jose Pons, asked the Charge d'Affaires of the United States in Madrid, Mr. Manzanares, for all the information that the U.S. Embassy could provide.

3. - Mr. Manzanares, after carrying out the appropriate consultations, informed the Ministry of Foreign Affairs that he was aware of no aerial transfers of prisoners.

4. - Today, the Ministry of Foreign Affairs has raised the issue again with the Bureau of European and Eurasian Affairs of the U.S. Department of State and the Assistant Secretary of that Bureau has reconfirmed what was stated in March.

From: Manzanares, Bob(Madrid)
Sent: Thursday, November 17, 2005 1:01 PM
To: Hall, Morgan C; Allegrone, Kathleen H
Subject: FW: MFA Communique on the CIA planes/DCM mentioned

FYI.

-----Original Message-----
From: Fitzpatrick, Kathleen M
Sent: Thursday, November 17, 2005 2:18 PM
To: Diaz, Irene X; Zuniga, Ricardo F; Allison, Robert S; Tachco, Amy N; Manzanares, Bob; Law, John; Shumake, Josie S

Subject: MFA Communique on the CIA planes/DCM mentioned

Thanks Irene. Bob -- Here is the text of MFA statement.

-----Original Message-----
From: Diaz, Irene X
Sent: Thursday, November 17, 2005 1:50 PM
To: Fitzpatrick, Kathleen M; Zuniga, Ricardo F; Allison, Robert S; Tachco, Amy N
Subject: CIA Planes
Importance: High

The following is the official communiqué issued by the Ministry of Foreign Affairs re the CIA planes

Comunicado del Gobierno

miércoles, 16 de noviembre de 2005

En relación con las noticias aparecidas estos días sobre la posible utilización de aeropuertos españoles para el traslado de presos o detenidos en vuelos internacionales, el Gobierno comunica lo siguiente:

1.- El Gobierno ha solicitado la comparecencia, a petición propia, del Ministro de Asuntos Exteriores y de Cooperación en el Congreso de los Diputados para informar con detalle de todos los extremos relacionados con este asunto.

2.- En el mes de marzo de este año, y tras las primeras noticias difundidas por algún medio de comunicación, el Director General de Política Exterior para Europa y América del Norte, José Pons, solicitó, a través del Encargado de Negocios de Estados Unidos en Madrid, señor Manzanares, toda la información de la que dispusiese la embajada norteamericana.

3.- El Encargado de Negocios de Estados Unidos, señor Manzanares, tras efectuar las oportunas consultas, informó al Ministerio de Asuntos Exteriores y de Cooperación de que no tenía constancia alguna de posibles traslados aéreos de detenidos.

4.- En el día de hoy, el Ministerio de Asuntos Exteriores y de Cooperación ha vuelto a dirigirse a la Dirección General para Asuntos de Europa y Eurasia del Departamento de Estado Norteamericano para interesarse nuevamente por el Asunto y el Director General del citado departamento ha vuelto a confirmar todos los extremos expuestos en el mes de marzo.

Irene Díaz
Political Section Specialist
U.S. Embassy Madrid
Tel: 34-91-587-2502
Mobil: 34-650-622-281
Fax: 34-91-587-2391/2292

HUMAN RIGHTS WATCH

Questions and Answers: U.S. Detainees Disappeared into Secret Prisons: Illegal under Domestic and International Law

December 9, 2005

The United States is holding an unknown number of terrorism suspects in secret overseas locations, and refusing either to acknowledge the detentions or to give information on the fate or the whereabouts of these detainees. These detainees have been held incommunicado, without trial, some for as many as four years. Some of the detainees are reported to have been tortured in custody.[1]

Several reports indicate that the CIA has held detainees in secret facilities in Eastern Europe, with Poland and Romania named as possible locations.[2] While refusing to directly address the existence of such detention centers, the U.S. asserts that its actions are consistent with its obligations under international law. Meanwhile, the Council of Europe and a number of European states have launched investigations into the allegations of violations of international and domestic laws.

The following questions and answers address legal issues concerning U.S. detainees disappeared into secret prisons.

What laws apply to the cases of U.S. detainees disappeared into secret prisons?

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1 "U.S. Holding at Least Twenty-Six "Ghost Detainees": List of Detainees Published by Human Rights Watch," Human Rights Watch, press release, December 1, 2005, available at http://hrw.org/english/docs/2005/11/07/usint11995.htm; Richard Esposito and Brian Ross, "Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons," ABC News, December 5, 2005; Dana Priest, "CIA Holds Terror Suspects in Secret Prisons; Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11," Washington Post, November 2, 2005.

2 Dana Priest, "CIA Holds Terror Suspects in Secret Prisons," Washington Post, November 2, 2005; "Human Rights Watch Statement on U.S. Secret Detention Facilities In Europe," Human Rights Watch, press release, November 2005, available at http://hrw.org/english/docs/2005/11/07/usint11995.htm; ABC News Radio Broadcast, "Brian Ross Investigates: Secretary of State Condoleezza Rice is off to Europe Today and the Timing Could Not be Worse," December 6, 2005.

International human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR)[3] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[4] govern individual rights to liberty, to a fair trial, and to be free from torture and other cruel, inhuman or degrading treatment. European governments are also bound by similar provisions in the European Convention on Human Rights.[5] The Geneva Conventions address the detention, treatment and trial of prisoners of war and civilians during armed conflict or military occupation.6

International human rights and humanitarian law (the laws of war) ensure that the fundamental rights of all individuals are protected at all times. When the laws of war do not apply, international human rights law still protects that person's rights. Furthermore, certain protections are so well established, such as the prohibitions on torture and other cruel, inhuman or degrading treatment, and prolonged arbitrary detention, that they have become customary obligations that are binding legal obligations independent of specific treaty agreements.[7] The domestic laws of states whose territories or nationals are implicated also apply.

Does holding someone without trial violate international human rights law?

Human rights law has long recognized that everyone has a right to liberty and security of person, and the right to a fair trial. These rights are guaranteed in the Universal Declaration of Human Rights,[8] the ICCPR,[9] and the ECHR.[10] The ICCPR and the

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[3] International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, available at: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm. Each State Party to the ICCPR pledges to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the convention, regardless of such distinctions as race, religion, political or other opinion, or national or social origin. Art. 2. The ICCPR has been ratified by a total of 154 countries, including the United States, the United Kingdom, Germany, Italy, Poland, Spain, Romania, Portugal, the Netherlands, Austria, Sweden and Norway.

4 Convention Against Torture, General Assembly resolution 39/46, entered into force on June 26, 1987, in accordance with article 27 (1), available at http://www.ohchr.org/english/law/cat.htm. The Convention against Torture has been ratified by a total of 140 countries, including the United States, the United Kingdom, Germany, Italy, Poland, Spain, Romania, Portugal, the Netherlands, Austria, Sweden and Norway.

5 European Convention on Human Rights (ECHR), Rome, 4.XI.1950 , available at http://conventions.coe.int/treaty/en/Treaties/Html/005.htm. The ECHR obligates each State Party to secure this right to everyone within its jurisdiction. Art.1. The European Convention binds 46 countries, including the United Kingdom, Germany, Italy, Poland, Spain, Romania, Portugal, the Netherlands, Austria, Sweden and Norway.

6 International Committee of the Red Cross, International Humanitarian Law database, available at: http://www.icrc.org/ihl. All of these countries are bound by the Geneva Conventions.

7 Restatement (Third) of Foreign Relations Law of the United States, Sec. 702 (Customary International Law of Human Rights). The Restatement, prepared by the American Law Institute, is generally considered to be an authoritative statement of the law of the United States.

