ANDREW TYRIE MP

HOUSE OF COMMONS

LONDON SW1A 0AA

2006 FEB -1 P 3:1

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).

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).

Chairman: Andrew Tyrie MP
Vice Chairmen: Chris Mullin MP, The Rt Hon Sir Menzies Campbell MP
Specialist Adviser: Mark Pallis, LLM
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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.

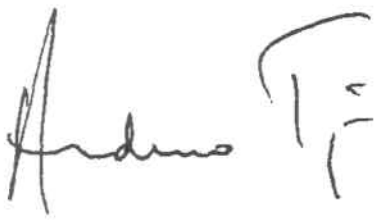
We would very much welcome your response to these concerns.

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



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S82C

OPINION

Extraordinary rendition of terrorist suspects through the United Kingdom

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

Kylie Evans
Lauterpacht Centre for International Law

For: All Party Parliamentary Group on Extraordinary Rendition

9 December 2005

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:

> "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:

(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.

include the European Convention on Human Rights (article 3)[16] and the Torture Convention, Article 3 of which states in material part:

> "1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

15. The United States ratified the Torture Convention with an extensive reservation dealing with various aspects of the application of the Convention in United States law, including the application of article 3. The United States reservation states (emphasis added):

> "That the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture', as used in article 3 of the Convention to mean 'if it is *more likely than not* that he would be tortured."

16. It is necessary to bear in mind the United States' reservation when interpreting Secretary Rice's carefully worded statement. Secretary Rice states:

> "The United States has not transported anyone, and will not transport anyone, to a country when the United States believes he will be tortured."

The critical words in Secretary Rice's statement are "will be tortured". The United States reservation makes this comment tenable so long as the United States believes that the risk of torture is not "more likely than not", the person can be returned without breaching the Torture Convention.

17. Assuming the United States reservation was validly made (about which we express no view), it is clear that the "more likely than not" standard adopted by the United States does not reflect the position under the Torture Convention itself, or the other treaties to which we have referred. Nor does it reflect the position of the UK government and courts, both of which have instead adopted a lower threshold for violations of the obligation not to send someone to a place where he may be tortured. The test in the United Kingdom is not whether the risk of torture is "more likely than not" but whether there is a "real risk" that a person would be tortured if returned. In other words, a State which returns a person to another State where there is a real possibility that he will be tortured breaches the law. It is not necessary under United Kingdom law that the risk of torture is not "more likely than not".[17]

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[16] The European Court of Human Rights in *Soering v. United Kingdom* (1989) 11 EHRR 439 para 88 held that the principle of non-refoulement is inherent in the terms of Article 3 of the European Convention on Human Rights. This passage was affirmed by the House of Lords in *A (FC) and others v. Secretary of State for the Home Department*, [2005] UKHL 71,, para 29.

[17] By contrast, a majority of the House of Lords in *A (FC) and others v. Secretary of State for the Home Department* held that evidence (obtained abroad without any form of complicity by the United Kingdom) was only excluded if, after due inquiry, it has not been shown on the balance of probabilities that the evidence was actually obtained by torture. The "real risk" test applies to such future-oriented issued as rendition or *non-refoulement*.

18. The leading case is *R v. Secretary of State for the Home Department ex parte Thangarasa; R v. Secretary of State for the Home Department ex parte Yogathas.*[18] The appellants were two Sri Lankan Tamils seeking asylum in the United Kingdom. Both men entered the UK from Germany where they arrived at different times. Mr Thangaras argued that his removal to Germany would violate the UK's obligation of *non-refoulement*. The House of Lords stated the test to be as follows:

> "... he must in practice show that there are substantial grounds for believing that if he is sent back to Germany there is a real risk that he will be sent back to Sri Lanka in circumstances giving rise to a real risk of a breach of article 3 of the European Convention."[19]

The House of Lords determined that he had not established a real risk on the facts and accordingly his appeal was denied.

19. The United Kingdom's position is commensurate with the "real risk" formulation adopted by the European Court of Human Rights.[20] Moreover, it is consistent with the formulation adopted by the Committee Against Torture (CAT) on the standard to be applied to article 3 cases. CAT has expressed the applicable standard of the risk of torture in the following terms:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."[21]

20. Secretary Rice states:

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

However this statement does not bring complete assurance that the practice is not occurring. 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. And that is essentially an objective question: a Government is not exonerated from conduct which leads directly to a person being tortured merely by closing its eyes to that prospect.

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18 [2002] UKHL 36.

19 *R v. Secretary of State for the Home Department ex parte Thangarasa; R v. Secretary of State for the Home Department ex parte Yogathas* [2002] UKHL 36, para 11.

20 *Soering v United Kingdom* (1989) 11 EHRR 439 para 88; *Cruz Varas v. Sweden* (1992) 14 EHRR 1 paras. 69-70; *Vilvarajah v. United Kingdom* (1991) EHRR 248 para 108.

21 Committee Against Torture, General Comment 1, Communications concerning the return of a person to a State where there may be grounds he would be subjected to torture (article 3 in the context of article 22), U.N. Doc. A/53/44. For a recent decision applying those principles in respect of article 3 of the Torture Convention see CAT/C/34/D/233/2003, 24 May 2005.

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 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 be subject to torture or cruel, inhuman or degrading treatment.

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:

> "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

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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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9 December 2005

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

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B3 OTHER

ACTION DRL-00

INFO	LOG-00	AID-00	[redacted]	DODE-00	EB-00	EUR-00	UTED-00
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STATE FOR IO/RHS, DRL/MLA, L/HRR

E.O. 12958: N/A
TAGS: PHUM, UNHRC-1
SUBJECT: Working Group on Arbitrary Detention Request for Response - #41

1. Mission has received a communication from the Working Group on Arbitrary Detention, following up on a request regarding the alleged detention of 26 persons in secret prisons outside territories under U.S. jurisdiction. This communication has been sent via e-mail to IO/RHS and is number 41 on the Geneva 2006 Communications Log.