[8] Universal Declaration of Human Rights, arts. 3 and 11.

ECHR specify that no one shall be deprived of his or her liberty except as established by law. Anyone arrested or detained on a criminal charge must have a fair and public trial within a reasonable time.[11]

International law permits the detention of persons without trial (administrative detention) under certain narrowly defined circumstances. In accordance with the ICCPR, there must be a public emergency that threatens the life of the nation. Administrative detainees under states of emergency should enjoy as a minimum the following rights and guarantees:

(a) The right to be brought before a judicial authority promptly after arrest;

(b) The right to receive an explanation of rights upon arrest in their own language or soon thereafter and to be informed of the specific reasons for the deprivation of liberty;

(c) The right of immediate access to family, legal counsel and a medical officer;

(d) The right to communicate with and be visited by a representative of an international humanitarian agency, such as the ICRC;

(e) The right to challenge, in a fair hearing and periodically if necessary, the lawfulness of the detention and to be released if the detention is arbitrary or unlawful;

(f) The right to complain to a judicial authority about mistreatment;

(g) The right to seek and obtain compensation if the detention proves to be arbitrary or unlawful.

Does holding persons in secret violate international human rights law?

When a person is forcibly detained by government officials who refuse to acknowledge the detention and who keep the person from the protection of the law, this is called a *forced disappearance*.[12] The U.S. has long condemned other countries that engage in forced disappearances, and was instrumental in drafting and approving United Nations statements that condemn all enforced disappearances with no exceptions for national

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9 Each State Party to the ICCPR pledges to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the convention, regardless of such distinctions as race, religion, political or other opinion, or national or social origin., art. 2.

10 The ECHR obligates each State Party to secure this right to everyone within its jurisdiction, art.1.

11 ICCPR, art. 9; ECHR, art. 5-6.

12 "The United States' "Disappeared": The CIA's Long-Term "Ghost Detainees", Human Rights Watch Briefing Paper, October 2004.

security or emergencies.[13] As described by the ICRC, "No matter how legitimate the reasons for a person's detention, no one has the right to keep that person's fate or whereabouts secret or to deny that he or she is being detained."[14]

"Disappeared" detainees are cut off from the outside world and from the protection of the law and thus subject to the whim of their captors. This has the effect of suspending the rights of "disappeared" persons and placing them in a situation of complete defenselessness, making them especially vulnerable to torture and other ill-treatment.

Do the laws of war apply to these detainees?

The U.S. has claimed that all persons captured in the "global war on terror" are "enemy combatants" who may be detained without charges for the duration of the conflict. Even if this were the case, a view Human Rights Watch contests,[15] the U.S. has not met even its basic obligations for detainees held under the laws of war. The U.S. has never stated the legal basis for the detention of any of detainees disappeared into secret prisons, the circumstances of their capture, or their individual status as combatants or terrorism suspects – the U.S. does not even acknowledge they are being held.

Does secret detention without trial violate the laws of war?

The customary laws of war prohibit secret detention. Consistent with the prohibition on enforced disappearance, states are required to record the personal details of detainees and provide information to family members on the fate of missing persons,[16] and detainees should be allowed to correspond with relatives and receive visits to the degree practicable.[17]

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During an international armed conflict, the Third and Fourth Geneva Conventions require that the ICRC have access to all detainees and places of detention. Prisoners

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13 Declaration on the Protection of all Persons from Enforced Disappearance, GA Res 47/133, entry into force December 18, 1992.

14 International Committee of the Red Cross, "Enforced Disappearance Must Stop," August 30, 2003, available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList581/8AE1907FEC3D5CA0C1256D92005202B3.

15 "Letter to Secretary Rumsfeld on the 'Joint Doctrine for Detainee Operations'," Human Rights Watch letter, April 7, 2005, available at: http://hrw.org/english/docs/2005/04/07/usdom10439.htm; "US: Pentagon Detention Guidelines Entrench Illegality: Enemy Combatants Could be Held as "Ghost Detainees"," Human Rights Watch press release, April 7, 2005, available at: http://hrw.org/english/docs/2005/04/07/usdom10440.htm.

16 See ICRC, Customary International Humanitarian Law, rules 123 and 117.

17 Ibid, rules 125-26.

should be documented, and their whereabouts must be made known to their family. Visits from the ICRC may only be prohibited for "reasons of imperative military necessity" and then only as "an exceptional and temporary measure."[18] In all cases, including where civilians can legitimately be held as spies or saboteurs, detainees must be treated with humanity and, if charged with a criminal offense, afforded a fair and regular trial.[19] In all cases, the Geneva Conventions prohibit torture or inhumane treatment.

What is the connection between secret incommunicado detentions and torture?

The prohibition on secret incommunicado detention is not just a protection of individuals' right to liberty and security, but is an important safeguard against abuse in detention or during interrogations, including torture and other forms of cruel inhuman or degrading treatment. Historically, secret detention has been a gateway to abuse.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as the intentional infliction of severe physical or mental pain or suffering by someone acting in an official capacity for a specific purpose.[20]

News reports citing current or **former intelligence officers and interrogators** have confirmed that detainees in U.S. custody have been subjected to abuse.[21] U.S. government officials, speaking anonymously to the media, have described a number of interrogation techniques authorized for use by the CIA which constitute torture, and which the United States has historically considered as such when conducted by other governments, including "waterboarding" (mock drowning), forced standing for over 40 hours, extended sleep deprivation, and exposure to extreme temperatures.[22]

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18 Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), art 126. and Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 143.

19 See e.g. article 3(1)(d) common to the four Geneva Conventions of 1949; Third Geneva Convention, arts. 93, 103, 105, 107; Fourth Geneva Convention, art. 71.

20 Convention against Torture, art. 1. The ECHR likewise prohibits torture and inhuman or degrading treatment or punishment. ECHR , art. 3.

21 Richard Esposito and Brian Ross, "Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons," ABC News, December 5, 2005; Neil A. Lewis, "Fresh Details Emerge on Harsh Methods at Guantanamo," *New York Times*, January 1, 2005.

22 "CIA Whitewashing Torture: Statements by Goss Contradict U.S. Law and Practice," Human Rights Watch press release, November 21, 2005, available at: http://hrw.org/english/docs/2005/11/21/usdom12069.htm; "Descriptions of Techniques Allegedly Authorized by the CIA," Human Rights Watch background briefing, November 21, 2005, available at: http://hrw.org/english/docs/2005/11/21/usdom12071.htm.

What international laws prohibit torture and cruel, inhumane and degrading treatment?

Torture and cruel, inhuman or degrading treatment are prohibited by such treaties as the ICCPR, the Convention against Torture, and the European Convention on Human Rights, among other treaties.

Torture and cruel, inhuman or degrading treatment is also prohibited under international law even for states that have not ratified human rights treaties. The ban is powerful enough to stand as customary international law. Torturers have been compared to slavers, *genocidaires* and pirates as "enemies of all mankind."[23]

All states are obligated under both international humanitarian and human rights law to prohibit, prevent and prosecute instances of torture and other ill-treatment of persons in custody. The prohibition against mistreatment applies to the United States during times of peace, armed conflict, or a state of emergency. Any person is protected, whether a U.S. national or a non-citizen. It is irrelevant whether the detainee is determined to be a prisoner-of-war, a protected person, or a so-called "security detainee" or "unlawful combatant." And the prohibition is in effect within the territory of the United States or any place anywhere U.S. authorities have effective control over a person. In short, the prohibition against torture and ill-treatment is absolute.

Does rendition to a country where a person is likely to be tortured violate human rights law?

States are absolutely prohibited from returning persons to another state where there are substantial grounds for believing that they would be subjected to torture or other ill-treatment.[24] This ban against *refoulement* is expressly stated in numerous major human rights agreements, and has been authoritatively interpreted as part of the general prohibition against torture even where not expressly stated.[25]

A note on terminology: *Rendition* is any transfer of a person between governments. *Extradition* is a rendition from one country to another through a legal process normally

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23 Restatement (Third) of Foreign Relations Law, §102, and reporter's note 6 (1986).

24Convention against Torture, art. 3.

25 "Still at Risk: Diplomatic Assurances No Safeguard Against Torture," Human Rights Watch report, April 2005, available at: http://hrw.org/reports/2005/eca0405/.

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UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Thirty-fifth session
7 – 25 November 2005

UNITED STATES OF AMERICA

List of issues to be considered during the examination of the second periodic report of the United States of America (CAT/C/48/Add.3)

Article 1

1. [redacted] Please explain why, if "[t]he definition of torture accepted by the United States upon ratification of the Convention (...) remains unchanged"[1], the Department of Justice issued a memorandum dated August 2002[2] which concluded "that torture as defined in and proscribed by section 2340-2340A covers only extreme acts" and how this is compatible with article 1 of the Convention. B5

2. [redacted] Q2: Please explain for which substantive reasons the August 2002 memorandum has been replaced by a new memorandum in December 2004[3], as the definition of torture remained unchanged, and Q3: if any of the conclusions of the August 2002 memorandum are still valid. Q4: How does a memorandum interpret a Convention and is it legally binding? B5

[1] § 11 of the State party report
[2] US Department of Justice, Office of Legal Counsel, Office of the Assistant Attorney General, Memorandum for Alberto R. Gonzales, August 1, 2002, p.46
[3] US Department of Justice, Office of Legal Counsel, Office of the Assistant Attorney General, Memorandum for James B. Comey Deputy Attorney General, December 30, 2004

3. [redacted] How does the State party consider Q5: that the memorandum dated 30 December 2004[4] is compatible with the Convention when it states that "[t]he term "torture", in United States and international usage, is usually reserved for extreme, deliberate and unusually cruel practices (...)",[5] or Q6: that "[t]he CAT thus treats torture as an "extreme form" of cruel, inhumane, or degrading treatment",[6] or Q7: that "[t]he requirement that torture be an extreme form of cruel and inhuman treatment is expressed in article 16 (...)"[7] [of CAT]. Herman Burgers and Hans Danelius,[8] quoted as authorities in the 30 December 2004 memorandum, expressly refer that "(...) extreme or extremely severe pain were suggested during the *travaux préparatoires*, but the phrase "severe pain" was considered sufficient to convey the idea that only acts of a certain gravity shall be considered to constitute torture". Q8: Please explain how this interpretation is compatible with article 1 of the Convention. B5

4. [redacted] Q9: Please explain why the interpretation of both memoranda seem to be much more restrictive than previous UN standards, namely the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[9] which states that "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment". B5

Article 2

5. [redacted] Considering the reservation of the State party to the Convention declaring that the "provisions of articles 1 through 16 of the Convention are not self-executing",[10] only legislation giving the United States courts criminal jurisdiction over extraterritorial acts of torture was enacted.[11] Q10: Is the State party actively considering to formally incorporate all provisions of the Convention into domestic law? Q11: If not, how will the State party ensure that its legislative, judicial, administrative and other measures fully meet the obligations of the Convention? Q12 [redacted] What guarantees B5 B5

[4] § 13 and annex 3 of the report
[5] US Department of Justice, Office of Legal Counsel, Office of the Assistant Attorney General, Memorandum for James B. Comey Deputy Attorney General, December 30, 2004, p. 6
[6] Ibid., p. 6
[7] Ibid., p. 7
[8] The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1988, p. 117, *in fine*
[9] Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975
[10] Annex 4 to the report
[11] § 141 of the core document (HRI/CORE/1/Add.49) and § 47 of the initial report (CAT/C/28/Add.5)

and controls does the State party have to ensure the monitoring of the activities of law enforcements officials in prisons and other detention centres under the jurisdiction of States of the Union or under its jurisdiction or *de facto* control[12]?

6. [redacted] Q13: Is the transfer of detainees from one place of detention to another duly registered and is this registrar public? Q14: Do foreigners detained under the jurisdiction of the State party receive any consular assistance? Q 15: Please provide updated and detailed data regarding the incarcerated population in the State party's territory[13] Q16: and in areas under the jurisdiction of the State party, including in Afghanistan, Iraq, and Guantánamo Bay.[14] Q17: Regarding the latter, please provide information on their exact legal status, Q18:the offences they are detained for, Q19: for what period and Q20: the process which determines the length of their detention. Q21: Do detainees have access to legal advice, Q22: medical treatment and Q23: family visits? Q 24: Is there any independent review of the grounds of detention and their continuing applicability? Please provide detailed information on the matter. B5

7. [redacted] According to information before the Committee,[15] the State party has established secret detention facilities, including on vessels, as well as of unacknowledged detentions, with no access to the International Committee of the Red Cross, no notification to families, no oversight with regard to their treatment, and in most cases no acknowledgement that they are even being held. Q.25: Please provide a list of all detention facilities where detainees are being held under the *de facto* effective control of the State party's authorities,[16] outside its territory or on State party's vessels, as well as information on the Q26: number, Q27: nationality, Q28: charges and Q29: exact legal status of those persons. Q30: Why have such secret detention facilities been established? Q31: Does the State party assumes responsibility for alleged acts of torture perpetrated by its own public agents out of its territory but in territories under its jurisdiction or *de facto* control[17]? Q32:As well as in B5

[12] "*De facto* control of the State party", means, e.g., territories, or part of territories, where American troops are operating under American command.
[13] § 78 of the initial report
[14] pages 50 and 71 of the report (annex 1)
[15] Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2005/65, § 364)
[16] Conclusions and recommendations of the Committee Against Torture: United Kingdom of Great Britain and Northern Ireland, and Dependent Territories, § 4 (b)
[17] "*De facto* control of the State party", means, e.g., territories, or part of territories, where American troops are operating under American command.

cases where those acts are perpetrated by persons who are not public agents but are subject to the control of the State party?

8. [redacted] Considering the numerous allegations of torture and ill-treatment of persons in detention under the jurisdiction of the State party and the case of the Abu Ghraib prison, Q33: what specific measures have been undertaken to identify and remedy problems in the command and operation of those detention facilities under the jurisdiction of the State party? Q34: What measures have been undertaken to ensure that the International Committee of the Red Cross has appropriately wide access to all such facilities and to all detainees, and Q35: that its reports are made known to sufficiently senior members of the chain of command for purposes of implementation? B5

9. [redacted] Q36: Under the State party domestic law, is it possible to derogate from the principle of prohibition of torture? Q37: Have any measures taken by the State party derogated from this absolute prohibition? Q38: Can any provision of the Patriot Act of 2001, be interpreted as a possible derogation? Q39: What legal or administrative measures has the State party put in place to ensure that the Convention's prohibition against torture is not derogated from under any circumstances? B5

10. [redacted] Q40: According to information before the Committee, criminal responsibility of perpetrators of torture may be waived under the President's authority as Commander-in-Chief. Please comment. Q41: Does the State party attribute to any person the right to authorize torture or ill-treat anyone under any circumstances, if so, to whom? Q42: Does the State party considers that such an authorization is compatible with article 2 of the Convention? Q43: Has there been an independent investigation regarding the possible responsibility of the high ranking officials of the Administration, including the CIA, Department of Defence, Department of Justice, and the armed forces, for authorizing or consenting, in any way, including through the issuance of orders or guidelines, for acts committed by their subordinates, especially during the interrogation of detainees, which could be considered as acts of torture? B5

11. [redacted] Q44: Can an order from a superior be invoked as a justification of torture? Q 45: Please indicate the appropriate legal measures to ensure this does not occur. Q46: Are there B5

any circumstances, such as "necessity", "self-defense", "superior orders" or any other principle which can be invoked as a defense for those who torture or ill-treat detainees?