2. Begin text of letter:
Dear Mr. Ambassador,
The Commission on Human Rights, by its resolution 2003/31 entitled "Question of arbitrary detention", decided to renew, for a three-year period, the mandate of the Working Group on Arbitrary Detention and invited the Working Group in discharging its mandate, to continue to seek and gather information from Governments and intergovernmental and nongovernmental organizations, as well as from the individuals concerned, their families or their legal representatives. The Human Rights Council assumed the mandate by its decision 2006/102.
I wish to refer to the letter dated 8 December 2005 addressed to you concerning cases of arbitrary detention which were reported to have occurred in your country.
In light of the above, and in keeping with the mandate entrusted to it by the Commission on Human Rights, and with its methods of work, the Working Group has examined the above-mentioned cases, taking into consideration all the pertinent information at its disposal and has adopted, on 1 September 2006, Opinion No. 29/2006 (copy attached). This Opinion will be reproduced in the report which the Working Group will present to the Human Rights Council.
Accept, Mr. Ambassador, the assurances of my highest consideration.
Leila Zerrougui Chairperson-Rapporteur of the Working Group on Arbitrary Detention

End text of letter.

3. Begin text of Opinion 29/2006:
OPINION No. 29/2006 (UNITED STATES OF AMERICA) Communication: addressed to the Government on 8 December 2005 Concerning: the case of Mr. Ibn Al-Shaykh al-Libi and 25 other persons
The State is party to the International Covenant on Civil and Political Rights.
1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1997/50 and extended by resolution 2003/31. The Human Rights Council assumed the mandate by its decision 2006/102. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2 The Working Group regrets that the Government did not provide it, despite repeated invitation to this effect, with the requested information. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);
II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
III. When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (Category III).
4. The source submitted to the Working Group a list containing the names and some other particulars of altogether 26 persons, who are being held in detention either in the United States of America or in other countries in the context of the so-called war on terror. According to the source they all are suspected of involvement in terrorist plots led by al-Qaida or other terrorist organisations. It is further contended that they are held in unknown secret detention facilities (the so-called black sites). According to the source they are deprived of the enjoyment of the requisite safeguards against arbitrary detention and their basic human rights are in jeopardy. The source holds that the United States authorities are responsible for the arbitrary detentions irrespective of their factual place of detention, because they all have been arrested or captured in the US led war against international terrorism. Many of them had been kept in facilities ran by the United States secret services, or have been transferred, often by secretly run flights to the detention centres of countries, with which the US authorities co-operate in their fight against international terrorism.
5. Upon reception of the communication the Working Group noted that the communication as submitted fails to meet the requirements of Rule 10 of its methods of work which reads as follows:
"10. As far as possible, each case shall form the subject of a presentation indicating family name, first name and any other

information making it possible to identify the person detained, as well as the latter's legal status, particularly:

(a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried them out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;
(b) The reasons given by the authorities for the arrest and/or the deprivation of liberty;
(c) The legislation applied in the case;
(d) The action taken, including investigatory action or the exercise of internal remedies, in terms of both approaches to the administrative and judicial authorities, particularly for verification of the measure of deprivation of liberty, and steps at the international or regional levels, as appropriate, the results of such action or the reasons why such measures were ineffective or were not taken; and
(e) An account of the reasons why the deprivation of liberty is deemed arbitrary."

The source informed the Working Group that it was unable to provide fuller data about the detainees. It pointed out that just because of the secrecy, surrounding black sites - which is one of the principal item of its complaint - the strict application of the rules would be tantamount to hamper the submission of this and similar complaints and would thereby reward States conducting secret rendition practice.

6. The Chairman-Rapporteur of the Working Group forwarded a summary of the communication to the Permanent Representative of the United States of America to the United Nations Office at Geneva on 8 December 2005 (paras. 7 to 18 below).

7. According to the allegations received, some of these secret detention facilities, located outside territories under United States jurisdiction, are administered by agents of the United States Central Intelligence Agency (CIA), who are applying CIA's approved enhanced or harshest interrogation techniques, which are allegedly contrary to international conventions and even to the United States military law. They include tactics such as "water-boarding", in which a detainee is made to believe he or she is drowning.

8. It was also reported that the United States intelligence services have also ships some detainees to countries that use interrogation techniques to extract confessions harsher that any authorized for use by United States intelligence officers. These detainees were not necessarily citizens of those nations. Secret jails in these countries are operated by the host nations, with CIA financial assistance and, sometimes, direction.

9. It was further reported that those detainees were taken from one country to another country on flights which have duration of three to eight hours, stayed there for
periods ranging from 18 months to more than 2 years, and transferred again to a third country. Some of the detainees were moved from Afghanistan and Middle East countries to Eastern Europe in a small fleet of private jets used by the CIA.

10. Allegations were also received regarding the existence of a related system of secretly returning prisoners to their home country when they have outlived their usefulness to the United States. Algerians, Chinese nationals, Egyptians, Jordanians, Moroccans, Pakistanis, Saudis, Tunisians and Uzbekistanis were reportedly returned
to their countries' intelligence services after initial debriefing