12. [redacted] Considering the adoption of several versions of interrogation rules, instructions and methods, specially regarding suspects of terrorism, Q47: have those interrogation rules, instructions and methods been unified for civilian and military use, and Q48: specially for the CIA and the military intelligence services? Q49: Are persons detained outside the State party, but under its jurisdiction, protected by the same norms regarding interrogation rules, instructions and methods? B5

Article 3

13. [redacted] Please provide detailed information on Q50: the provisions implementing article 3 of the Convention in domestic law, and which procedures,Q51: including judicial remedies, ensure that it is implemented in practice, Q52: including regarding persons under the jurisdiction of the State party outside its territory. Q53: Have any decisions of non-refoulement to third countries, under article 3 of the Convention, been revoked? Q54: Are any categories of foreign persons considered as having committed a crime or suspected of having committed a crime automatically excluded from the protection of article 3 of the Convention? B5

14. [redacted] Q55: Does the reservation of the State party to article 3 of the Convention restrict or change the protecting scope of this provision? Q56: Please explain the practical differences between Article 3 of the Convention and the State party reservation to article 3.[18] Q57: How and by whom the determination that a person is "more likely than not" to be tortured is made? Please provide examples, *in abstracto*, if necessary. B5

15. [redacted] Q58: May foreigners, who claim the right not to be returned to a third country under article 3 of the Convention, appeal to the courts against the decision of the Secretary of State? Q59: Do asylum seekers have the right to appeal against removal? Q60: Please provide detailed information on any such procedure. Q61: Does the appeal against a removal have suspensive effect? Q62: Please provide information on the number of appeals filed and their B5

[18] § 33 of the report

outcome. Q63: Does the State party have a list of "safe third countries" for removal? Q64: If so, how is it created and maintained?

16. [redacted] According to information before the Committee, the State party has adopted a policy to send, or to assist in the sending of persons to third countries, either from the State party's territory or from areas under its jurisdiction, for purposes of detention and interrogation. Q65: How many persons have been affected by this policy, Q66: to which countries were they sent to, and Q67: what measures have been adopted to ensure that they would not be subject to torture? There are also allegations[19] that persons are detained without charges in certain countries at the request of the State party's authorities. Q68: Please comment. B5

17. [redacted] Are enforced or involuntary disappearances, which can be considered a form of torture, a crime punishable by law in the State party? [redacted] B5 [redacted] Q70: How does the State party prevent that persons returned to third countries to be interrogated disappear? B5

18. [redacted] Q71: Please provide further information on the procedure used to obtain diplomatic assurances that a person will not be tortured if removed Q72: or extradite to a third State.[20] Q73: Have there been any cases where those assurances were not considered adequate and, therefore, the person was not removed or extradited? Q74: Please provide examples, *in abstracto* if necessary. Q75: Please provide details of the assurances that must be fulfilled by the receiving country in order for the State party to remove or extradite a person. Q76: What monitoring mechanisms are in place to assess if the assurances have been honored?[21] [redacted] Q77: Please provide further information on the "rule of non-inquiry" of the Secretary of State.[22] Q78: What purpose does this rule serve? B5

[19] Report of the Special Rapporteur on Torture (E7CN.4/2004/56/Add.1, § 1818 to 1833)
[20] § 33 of the report
[21] § 43 of the report
[22] § 41 of the report

19. [redacted] bundled with Q71-76 According to information before the Committee, persons have been sent to third countries, which the State party itself considers not to respect human rights,[23] where they have undergone torture and ill-treatment. Q78: [redacted] Q79: Were those cases investigated and what was the result of the investigations, if any? Q80: Are all State party's agencies, when operating outside the State party's territory, under the obligation to respect the *non-refoulement* rule? [redacted] Q81: Please explain what "extraordinary renditions" are and Q82: what procedures and guarantees they follow? B5 B5 B5

Article 4

20. [redacted] Q83: Does torture, under the State party's federal law, constitute a specific type of criminal offense, when committed inside the State party?[24] Q84: Please provide examples. Q85: If not, is the state party actively considering making torture a specific federal crime, if committed inside its territory? Q86: Please explain how this *lacuna* is reconciled with the necessity of prevention of torture and, specifically, with the obligations of the State party under articles 1, 2 and 4 of the Convention? According to the State party report,[25] acts of torture "may be prosecuted" as other criminal acts (assault, homicide, kidnapping, rape, etc.). Q87: Please explain how and under which other offences they could be prosecuted. B5

21. [redacted] According to the State party's report,[26] the Uniform Code of Military Justice includes the offences of cruelty and maltreatment but does it include the offence of torture? Q88: If not, please explain why and how this is compatible with the State party's obligations under article 4 of the Convention. B5

Article 5

[23] The US State Department's annual Country Reports on Human Rights Practices http://www.state.gov/g/drl/rls/hrrpt/2004/c14136.htm
[24] U.S.C.: Title 18, part I, chapter 113C, § 2340
[25] § 16 of the report
[26] § 19 of the report

22. [redacted] Q89: In which case do foreigners have penal immunity regarding the crime of torture, including if present in the territory of the State party, according to the domestic law of the State party? Q90: Have any prosecutions been initiated under the extraterritorial criminal torture statute,[27] considering that there were investigations pending at the date of submission of the report?[28] Q91: Taking in consideration that the prohibition of torture and conspiracy to torture extends to contractors outside the State party,[29] have any contractors been charged with this specific offence? B5

Article 10

23. [redacted] Q92: Are the terms of the Convention applicable to the armed forces and other personnel, including contractors, when participating in peacekeeping or other military operations either alone or as part of an internationally authorised contingent? [redacted] Q:93: If so, have they been informed of their obligations under the Convention and [redacted] Q94: which other international human rights instruments apply to them? B5 B5 B5 B5

24. [redacted] Q95: What education programs and information, rules and instructions and mechanisms of systematic review exist for military personnel involved in the custody, interrogation or treatment of individuals in detention? B5

25. [redacted] Q:96: What use does the State party make of private contractors in respect of the operation of detention facilities and interrogation of detainees and how is this personnel recruited? Q97: According to information before the Committee, human right training for contractors is inexistent or very limited. Please provide detailed information on their training. B5

Article 11

[27] U.S.C.: Title 18, part I, chapter 113C, § 2340A
[28] § 50 of the report
[29] § 12 of the report

26. [ ] Q98: Could the use of the word "extreme" in the December 2004 memorandum[30] create unnecessary confusion for trainers and personnel, considering that, according to the Report by Major General Fay, Lieutenant General Jones, and General Kerna, "military personnel or civilians appeared to have abused Iraqi prisoners due to (...) confusing interrogation rules".[31] B5

27. [may be bundled with Q98 above.] Q99: Please provide detailed examples of revisions of interrogation rules, instructions, methods and practices after the August 2002 memorandum was superseded by the December 2004 memorandum.[32] Q100: Are there any specific interrogation rules, instructions and methods for specific agencies or Q101: do the same apply to all personnel, including the limits on interrogation techniques? Q102: Please provide the Committee with all the interrogation rules, instructions and methods currently applicable. B5

Article 12

28. [ ] Q103: Please provide information on the programs, activities, resources and results of the Civil Division Rights of the Department of Justice? B5

29. [ ] Q104: Since October 1999, what has been the outcome of the enforcement of the Civil Rights of Institutionalized Persons Act?[33] [ ] B5

[ ] Q105: How many investigations ended in prosecution for torture or cruel, inhuman or degrading treatment or punishment or similar offences? Q106: What measures have been taken for the betterment of conditions of detention? Please provide detailed information. B5

30. [ ] Please provide disaggregated statistical data regarding deaths in custody according to Q107: location of detention, and Q108: gender, Q109: age, Q110: ethnicity of the deceased and B5

[30] US Department of Justice, Office of Legal Counsel, Office of the Assistant Attorney General, Memorandum for James B. Comey Deputy Attorney General, December 30 2004
[31] Page 75 of the report (annex 1)
[32] § 62 of the report
[33] § 26 of the report

Q111: cause of death. Q112: Please provide detailed information on the results of the investigations in respect of those deaths, Q113: including any specific recommendations made following the inquiries? [redacted] B5

[redacted] Deleted: 1

31. [redacted] Please provide information in respect of the numerous deaths of detainees which have occurred under the State party's jurisdiction Q114: in Afghanistan Q115: and Iraq, allegedly after being torture. Q116: Have those death been fully and impartially investigated, those found to be responsible prosecuted and punished in accordance with the seriousness of the offences? B5

32. [redacted] may be lumped with Q31 above.] Please provide updated detailed information on any specific cases of torture or cruel, inhuman or degrading treatment or punishment or similar offences committed by personnel of the State party's in Q117: Afghanistan, Q118: Iraq and Q119: Guantánamo Bay, including number of cases, their status, before which authorities they are pending and their outcome, if any. Q120: In the view of the State party, how did such acts occur, and Q121: what actions have been adopted to ensure that there will be no re-occurrence of any such acts in places of detention under the State party's control? B5

33. [redacted] [may be lumped with Q31 above.] Please comment on the information that the official investigations conducted into allegations of torture and ill-treatment in Q122:Afghanistan and Q123: Iraq, and especially in the Abu Ghraib prison, were not fully independent. Q124: Were any investigations[34] carried out by an independent, judicial or non-military authority? Q125: If not, are any independent investigation foreseen in the future? Q126:Are there any independent entities that monitor these facilities (national or international or non-governmental)? Q127: Please provide the results of the investigations that were still ongoing at the time of submission of the report, including by the Naval Criminal Investigation Service and by the Naval Inspector General.[35] B5

Articles 13 and 14

[34] Page 74 of the report (annex1)
[35] Page 68 of the report

34. [redacted] Q128: Do the Combatant Status Review Tribunals and the Administrative Review Boards[36] have any jurisdiction regarding complaints of torture and cruel, inhuman or degrading treatment or punishment? Q129: How is their impartiality ensured when dealing with such cases? B5

35. [redacted] Q130: Please provide detailed information on how, in practical terms, the "Justice For All Act" of 2004 has provided an improvement of the rights of victims of torture to obtain redress?[37] Q131: Since the enactment of the Act, has there been an increase in the number of complaints? Q132: Please provide statistical information. B5

36. [redacted] Q133: What remedies are available to detainees under the State party jurisdiction outside the State party territory with regard to acts of torture, and before what authority they may seek compensation? Q134: How many detainees have exercised this right so far? Q135: Please provide a breakdown of the statistical data regarding complaints of torture or ill-treatment according to gender, age, location of the complainant, and result of the investigation. Q136: Has compensation been provided to date, to how many victims, and what amounts were involved? Q137: Please provide information on compensation given to the Abu Ghraib victims.[38] B5

37. [redacted] Q138: Please explain how the Prison Litigation Reform Act which contains a provision establishing "that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury"[39] is compatible, amongst others, with article 13 of the Convention, considering that it limits the right of victims to complain and increases the possibility of impunity for perpetrators. B5

38. [redacted] Q139: Please indicate if victims of torture perpetrated by personnel of the State party have been treated in any Centre for Victims of Torture in the State party.[40] B5

39. [redacted] suggest that we provide information as of April 2006] Q140: Please update information on the *habeas corpus* cases pending before B5

[36] Page 53 of the report (annex 1)
[37] § 65 of the report
[38] Page 79 of the report
[39] § 153 of the report
[40] § 84 of the report

district courts,[41] following the decisions of the U.S. Supreme Court in "Rasul v. Bush". Q141: Does the State party ensure the right of *habeas corpus* to detainees under its control in other parts of the world?

40. [redacted] Q142: Is the State party considering reviewing its decision not to apply the Geneva Conventions to detainees who are considered "enemy combatants" by the State party, in Afghanistan, Iraq, Guantánamo Bay or in other location under the jurisdiction of the State party[, which creates a climate of impunity for cruel, inhuman or degrading treatment or punishment of those persons]? Q143: What is the exact legal status of those persons and Q144: what international instruments are applicable to them, in order to protect their human rights. B5

Article 15

41. [redacted] Q145: Please provide examples of judicial cases where the courts have declared statements inadmissible on ground of having being obtained coercively, if any. B5

42. [redacted] Q 146: In view of the prohibition contained in Article 15 of the Convention on the use of any statement obtained as a result of torture from being used as evidence in any proceedings except against the alleged torturer, how is this provision specifically guaranteed at the Combatant Status Review Tribunals and at the Administrative Review Boards?[42] Q147: Please provide information on any statement which has been considered inadmissible so far. B5

Article 16

43. [redacted] The reservation to article 16 limits the meaning of cruel, inhuman or degrading treatment or punishment to the treatment or punishment prohibited by the fifth, eight and fourteen amendments to the Constitution. Q148: B5

[41] Page 59 of the report
[42] Page 53 of the report (annex 1)

In practical terms, what kinds of treatment or punishment are prohibited, and admissible, by the amendments but not by the Convention? Please provide concrete examples.

44. [redacted] Q149: Considering the reservation to article 16, is this article fully applicable outside the State party territory, in territories under the jurisdiction of the State party or under the *de facto* control of the State party?[43] Q150: Please clarify what is considered to be within the Special Maritime and Territorial Jurisdiction? Q151: Does article 16 of the Convention apply to the Special Maritime and Territorial Jurisdiction?[44] Q152: Are cruel, inhuman or degrading treatments or punishment, committed by its agents against foreigners outside the territory of the State party, punishable by law in the State party? B5

45. [redacted] Q153: Please provide examples of practical implementation of the National Detention Standards which provided non-citizens detainees with better condition of detention.[45] Q154: Please provide information on the measures taken to address the complaints of harassment and sexual violence against immigrant women by border patrol agents. B5

46. [redacted] According to information before the Committee, various cases of death after the use of "tasers" have occurred, which raises serious concerns about their safety. Q155: Please provide detailed information on their use, including any measures taken to make their use safe? B5

47. [redacted] Q156: Why are juveniles detained with adults, in federal or state facilities, and under which conditions, considering that federal law prohibits that juveniles be held in custody with adults. Q157: How many juveniles are still detained with adults, in federal or state facilities?[46] B5

48. [redacted] According to information before the Committee, detained women are kept shackled during childbirth. 158: Why does the State party consider such a measure to be necessary? Please enunciate the measures taken to prohibit detainees been placed in Q159: B5