by United States intelligence officers.
11. The transfer practice, also known as "rendition" or "extraordinary rendition", is supposed to be a counter -terrorism technique. Detainees are held in order to continue detention and interrogation, and to exchange information with foreign intelligence agents conducting the interrogations.
12. Some of these detention centres were located in former Soviet air or military bases. Former detainees held in these secret detention facilities relate that they were not formally charged of any crime, nor brought before any authority, administrative or judicial, responsible for their detention to contest the legality of it. They were held in incommunicado detention, not having access to the outside world and could not access neither their families -who have had no idea of their whereabouts- nor defence lawyers. They were not allowed to speak to no one but the interrogators. They were also forced to listen to loud music day and night. Some detainees were kept in dark and underground cells.
13. Concern was expressed that these transfers occur outside the confines of any legal procedure, such as deportation or extradition, and do not allow access to counsel or to any judicial body to contest the transfer.
14. According to the information received by the Working Group, many of the detainees listed below are being held in secret prisons or ''black sites" located outside territories under the jurisdiction of the United States of America. Many of them are suspected of involvement in serious crimes, including the 11 September 2001 attacks; the 1998 United States Embassy bombings in Kenya and Tanzania, and the 2002 bombing at two nightclubs in Bali, Indonesia. Yet none on this list has been arraigned or criminally charged, and United States Government officials have reportedly suggested that some detainees have been tortured or seriously mistreated in custody.
15. The current location of these prisoners is unknown. The list of persons in detention is the following:

Mr. Ibn Al-Shaykh al-Libi. Reportedly arrested on 11 November 2001 in Pakistan. Libyan, suspected commander at al-Qaeda training camp.
Mr. Abu Faisal. Reportedly arrested on 12 December 2001. Nationality unknown.
Mr. Abdul Aziz . Reportedly arrested on 14 December 14 2001. Nationality unknown. In early January 2001, Kenton Keith, a spokesman at the U.S. Embassy in Islamabad, produced a chart with the names of senior al-Qaida members listed as killed in action, detained, or on the run. Faisal and Aziz were listed as detained on 12 and 14 December 2001.
Mr. Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain). Reportedly arrested in March 2002 in Faisalabad, Pakistan. Palestinian; born in Saudi Arabia; suspected senior al-Qaida operational planner. The source adds that this system of secret prisons began with the transfer of Mr. Abu Zubaydah from Pakistan to Thailand, where he was housed in a small disused warehouse in an active airbase. After treatment there for gunshot wounds by a CIA doctor especially sent from the CIA headquarters to assure Mr. Zubaydah was given proper care, he was slapped, grabbed, made to stand long hours in a cold cell and finally handcuffed and strapped feet up to a water board until after 31 seconds he begged for mercy and began to cooperate.
Mr. Abdul Rahim al-Sharqawi (alias Riyadh the facilitator). Reportedly arrested in January 2002. Possibly Yemeni, suspected

al-Qaida member (possibly kept previously in Guantanamo).
Mr. Abd al-Hadi al-Iraqi. Reportedly arrested in January 2002. Nationality unknown, presumably Iraqi. Suspected commander of an al-Qaida training camp.
Mr. Muhammed al-Darbi. Reportedly arrested in August 2002. Yemeni, suspected al-Qaida member. On 26 December 2002, citing "U.S. intelligence and national security officials," the Washington Post reports that al-Darbi, as well as Ramzi Binalshibh [see below], Omar al-Faruq [reportedly escaped from U.S. custody in July 2005], and Abd al-Rahim al-Nashiri [see below] all "remain under CIA control."
Mr. Ramzi bin al-Shibh. Reportedly arrested on 13 September 2002. Yemeni. Suspected al-Qaida conspirator in September 11 attacks (former roommate of one of the hijackers). Mr. Ramzi Binalshibh was captured in Pakistan and flown to Thailand.
Mr. Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii), (alias Abu Bilal al-Makki or Mullah Ahmad Belal). Reportedly arrested in November 2002 in the United Arab Emirates. Saudi or Yemeni. Suspected al-Qaida chief of operations in the Persian Gulf, and suspected planner of the USS Cole bombing and of the attack on the French oil tanker, Limburg.
Mr. Mohammed Omar Abdel-Rahman (alias Asadullah). Reportedly arrested in February 2003 in Quetta, Pakistan. Egyptian, son of the Sheikh Omar Abdel-Rahman, who was convicted in the United States of involvement in terrorist plots in New York. See Agence France Presse, 4 March 2003: "Pakistani and US agents captured the son of blind Egyptian cleric Omar Abdel Rahman. . . a US official said Tuesday. Muhamad Abdel Rahman was arrested in Quetta, Pakistan, the official said, speaking on condition of anonymity." David Johnston, New York Times, 4 March 2003: "On February 13, when Pakistani authorities raided an apartment in Quetta, they got the break they needed. They had hoped to find Mr. [**Khalid Sheikh**] **Mohammed**, but he had fled the apartment, eluding the authorities, as he had on numerous occasions. Instead, they found and arrested Muhammad Abdel Rahman, a son of Sheik Omar Abdel Rahman, the blind Egyptian cleric. . ."
Mr. Mustafa al-Hawsawi (alias al-Hisawi). Reportedly arrested on 1 March 2003 (together with Khalid Sheikh Mohammad) in Pakistan. Saudi. Suspected al-Qaida financier.
Mr. **Khalid Sheikh Mohammed**. Reportedly arrested on 1 March 2003 in Rawalpindi, Pakistan. Kuwaiti (Pakistani parents). Suspected al-Qaida member; alleged to have masterminded September 11 attacks; the killing of Daniel Pearl and the USS Cole attack in 2000.
Mr. Majid Khan. Reportedly arrested on March-April 2003 in Pakistan. Pakistani. Alleged link to Khalid Sheikh Mohammad; alleged involvement in a plot to blow up gas stations in the United States. Details about Khan's arrest were revealed in several media reports, especially in Newsweek: Evan Thomas, "Al Qaeda in America: The Enemy Within," Newsweek, 23 June 2003. U.S. prosecutors provided evidence that Majid Khan was in U.S. custody during the trial of 24-year-old Uzair Paracha, who was convicted in November 2005 of conspiracy charges, and of providing material support to terrorist organizations.
Mr. Yassir al-Jazeeri (alias al-Jaziri). Reportedly arrested on 15 March 2003 in Pakistan. Possibly Moroccan, Algerian, or Palestinian. Suspected al-Qaida member; linked to **Khalid Sheikh Mohammed**. Details of arrest reported: Alex Spillius, "FBI Questions al-Qaeda Man in Pakistan," Daily Telegraph, 17 March 2003; Paul Haven, "Al-Qaida suspect begins cooperating with authorities, Pakistani security officials say," Associated Press, 17 March 2003.
Mr. AH Abdul Aziz AH (alias Ammar al Baluchi). Reportedly arrested

on 29 April 2003 in Karachi, Pakistan. Pakistani. He is alleged to have funneled money to September 11 hijackers, and alleged to have been involved with the Jakarta Marriot bombing and in handling Jose Padilla's travel to the United States. U.S. Judge Sidney Stein ruled that defense attorneys for Uzair Paracha could introduce statements Baluchi made to U.S. interrogators, proving that he was in U.S. custody. Former Deputy Attorney General James Comey also mentioned Baluchi during remarks to the media about the case of Jose Padilla

on 1 June 2004.

Mr. Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Saudi (of Yemeni descent). Suspected of involvement in the bombing of the USS Cole in 2000, and the September 11 attacks. See Afzal Nadeem, "Pakistan Arrests Six Terror Suspects, including Planner of September 11 and USS Cole Bombing," Associated Press, 30 April 2003. His brother, Hassan Bin Attash, is reportedly held in Guantanamo. President Bush described his arrest as a "major, significant find" in the war against terrorism: "He's a killer. He was one of the top al-Qaida operatives.. .. He was right below Khalid Shaikh Mohammad on the organizational chart of al-Qaida. He is one less person that people who love freedom have to worry about." David Ensor and Syed Mohsin Naqvi, "Bush Hails Capture of Top al Qaeda Operative," CNN.com, 1 May 2003.

Mr. Adil al-Jazeeri. Reportedly arrested on 17 June 2003 outside Peshawar, Pakistan. Algerian, suspected al-Qaida and longtime resident of Afghanistan; alleged "leading member" and "longtime aide to bin Laden." (Previously kept in Guantanamo).

Mr. Hambali (alias Riduan Isamuddin). Reportedly arrested on 11 August 2003 in Thailand. Indonesian; allegedly involved in Jemaah Islamiyah and al-Qaida; alleged involvement in organizing and financing the Bali nightclub bombings, the Jakarta Marriot Hotel bombing, and preparations for the September 11 attacks.

Mr. Mohamad Nazir bin Lep (alias Lillie, or Li-Li). Reportedly arrested in August 2003 in Bangkok, Thailand. Malaysian, Alleged link to Hambali.

Mr. Mohamad Farik Amin (alias Zubair). Reportedly arrested in June 2003 in Thailand. Malaysian; alleged link to Hambali. For more information on the arrest of Mohammad Farik Amin and Mohamad Nazir bin Lep, see: Kimina Lyall, "Hambali Talks Under Grilling-Slaughter of Innocents," The Australian, 21 August 2003; Kimina Lyall, "Hambali Moved JI Front Line to Bangladesh, Pakistan," The Weekend Australian, 27 September 2003; Simon Elegant and Andrew Perrin, "Asia's Terror Threat," Time Asia Magazine, 6 October2003; Simon Elegant, "The Terrorist Talks," Time, 13 October 2003.

Mr. Tariq Mahmood. Reportedly arrested in October 2003 in Islamabad, Pakistan. Dual British and Pakistani nationality. Alleged to have ties to al-Qaida. See "Pakistan grills detained British al-Qaeda suspect," Agence-France Presse, 10 November 2005; Sean O'Neill, "Five still held without help or hope; Guantanamo," The Times, 12 January 2005.

Mr. Hassan Ghul. Reportedly arrested on 23 January 2004, in Kurdish highlands, Iraq. Pakistani; alleged to be Zarqawi's courier to bin Laden; alleged ties to Khalid Sheikh Mohammad. President Bush described Hassan Ghul's arrest on 26 January 2004, in comments to the press, Little Rock, Arkansas: "Just last week we made further progress in making America more secure when a fellow named Hassan Ghul was captured in Iraq. Hassan Ghul reported directly to Khalid Sheik Mohammad, who was the mastermind of the September 11 attacks.... He was captured in Iraq, where he was helping al Qaida

to put pressure on our troops."
Mr. Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi). Reportedly arrested in Karachi on 12 June 2004 in a "CIA-supervised" operation. Presumably Pakistani. Pakistani intelligence officials told journalists Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the United States and then flown in an unmarked CIA plane to an undisclosed location. Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. See also Zahid Hussain, "Pakistan Intensifies Effort Against al Qaeda," The Asian Wall Street Journal, 5 August 2004; Bill Powell, "Target: America," Time Magazine, 16 August 2004, Vol. 164, Issue 7; "Pakistani Aides: Al-Qaida Arrest in June Opened Leads," Dow Jones International News, 3 August 2004; "CIA-supervised arrest in Pak opened valuable leads: Report," The Press Trust of India, 3 August 2004.
Mr. Mohammed Naeem Noor Khan (aka Abu Talaha). Reportedly arrested on 13 July 2004 in Pakistan. Pakistani, computer engineer, was held by Pakistani authorities, and likely transferred to U.S. custody. See Douglas Jehl and David Rohde, "Captured Qaeda Figure Led Way to Information behind Warning," New York Times, 2 August 2004. Kamran Khan, "Al Qaeda Arrest In June Opened Valuable Leads," Washington Post, 3 August 2004; Kamran Khan and Dana Priest, "Pakistan Pressures Al Qaeda; Military Operation Results In Terror Alert and Arrests," Washington Post, 5 August 2004; "Pakistan questioning almost 20 Al-Qaeda suspects," Agence-France Presse, 5 August 2005; Robert Block and Gary Fields, "Al Qaeda's Data on U.S. Targets Aren't New: Surveillance of Listed Sites In Eastern Cities Took Place Over Time, Perhaps Years," The Asian Wall Street Journal, 7 August 2004; Adrian Levy and Cathy Scott-Clark, "One Huge U.S. Jail," The Guardian, 19 March 2005.
Mr. Ahmed Khalfan Ghailani. Reportedly arrested on 24 July 2004 in Pakistan. Tanzanian. Reportedly indicted in the United States for 1998 embassy bombings. U.S. and Pakistani intelligence officials told UPI that Ghailani was transferred to "CIA custody" in early August. See Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. Pakistani security officials told AFP and Reuters in January 2005, that Ghailani was handed over to the United States "several months ago." See e.g., "Pakistan hands Tanzanian Al-Qaeda bombing suspect to US," Agence France Presse, 25 January 2005.
Mr. Abu Faraj al-Libi. Reportedly arrested on 4 May 2005, in North