[43] "*De facto* control of the State party", means, e.g., territories, or part of territories, where American troops are operating under American command.
[44] § 45 of the report
[45] § 126 of the report
[46] § 116 of the report

chain gangs and Q160: in hitching posts.[47] Q161: What measures have been taken to review the regime of super maximum security prisons?[48]

49. [redacted] Q162: What measures have been taken to prevent sexual violence to detainees, including inter-prisoner violence? Q163: Regarding females, juveniles and immigrants detainees, which specific measures have been taken to protect them against this type of violence? Q164: Please provide the number of complaints lodged by detainees, Q165the outcome of the investigations Q166: and the compensation paid to the victims. B5

50. [redacted] Q167: How the use of solitary confinement is regulated and Q168: how the monitoring of the detainees' mental is health carried out?[49] [redacted] Q169: How is prolonged isolation and indefinite detention, with or without charges, compatible with the obligation of the State party under article 16? B5 B5 B5

51. [redacted] Q170: Please provide information in respect of allegations of extreme pain during the procedure of execution by lethal injection, as the sedative is not properly administrated.[50] Q171: How executions are monitored, especially those by lethal injection? B5

52. [redacted] According to information before the Committee, the State party has authorized the use of interrogation techniques such as 20-hour interrogations, stress positions, isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, use of dogs to instil fear, removal of clothing, forced shaving, use of female interrogators, physical contact and removal of religious items? Q172: If so, how does the State party reconcile the use of such techniques with its obligations under article 16 of the Convention? Please provide detailed information on interrogation techniques authorized and practised in Q173: Guantánamo Bay, Q174: Afghanistan, Q175: Iraq, and Q176: in other places of detention under the State party control. Q177:Are there any specific rules regarding the use of gender or sexualized practices as methods of interrogation? B5

[47] § 121 and 124 of the report
[48] § 95 of the report
[49] Report of the Special Rapporteur on Torture (E/CN.4/2005/62/Add.1, § 1857)
[50] Report of the Special Rapporteur on Torture (E/CN.4/2005/62/Add.1, § 1858)

53. [redacted] While acknowledging the federal structure of the State party, it is the federal State that responds for the international obligations assumed by the State party under the Convention. Q178: Please provide detailed information on the existing mechanisms the State party has to monitor the implementation of the Convention at the State level, in order to fulfill its international obligations under the Convention? [redacted] B5

[redacted] Please provide detailed information on the Q179: McCain and Q180: Graham-Levin amendments Q181: as well as on the changes they will introduce to the current legislative, administrative, judicial and other measures preventing cruel, inhuman or degrading treatment or punishment. B5

Other issues

54. [redacted] Q182: Is the State party considering making the declaration under article 22, recognizing the competence of the Committee to receive and consider individual communications? B5

55. [redacted] Q183: Is the State party considering withdrawing any of its reservations to the Convention, as they might be interpreted, and applied, as limiting the full application of the Convention? B5

56. [redacted] Q184: Does the State party envisage ratifying the Optional Protocol to the Convention against Torture? If so, has the State party taken any steps to set up or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment? B5

57. [redacted] Q185: Please indicate whether the State party's legislation prevents and prohibits the production, trade, import, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. Q186: If so, please provide information about its contents and implementation. Q187: If not, please indicate whether the adoption of such legislation is being actively considered. B5

58. [redacted] B5

[redacted] B5 Q188: Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, and please describe if, and Q189: how, these measures have affected human rights safeguards in law and practice. Q 190: Please describe the relevant training given to law enforcement officers, Q191: the legal remedies available to persons subjected to anti-terrorist measures, Q192: the number of complaints of non-observance of international standards, and Q193: the outcome of these complaints.

59. [redacted] B5

[redacted] B5 Q194: Please provide information on the legislative and other measures the State party has taken to prevent domestic violence and Q195: to classify acts of domestic violence as specific offences under the criminal law.

ANDREW TYRIE MP

HOUSE OF COMMONS
LONDON SW1A 0AA

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2006 FEB -1 P 5:11

Dr Condoleezza Rice
Secretary of State

200602123

2006 Feb 2 P 13:18

By hand

30th January 2006

Dear Secretary of State

I am writing to you again in my capacity as Chairman of the All Party Parliamentary Group on Extraordinary Rendition. As you may recall, this is a cross party group of over 50 MPs and Peers from the British parliament.

We are deeply concerned about allegations that the United States has carried out extraordinary renditions. We are also concerned about allegations that the UK may have provided logistical support to US flights as individuals are transported to and from third countries, such as Egypt, Jordan and Syria.

We read your statement of 5th December on this issue with care. We commissioned a leading authority, Professor James Crawford, Dean of the Faculty of Law at the University of Cambridge, to give his opinion on it (attached).

B5 Two important conclusions can be drawn from Professor Crawford's Opinion. First, to comply with its legal obligation the British government must satisfy itself that Extraordinary Rendition is not leading to torture. As Professor Crawford puts it: 'the question that must be asked is whether torture is likely to take place if a person is transported, irrespective of whether or not the government claims that the answer is no, or what its hopes or beliefs may be' (para. 20). B5 B5

Chairman: Andrew Tyrie MP
Vice Chairmen: Chris Mullin MP, The Rt Hon Sir Menzies Campbell MP
Specialist Adviser: Mark Pallis, LLM
APPG on Extraordinary Rendition,
c/o Office of Andrew Tyrie,
House of Commons, London, SW1A 0AA
Tel 0207 219.6371 Fax 0207 219 0625

Secondly, relying on your assurances provides little or no legal cover for the UK government. Your assurances are based on the US government's interpretation of its obligations, but these are as good as worthless for ensuring compliance with Britain's legal obligations.

In particular, as Professor Crawford clarifies, any UK assistance to US aircraft which may be engaged in Extraordinary Rendition should be conditional on the US respecting obligations not to engage in torture, at the legal standard at which the obligations apply to the UK. In other words, if the US is to use, or has used, UK airports and airspace for these practices, the US must abide, or have abided, by the legal rules that bind the UK and UK courts' interpretation of them, not just US law or the US administration's interpretation of them.

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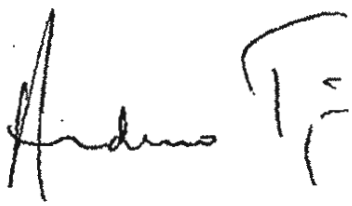
We would very much welcome your response to these concerns.

We would also be delighted if you felt able, if only briefly, to meet with us - either at a full meeting specially convened for the purpose or with Chris Mullin MP, The Rt Hon Sir Menzies Campbell and me, each of us from one of the main parties in Britain.

If you are not able to attend, perhaps your legal adviser, John Bellinger, may be able to find the time to address us when he is in the UK in early February.

I am putting this letter into the public domain.

Yours sincerely



ANDREW TYRIE

Chairman: Andrew Tyrie MP
Vice Chairmen: Chris Mullin MP, The Rt Hon Sir Menzies Campbell MP
Specialist Adviser: Mark Pallis, LLM
APPG on Extraordinary Rendition,
c/o Office of Andrew Tyrie,
House of Commons, London, SW1A 0AA
Tel 0207 219 6371 Fax 0207 219 0625

L126C

OPINION

Extraordinary rendition of terrorist suspects through United Kingdom territory

Introduction

1. We are asked by the All Party Parliamentary Group on Extraordinary Rendition to advise on various aspects of the statement made by United States Secretary of State Condoleezza Rice on 5 December 2005 in response to allegations that the United States is engaging in unlawful renditions of terror suspects, and to the concern that United Kingdom territory or facilities may have been used as transit points in that context.