Western Frontier Province, Pakistan. Libyan, suspected al-Qaida leader of operations; alleged mastermind of two assassination attempts on Musharraf. Col. James Yonts, a U.S. military spokesman in Afghanistan, "said in an email to The Associated Press that al-Libbi was taken directly from Pakistan to the U.S. and was not brought to Afghanistan."
16. It was reported that this alleged hidden global internment network is a central element in the CIA's unconventional war on global terrorism. It depends on the cooperation of foreign intelligence services. Concern was expressed that the existence of these secret sites of detention where no legal control or human rights protection can be exercised, facilitates avoiding the international obligations and responsibilities of the Governments who are running them. It is also well known that secret detention without any legal control augments for the detainee the practice of torture and other cruel, inhuman or degrading treatment especially when under interrogation.
17. It was alleged that the pattern of this type of arbitrary

deprivation of liberty, lacking any legal basis, is against international human rights law and implies more gross violations of detainees rights: forced disappearance; lack of access to lawyers, families, doctors; to have families informed of place of arrest and detention; the right to be free from torture and cruel, inhuman or degrading treatment, which are against the standards of international law.

18. It was further stressed that detaining terrorist suspects under such conditions, without charging them and without the prospect of a trial in which their guilt or innocence will eventually be established, is in itself a serious denial of their basic human rights and is incompatible with both International Humanitarian Law and Human Rights Law.

19. The Working Group requested the Government to provide, within 90 days, relevant information concerning the allegations of the source in respect of both, the facts and the applicable legislation. Since no reply arrived within the imparted deadline, the Secretariat of the Working Group sent out a reminder on 7 April 2006. The Permanent Representation, in a note dated 8 May 2006 promised a response to the Working Group as soon as it will be able to provide a more complete response. Since no response arrived, the Working Group informed the Government that the Working Group will consider this case during its 46th session between 28 August and 1 September 2006. No reaction arrived to this information, either.

20. The lack of co-operation of the authorities may not prevent the Working Group to take an Opinion. It had to rely on the information provided by the source. The information is consistent to the extent, which is possible under the circumstances, and is corroborated by other information coming from independent and reliable sources, first of all from non-governmental organisations. Not even the United States authorities deny the practice of rendition and the running of secret detention facilities in the United States and abroad. The US Secretary of State herself was quoted as saying that many extremely dangerous terrorists possess information that may save lives, perhaps even thousands of lives; therefore rendition of such terrorists may be a vital tool in combating transnational terrorism.

21. The detention of the 26 aforementioned individuals falls outside of all national an international legal regimes pertaining to the safeguards against arbitrary detention. In addition the secrecy surrounding the detention and the interstate transfer of suspected terrorists may expose the persons affected to torture, forced disappearance, extra-judicial killing and in case they are prosecuted against, to the lack of the guarantees of a fair trial.

22. In the light of the foregoing the Working Group renders the following opinion.

The deprivation of liberty of Ibn Al-Shaykh al-Libi, Abu Faisal, Abdul Aziz , Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain), Abdul Rahim al-Sharqawi (alias Riyadh the facilitator, Abd al-Hadi al-Iraqi, Muhammed al-Darbi, Ramzi bin al-Shibh, Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii) (alias Abu Bilal al-Makki or Mullah Ahmad Belal), Mohammed Omar Abdel-Rahman (alias Asadullah), Mustafa al-Hawsawi (alias al-Hisawi), **Khalid Sheikh Mohammed**, Majid Khan, Yassir al-Jazeeri (alias al-Jaziri), Ali Abdul Aziz Ali (alias Ammar al Baluchi), Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad), Adil al-Jazeeri, Hambali (alias Riduan Isamuddin), Mohamad Nazir bin Lep (alias Lillie, or Li-Li), Mohamad Farik Amin (alias Zubair), Tariq Mahmood, Hassan Ghul, Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi), Mohammed Naeem Noor Khan(aka

Abu Talaha) Ahmed Khalfan Ghailani and Abu Faraj al-Libi is arbitrary being in contravention of Article 9 of the International Covenant on Civil and Political Rights and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.
23. Consequent upon the opinion rendered the Working Group requests the Government to take the necessary steps to remedy the situation of the aforementioned persons.
Adopted on 1 September 2006. End of Opinion.

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09/10/07, (202) 647-5543
S:THE SECRETARY

D:FLOWERS F:MBROOKS S/P:JGERAN L/PM:VPADMANABHAN
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NEA/ARP:ASTEINFELD NEA/MAG:MNARDI AF/Z:NGAREY
S/ES-CR:KCHAGNON S/ES:KWHITAKER S/ES-O:CSDANIELS

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IMMEDIATE LONDON

REVIEW AUTHORITY: Frank Perez, Senior Reviewer

E.O. 12958: N/A

TAGS: OPDC, PREL, UK

SUBJECT: GUANTANAMO - LETTER IN RESPONSE TO UK REQUEST FOR TRANSFER OF FIVE DETAINEES

1. PLEASE DELIVER THE FOLLOWING MESSAGE FROM SECRETARY RICE TO FOREIGN SECRETARY DAVID MILIBAND. THE MESSAGE IS IN RESPONSE TO FOREIGN SECRETARY MILIBAND'S AUGUST 7, 2007 LETTER TO SECRETARY RICE. THERE WILL BE NO SIGNED ORIGINAL.

2. BEGIN TEXT:

DEAR DAVID:

THANK YOU FOR YOUR AUGUST 7 LETTER REQUESTING THE RELEASE AND RETURN TO THE UNITED KINGDOM OF FIVE INDIVIDUALS CURRENTLY DETAINED AT GUANTANAMO BAY.

WE ARE REVIEWING YOUR REQUEST CONSISTENT WITH OUR POLICIES AND HOPE TO PROVIDE A RESPONSE SOON. I APPRECIATE YOUR EFFORTS TO HELP CONTRIBUTE TO THE REDUCTION OF THE NUMBER OF DETAINEES HELD AT GUANTANAMO.

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I LOOK FORWARD TO DISCUSSING THIS MATTER FURTHER ONCE WE HAVE COMPLETED OUR REVIEW.

SINCERELY,

CONDI RICE

END TEXT.

YY

S07B

Ref.: TG AMR 51/2007.046

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

12 October 2007

Dear Mr President,

Last month I wrote to you to relay Amnesty International's deep concerns about the detention and interrogation program operated by the Central Intelligence Agency (CIA) following your Executive Order of 20 July 2007 re-authorizing this program. My previous letter enclosed a copy of our recent report, *USA: Law and executive disorder: President gives green light to secret detention program*. I look forward to receiving your response to the concerns raised in our report and letter.

Since I wrote to you, there have been further disturbing revelations relating to the CIA program, a program that violates the USA's international legal obligations. On 4 October 2007, the *New York Times* published a detailed article claiming that the US Justice Department's Office of General Counsel had issued a legal opinion in 2005, previously undisclosed and described as "an expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency". According to the *New York Times*, this legal opinion "for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures". Then, in late 2005, with the Detainee Treatment Act (DTA) pending – containing the prohibition on cruel, inhuman or degrading treatment, as defined in US rather than international law – another opinion was reportedly issued declaring that none of the CIA's interrogation methods violated that DTA standard. Both these legal opinions remain classified.

I note that in your statement of 5 October 2007 you did not deny the existence of these legal opinions, but instead reiterated and justified your support for the CIA detention program on the grounds of gathering "actionable intelligence" for counterterrorism purposes. You also reiterated that "this government does not torture people" and adheres to its domestic and international obligations. Finally, you stated that the interrogation techniques in question "have been fully disclosed to appropriate members of the United States Congress".

Amnesty International remains concerned not only by your continued approval of a detention program that places you and other officials involved in it potentially subject to criminal responsibility under international law and detainees exposed to torture or other ill-treatment (which secret detention *per se* constitutes), but also that secrecy is being used to obscure human rights violations and block government accountability. I note that the Chairman of the Senate Select Committee on Intelligence disputes your assertion that the appropriate officials have been fully briefed on the CIA detention and interrogation program. According to Senator John D. Rockefeller IV, "the reality is, the Administration refused to disclose the program to the full Committee for five years, and they have refused to turn over key legal documents since day one". The Senator has written to the Acting Attorney General and expressed his view that it is "unfathomable that the Committee tasked with oversight of the CIA's interrogation and detention program would be provided more information by the New York Times than by the [UNCLASSIFIED] Rockefeller reiterates the

Committee's request to be provided with all classified opinions relating to the CIA program, in order to allow it to conduct its oversight function. I urge you to ensure that this request is granted, and I repeat our own call for all US government documents providing authorization or legal clearance for secret detention and "enhanced" interrogation by the CIA or other agencies to be declassified.

As outlined in our report, we are concerned that the Justice Department and your Executive Order of 20 July 2007 has sought to exploit the US Supreme Court's "shocks the conscience" test on prohibited conduct, in order to bypass the prohibition on torture or other ill-treatment in the context of counterterrorism interrogations. Under this framework, it seems that someone who is believed to be in possession of "actionable intelligence" may be subject to "enhanced" interrogation techniques without "shocking the conscience" to the degree that the same treatment would shock if used against someone not considered to be in possession of such information. This dangerous argument should be rejected as incompatible with the unequivocal prohibition on torture and other cruel, inhuman or degrading treatment in all circumstances. I urge you to publicly repudiate it.

A number of detainees have alleged torture and other ill-treatment while held in secret CIA custody. Abu Zubaydah has referred to "months of torture", and has reportedly said that he was kept for a prolonged period in a cage known as a "dog box", in which there was not enough room to stand. Khaled Sheikh Mohammed is also reported to have alleged that he was kept naked in a cell for several days, suspended from the ceiling by his arms with his toes barely touching the ground, and to have been chained naked to a metal ring in his cell in a painful crouching position for prolonged periods. Both Abu Zubaydah and Khaled Sheikh Mohammed are alleged to have been subjected to "water-boarding", in effect mock execution by drowning. This is one of the techniques to have predated, but also said to have been cleared by, the newly reported 2005 legal opinion. It is a technique which clearly violates the international prohibition on torture. Again, I urge you to publicly reject it.