2. The Secretary's statement makes the following points:

(a) The United States acknowledges the use of rendition to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held or brought to justice;

(b) Such renditions take place in accordance with United States law and the United States' treaty obligations including under the Convention Against Torture;

(c) The United States does not authorise, permit, tolerate or condone torture under any circumstances;

(d) The United States has respected and will continue to respect the sovereignty of other countries;

(e) The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture;

(f) The United States does not use the airspace or the airports of any country for the purpose of transporting a detainee to a country where he or she will be tortured;

(g) The United States has not transported anyone, and will not transport anyone, to a country where the United States believes the person will be tortured. Where appropriate assurances are sought from the receiving Government that a person being transferred will not be tortured.

3. In the statement, Secretary Rice makes a number of additional remarks concerning the "war against terrorism" including the status of captured members of al-Qaida and the legality, in general, of the practice of rendition. It is not our purpose to deal with these issues in this memorandum. Nor will we examine the application of

the Chicago Convention to issues of overflight concerning civil or State aircraft. This memorandum is confined to the issue of the legality of material assistance by one State (the transit State, here assumed to be the UK) to another (the rendering State) in circumstances where a third State (the receiving State) may subject persons to torture or cruel, inhuman or degrading treatment in violation of international law.

4. Reference was made to the alleged practices of the United States in a landmark decision handed down on 8 December 2005 by the House of Lords.[1] The question at issue there was whether the Special Immigration Appeals Commission could make use of evidence which had been or might well have been obtained by torture committed by a third State outside the United Kingdom without any complicity on the part of the United Kingdom. On the basic question of the inadmissibility of evidence obtained abroad by torture, they were unanimous. Thus Lord Hoffmann said:

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> "The use of torture is dishonourable. It corrupts and degrades the state which uses it and the legal system which accepts it. When judicial torture was routine all over Europe, its rejection by the common law was a source of national pride and the admiration of enlightened foreign writers such as Voltaire and Beccaria. In our own century, many people in the United States, heirs to that common law tradition, have felt their country dishonoured by its use of torture outside the jurisdiction and its practice of extra-legal 'rendition' of suspects to countries where they would be tortured..."[2]

5. It should be emphasised, however, that at present there is no evidence that the United Kingdom has provided any material assistance to the United States to carry out renditions in breach of international law. All that can be said is that allegations have been made that the United States has seized terrorist suspects and sent them to third countries, possibly in aircraft which in the course of their journeys may have landed in the United Kingdom, for interrogation in circumstances that may be unlawful under international law. The question of the United Kingdom's responsibility is thus essentially one for the future – including the duty of inquiry in the light of the circumstances now known or reasonably suspected.

6. In this opinion, we will examine the formulations used in the Secretary's statement with respect to the United States' international responsibility concerning the prohibition of torture and analyse whether those formulations comply with the equivalent formulations adopted by the United Kingdom. We will do this by examining three main points:

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(a) The definition of torture: what is the definition of torture and what are the relevant differences in the definition relied on by the United States and the United Kingdom?

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[1] *A (FC) and others (FC) v. Secretary of State for the Home Department; A and others (FC) and others v. Secretary of State for the Home Department (Conjoined Appeals)*, 8 December 2005, [2005] UKHL 71(Lord Bingham of Cornhill, Lord Nicholls of Birkenhead, Lord Hoffmann, Lord Hope of Craighead, Lord Rodger of Earlsferry, Lord Carswell, Lord Brown of Eaton-under-Heywood).

[2] Ibid, para 82 (Lord Hoffmann), citing J Waldron, "Torture and Positive Law: Jurisprudence for the White House" (2005) 105 *Columbia Law Review* 1681.

(b) The standard of the risk of torture in the receiving State: what standard of risk of torture applies and what are the differences in the approaches taken by the United States and the United Kingdom?

(c) The question of the United Kingdom's own obligations in light of the allegations made?

The definition of torture

7. The first point to arise is a definitional one. Torture is prohibited in both general international law and in a range of treaties including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention), the International Covenant on Civil and Political Rights (article 7) and the European Convention on Human Rights (article 3). In general international law, the prohibition against torture is a peremptory norm from which no derogation is permitted; likewise under the European Convention on Human Rights no derogation is permitted from article 3 even in time of national emergency.

8. Secretary Rice states that "torture is a term that is defined by law". In fact torture is defined in the Torture Convention in the following terms:

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."[3]

The Convention does not define cruel, inhuman or degrading treatment, however the Committee Against Torture and the European Court of Human Rights have given content to the meaning of such treatment in their jurisprudence. One of the leading cases on point is *Selmouni v France* in which the European Court said:

> "The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore finds elements which are sufficiently serious to render such treatment inhuman and degrading."[4]

This decision was referred to with approval by the House of Lords in its judgment of 8 December 2005.[5]

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3 Torture Convention, Art. 1.

4 (1999) 29 EHRR 403

5 *A (FC) and others v. Secretary of State for the Home Department*, [2005] UKHL 71, para 29 (Lord Bingham of Cornhill).

9. The United Nations definitions of torture and cruel, inhuman or degrading treatment have been interpreted and applied by the House of Lords and European Court of Human Rights. In its judgment of 8 December 2005, the House of Lords referred to the fact that the common law "has from its very earliest days ... set its face firmly against the use of torture."[6] The Court proceeded to affirm the definition of torture contained in the Torture Convention and to draw conclusions for the United Kingdom from the peremptory status of the prohibition of torture under international law.[7]

10. The European Court of Human Rights has examined numerous cases involving allegations of torture and cruel, inhuman and degrading treatment, against State parties including the United Kingdom. While mistreatment must attain a minimum level of severity to fall within the scope of article 3 of the European Convention on Human Rights, the Court has generally adopted a somewhat lower threshold for this standard in respect of persons held in detention.[8]

11. One of the leading cases is *Ireland v. United Kingdom*.[9] The Court held that various techniques used to interrogate Nationalist detainees in Northern Ireland constituted inhuman or degrading treatment. The techniques included forcing a detainee to stand spread-eagled against a wall for extended periods of time with the majority of his weight on his fingertips; covering a detainee's head with a hood; subjection of the detainee to a loud hissing noise; sleep deprivation and deprivation of food and drink. According to the Court:

> The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.[10]

The House of Lords has since said that the conduct complained of would now be regarded as torture.[11]

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6 Ibid, para 11 (Lord Bingham of Cornhill).

7 Ibid, paras 32-3 (Lord Bingham of Cornhill; cf Lord Hoffmann at para 97: "I would be content for the common law to accept the definition of torture which Parliament adopted in section 134 of the Criminal Justice Act 1988, namely, the infliction of severe pain or suffering on someone by a public official in the performance or purported performance of his official duties. That would in my opinion include the kind of treatment characterised as inhuman by the European Court of Human Rights in *Ireland v United Kingdom* but would not include all treatment which that court has held to contravene article 3."

8 *Selmouni v. France* (1999) 29 EHRR 403; *Ribitsch v. Austria* (1996) 21 EHRR 573. Both decisions stand for the proposition that any recourse to physical force which is not made strictly necessary by an applicant's own conduct diminishes human dignity and will in principle breach art. 3.

9 *Ireland v. United Kingdom* (1978) 2 EHRR 25.

10 Ibid, para 167.

11 *A (FC) and others v. Secretary of State for the Home Department*, [2005] UKHL 71, para 53 (Lord Bingham of Cornhill).

12. There have been suggestions made in United States material that under United States law certain practices such as "waterboarding"[12] do not constitute torture or the United States' interpretation of what constitutes torture or cruel, inhuman or degrading treatment. This interpretation of the definition of torture is clearly at odds with the views taken by UK courts and the European Court of Human Rights. Under UK law, using "waterboarding" to obtain information from a suspect would clearly constitute both torture and cruel, inhuman or degrading treatment. Lord Bingham, (with whose speech on the principal issues the rest of the members of the House agreed) expressed the view that various techniques detailed in the so-called "Torture Papers" would also fall within the definition of torture under UK law.[13] We have no doubt that "waterboarding" and practices of analogous severity would be condemned by United Nations treaty monitoring bodies such as the Committee Against Torture, United Nations Special Rapporteur on Torture[14] and the Human Rights Committee.[15]

13. The central point to note is that the United Kingdom is bound by its own obligations in respect of torture, and not by any view taken by the United States as to what constitutes torture. The United Kingdom's obligations arise independently of those of the United States. The same is true with respect to the standard of the risk of torture, to which we now turn.

The standard of the risk of torture under the principle of *non-refoulement*

14. Under international law, States are prohibited from sending a person to a territory where it is believed that he will be tortured. This obligation is commonly referred to as the *non-refoulement* principle. It arises both under general international law and under international treaties to which the United Kingdom is a party. These

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[12] The practice of "waterboarding" has been described as binding a prisoner to an inclined board with his feet raised and head lowered. Cellophane is then wrapped over the prisoner's face and water is poured over him causing him to gag. The practice continues until the prisoner offers information or a confession: "CIA's Harsh Interrogation Techniques Described", ABC News, 18 November 2005, available at: http://abcnews.go.com/WNT/Investigation/story?id=1322866.

[13] *A (FC) and others v. Secretary of State for the Home Department*, [2005] UKHL 71, para 53 (Lord Bingham of Cornhill): "[S]ome of the Category II or III techniques detailed in a J2 memorandum dated 11 October 2002 addressed to the Commander, Joint Task Force 170 at Guantanamo Bay, Cuba, (see *The Torture Papers: The Road to Abu Ghraib*, ed K Greenberg and J Dratel, (2005), 227-8), would now be held to fall within the definition in article 1 of the Torture Convention.". The techniques referred to are as follows: Category II: the use of stress positions (like standing) for a maximum of four hours, the use of falsified documents or reports, use of the isolation facility for up to 30 days, interrogating the detainee in an environment other than the standard interrogation booth, deprivation of light and auditory stimuli, placing a hood over the detainees head, the use of 20 hour interrogations, removal of all comfort items (including religious items), switching the detainee from hot rations to MREs, removal of clothing, forced grooming and using individuals detainees individuals phobias to induce stress; Category III: the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family, exposure to cold weather or water (with appropriate medical monitoring), use of a wet towel and dripping water to induce the misperception of suffocation, use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger and light pushing: Greenberg and Dratel (eds) *The Torture Papers: The Road to Abu Ghraib*, (CUP, 2005) 227-8.

[14] The Special Rapporteur on Torture has condemned numerous cases involving credible allegations of torture by the use of water in similar circumstances: UN doc E/CN.4/2005/62/Add.1 paras. 97, 583, 1825, 1829.

[15] See for example: Human Rights Committee, General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment, 10 March 1992.

B5 **The United Kingdom's independent obligations in light of the allegations made**

21. Regardless of the United States' position, the United Kingdom has an independent obligation to ensure that its territory is not used to send any person to a country where there is a real risk that he may be tortured.

22. International law requires torture to be guarded against by active measures. As Lord Bingham stated "... the *jus cogens erga omnes* nature of the prohibition of torture requires member states to do more than eschew the practice of torture."[22] In addition to the duty to refrain from committing acts of torture, States have a positive B5 obligation to protect individuals by ensuring that they are not subjected to conduct constituting a violation of international law. This positive duty requires States to investigate arguable breaches of the Torture Convention that may have occurred on its territory, including allegations of complicity or participation in torture. In Lord Bingham's words:

> "A Committee against Torture was established under article 17 of the Torture Convention to monitor compliance by member states. The Committee has recognised a duty of states, if allegations of torture are made, to investigate them: *PE v France*, 19 December 2002, CAT/C/29/D/193/2001, paras 5.3, 6.3; *GK v Switzerland*, 12 May 2003, CAT/C/30/D/219/2002), para 6.10.[23]

The duty to investigate arises where a prima facie case exists that the Convention has been breached. Credible information suggesting that foreign nationals are being transported by officials of another State, via the United Kingdom, to detention facilities for interrogation under torture, would imply a breach of the Convention and must be investigated.

23. The matter of diplomatic assurances has been raised in respect of the present allegations. It has been suggested that both the sending State and transit State may be exonerated from liability under international law if assurances are obtained from officials of the receiving State that persons transferred into their jurisdiction will not B5 be subject to torture or cruel, inhuman or degrading treatment. B5

24. The European Court of Human Rights dismissed the sufficiency of obtaining assurances to exonerate the United Kingdom from a breach of the non-refoulement obligation in *Chahal v. United Kingdom*.[24] The Government of India provided written assurances to the United Kingdom to the effect that Chahal "would have no reason to expect to suffer mistreatment of any kind at the hands of the Indian authorities". The Court found:

B5 > "Although the Court does not doubt the good faith of the Indian Government in providing the assurances mentioned above (paragraph 92), it would appear that, despite the efforts of that Government, the NHRC and the Indian courts to bring about reform, the violation of human rights by certain

[22] *A (FC) and others v. Secretary of State for the Home Department*, [2005] UKHL 71, para 34 (Lord Bingham of Cornhill).
[23] Ibid, para 36 (Lord Bingham of Cornhill).
[24] (1996) 23 EHRR 413.

> members of the security forces in Punjab and elsewhere in India is a recalcitrant and enduring problem... Against this background, the Court is not persuaded that the above assurances would provide Mr Chahal with an adequate guarantee of safety."[25]

25. Where governments are using public power to transfer persons at risk to a given country, in circumstances where earlier practices support credible allegations of torture in that country, mere assurances by the government, unaccompanied by other action, will be insufficient.

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James Crawford SC, FBA
Whewell Professor of International Law,
University of Cambridge

Kylie Evans
Lauterpacht Centre for International Law

9 December 2005

[25] *Chahal v. United Kingdom* (1996) 23 EHRR 413, para 105.

L128

NotesTele

Elizabeth M Kiingi 02/16/2006 10:31:10 AM From DB/Inbox: Elizabeth M Kiingi

Cable
Text:

CONFIDENTIAL
TELEGRAM February 15, 2006

To: SECSTATE WASHDC - PRIORITY

Action: EUR

From: USEU BRUSSELS (USEU BRUSS 524 - PRIORITY)

TAGS: EUN, PGOV, PHUM, PTER

Captions: None

Subject: SECSTATE LEGAL ADVISER ON WAR ON TERROR

Ref: None

Classified By: USEU POLOFF TODD HUIZINGA, FOR REASONS 1.4 (B) AND (D)

B1

[redacted]

2. (SBU) On February 7-8, Secretary of State Legal Adviser John Bellinger met with a wide range of EU and member-state officials, including Robert Cooper, Director-General for Common Foreign and Security Policy at the EU Council Secretariat; Jean-Claude Piris, the Director-General of the Legal Services of the EU Council Secretariat; Michel Petite, Director-General of the Legal Services of the European