Abd al-Rahim al-Nashiri has alleged that he was tortured in CIA custody, and that he had made false statements in order to stop the torture. Majid Khan, meanwhile, has written a "torture report", which contains details of the abuse to which he says he was subjected while in the custody of the CIA, the Department of Defense, and another agency the identity of which has been censored by the US authorities. Indeed, any details of the alleged torture described by these men relating to their custody prior to their transfer to Guantánamo in September 2006 have been redacted from the transcripts of the Combatant Status Review Tribunals (CSRTs) that were held in their cases in March and April this year. The CSRT hearings were conducted behind closed doors to prevent any details of the CIA program from becoming public, including the interrogation techniques used, the location of secret facilities, and the conditions of confinement in them. Amnesty International is concerned that the US government's use of classification is obscuring practices that violate international law.

On 9 August 2007, the Pentagon announced that the CSRTs had determined that these four men and the other 10 detainees transferred from CIA custody to Guantánamo in September 2006 met the criteria for designation as "enemy combatants" – a status, at least with the legal consequences ascribed to it by the USA, unrecognized in international law. The announcement made no reference to the torture allegations, what investigation, if any, had been ordered or carried out into the allegations, or whether the CSRT had relied upon any coerced testimony in making its determinations. The USA is obliged under international law to investigate these allegations and to make the findings public. Anyone suspected of involvement in enforced disappearance, torture or other cruel, inhuman or degrading treatment should be brought to justice. I would appreciate receiving details of what investigations have been initiated and carried out into these allegations.

The 14 "high-value" detainees are themselves suspected by the USA of involvement in serious crimes. We have repeatedly called for anyone against whom there is evidence of their involvement in such crimes to be charged and brought to trial in full and fair proceedings that comply with international law. In your announcement of their transfer from secret CIA custody to Guantánamo more than a

we have largely completed our questioning

of the men" they were being brought "into the open" and transferred in order "to start the process for bringing them to trial". Thirteen months later – and with some of them now held for more than five years – no charges have been laid against them. We call on you to ensure that they are provided immediate access to lawyers, charged with recognizable criminal offences without further delay, brought to trial in an independent, impartial and competent court – such as a US District Court, not a military commission – or else released. No information obtained under unlawful methods, including torture or other ill-treatment, should be admitted in any proceedings, except against the alleged perpetrators of such conduct. There should be no pursuit of the death penalty against any defendant.

Amnesty International regrets that following the decision to treat detainees as people from whom information could be taken rather than due process given, the US government has seen fit to establish administrative review tribunals and military commissions that can admit information, including in the form of hearsay, extracted by coercion, including torture or other ill-treatment. A decision by a CSRT finding a detainee to be an "enemy combatant" can effectively mean lifelong detention without trial. Administrative Review Boards can similarly rely on coerced information to keep a detainee in indefinite military custody. Military commissions, meanwhile, have the power to hand down death sentences. With this in mind, we recall that more than 60 years ago, two and a half years after the USA entered World War II, the US Supreme Court stated that:

> "The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession. There have been, and are now, certain foreign nations with governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government."

In recent years, the conscience of the international community has been shocked by the revelation that the President of the United States has, in effect, authorized enforced disappearance. It has repeatedly been shocked by arguments contained in documents authored in the Office of Legal Counsel and other government offices discussing and providing apparent legal clearance for policies or practices that flout the international prohibition on torture or other ill-treatment.

Amnesty International remains deeply concerned that the Military Commissions Act, and your administration's interpretation of it, has further eroded the protections against torture and other ill-treatment, unfair trial and unchecked executive detentions. We urge you to support efforts to restore the right of all detainees to full judicial review of the lawfulness of their detention as provided under the procedure of *habeas corpus*, and to end the secret detention program immediately. All detentions and interrogation methods must fully comply with international law and standards.

I am copying this letter to the officials listed below.

Yours sincerely,

For Irene Khan
Secretary General

Acting Attorney General Peter D. Keisler
Secretary of State Condoleezza Rice
CIA Director General Michael Hayden
Senator John D. Rockefeller IV, Chairman, Senate Intelligence Committee
Department Legal Advisor John Bellinger

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	FBIE-00	UTED-00	VCI-00	FSI-00	OBO-00	H-00	TEDE-00
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TAGS: PGOV, PREL, MOPS, PTER, PHUM, KAWK, KISL, KPAO,
SUBJECT: Q AND A-GUANTANAMO DETAINEES CHARGED FOR 9/11

1. Summary: The Department of Defense announced today that charges have been sworn against 6 Guantanamo detainees for their involvement in the 9/11 attacks, beginning the process of their trial by military commission. Those attacks resulted in the death of 2,973 people, from over 90 countries and the filing of charges is the beginning of the process of holding these men responsible for the terrible events of 9/11. Posts are asked to draw from the points provided below in responding to foreign government and media requests regarding this announcement. End Summary.

2. Begin Questions and Answers:

--What are these defendants being charged with? These defendants are being charged with murder, destruction of property, material support for terrorism, and other serious charges related to the September 11th attacks.

--**Khalid Sheikh Mohammed** is charged as the mastermind of the 9/11 attacks, as he allegedly proposed the concept to Osama bin Laden as early as 1996, obtained approval and funding from bin Laden for the attacks, oversaw the entire operation, and trained the hijackers in all aspects of the operation in Afghanistan and Pakistan.

--Walid Muhammad Salih Mubarek Bin 'Attash is alleged to have administered an al Qaeda training camp in Logar, Afghanistan where two of the September 11th hijackers were trained. He is also alleged to have traveled to Malaysia in 1999 to observe airport security by US air carriers to assist in formulating the hijacking plan.

--Ramzi Binalshibh is alleged to have been selected by Osama bin Laden to be one of the 9/11 hijackers and that he made a "martyr video" in preparation for the operation. He was unable to obtain a US visa and, therefore, could not enter the United States as the other hijackers did. In light of this, it is alleged that Binalshibh assisted in finding flight schools for the hijackers in the United States, and continued to assist the conspiracy by engaging in numerous financial transactions in support of the 9/11 operation.

--Ali Abdul Aziz Ali's role is alleged to have included sending approximately $120,000 to the hijackers for their expenses and flight training, and facilitating travel to the United States for nine of the hijackers.

--Mustafa Ahmed Adam al Hawsawi is alleged to have assisted and prepared the hijackers with money, western clothing, traveler's checks and credit cards. He is also alleged to have facilitated the transfer of thousands of dollars between the accounts of alleged 9/11 hijackers and himself on September 11, 2001.

--Mohamed al Kahtani is alleged to have attempted to enter the United States on August 4, 2001, through Orlando International Airport where he was denied entry. It is also alleged that al Kahtani carried $2,800 in cash and had an itinerary listing a phone number associated with Hawsawi.

--What does it meant that the defendants have been charged? The prosecutors' charges will now go to the military commissions Convening Authority, Judge Susan Crawford to decide which charges, if any, will be referred for trial by military commission. She will only refer those charges where she believes there is probable cause to believe the offenses have been committed.

--When will the trials begin? The announcement of charges begins a lengthy process to bring these individuals to justice. The most important goal is that the defendants receive fair trials, which will take time. We cannot speculate on a trial start date at this time.

--Why has it taken the United States so long to try these individuals? Doesn't it violate their right to a speedy trial? These cases are incredibly complex and have taken a

great deal of time to prepare. The process of holding trials has also been delayed by litigation initiated by the detainees.

--Will these individuals be tried separately or as a group? The Department of Defense has stated its intention is try these individuals as a group. If the defendants object, it will up to the judge to determine whether the defendants should be tried together or separately.

--Will the government seek the death penalty for these individuals? The Chief Prosecutor has asked that the charges be deemed death penalty eligible. The Convening Authority will decide whether in fact the charges are death penalty eligible. If so, the death penalty is a possibility for these defendants.

--Doesn't the application of the death penalty to these defendants violate international law? No. International Humanitarian Law contemplates the use of the death penalty for serious violations of the laws of war. The most serious war criminals sentenced at Nuremberg were executed for their actions.

--If the individuals are convicted and the defendants are not sentenced to death, where will they be held? Doesn't the US plan to close GTMO? It is premature to discuss where defendants would serve their sentences. As the President has said, we would like to move towards the day when we can close Guantanamo.

--Why is the United States not trying these defendants in its federal courts? Military commissions are a traditional tool for trying individuals suspected of war crimes, and have been used in conflicts from the Revolutionary War to World War II. They are recognized under the law of war, as well as under U.S. domestic law.

--Why isn't the United States using courts martial to try these defendants? The commission trials are very similar to courts-martial, with similar rules of procedure and evidence. The rules are modified on occasion to deal with the realities of prosecuting enemy combatants as opposed to U.S. servicemen.

--Are these military commissions fair? Yes. Under the Military Commissions Act, each accused gets the following rights:
-The right to remain silent and to have no adverse inference drawn from it;
-The right to be represented by counsel;
The right to examine all evidence used against him by the prosecution;
-The right to obtain evidence and to call witnesses on his own behalf including qualified expert witnesses;
-The right to cross-examine every witness called by the prosecution;
-The right to be present during the presentation of evidence;
-The right of judicial review in the U.S. Court of Appeals

in the D.C. Circuit and to seek review in the U.S. Supreme Court..

--Didn't the U.S. torture al Kahtani? The United States abides by its international commitments regarding torture. Torture is prohibited under U.S. law, and is abhorrent to American values. No evidence obtained through torture is admissible in trials by military commission.

--Will coerced evidence be admitted? No evidence obtained through torture is admissible. In addition, evidence obtained in violation of the McCain Amendment's prohibition on cruel, inhuman or degrading treatment is not admissible. For evidence obtained before the enactment of the McCain Amendment, where there is an allegation that evidence has been obtained through coercive means, it is inadmissible unless the judge makes a specific finding that 1) the statement is reliable; 2) the statement is probative; and 3) the interests of justice would best be served by the statement's admission. The military judge's decision to allow in evidence would be reviewable by the U.S. federal courts if the defendant is convicted.

-- The Director of Central Intelligence told a U.S. Congressional committee last week that the CIA had used the waterboarding technique on **Khalid Sheikh Mohammed**. Will the government attempt to introduce information obtained from that process at the tribunal? The prosecutors will make an independent determination on what evidence to introduce at trial. The defense will have the opportunity to oppose the admission of any piece of evidence on the grounds it was obtained through coercion. It will then be up to the judge to determine whether or not to admit the evidence.

End Questions and Answers.

3. Minimize considered.
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September 11, 2009

ACTION MEMO FOR DEPUTY SECRETARY STEINBERG

FROM: EUR – Nancy McEldowney, Acting

SUBJECT: Phone Call Request: Luis Amado, Portuguese Foreign Minister

Recommendation: That you agree to call Portuguese Foreign Minister Luis Amado to thank Portugal for taking in two Guantanamo detainees and for its contributions in Afghanistan.

OCT 06 2009
Approve _____ Disapprove _____

Date OCT 7 2009 Time 1:30 p.m.

Purpose:

- This is an opportunity to thank Portugal for resettling two Syrian detainees from Guantanamo on August 28 and encourage fulfillment of the government's promise to take a third detainee.
- You may also wish to thank Portugal for its contributions to the NATO mission in Afghanistan and encourage further contributions.

REVIEW AUTHORITY: Frank Perez, Senior Reviewer

Attachments:
Tab 1 – Call Sheet
Tab 2 – Biographic Information

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Approved:

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	EUR/RPM: ACope		ok
	SCA/A: AViehe		ok
	S/SRAP: CLaVine		ok
	S/GC: MWilliams		ok
	P: CPeterson		ok
	S/P: HDPittman		ok
	D(S): AScanlon		ok
	EUR-Press: BEllis		ok
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	NSC: TBradley		info
	Embassy Lisbon:		ok