A12

ORIGIN L-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CTME-00	INL-00	DODE-00
	DOTE-00	WHA-00	DS-00	EB-00	OIGO-00	FAAE-00	UTED-00
	H-00	TEDE-00	INR-00	IO-00	JUSE-00	LAB-01	MMP-00
	NEA-00	DCP-00	NSCE-00	OIC-00	OIG-00	OMB-00	NIMA-00
	PA-00	PER-00	GIWI-00	SCT-00	SP-00	IRM-00	SSO-00
	SS-00	TEST-00	SA-00	FMP-00	R-00	DSCC-00	PRM-00
	DRL-00	SAS-00	SWCI-00				

(SAS) /000R

167220
SOURCE: CBLEXCLS.004162
DRAFTED BY: L/HRR:GBRANCATO -- 08/03/2004 202-647-2773
APPROVED BY: IO:MLAGON
DRL: MIKE KOZAK - OK
L: SAM WITTEN OK
L: CURT BRADLEY (SUBS) - OK

RELEASED IN FULL

L/HRR: BOB HARRIS OK
L/PM: JOANN DOLAN OK
S/WCI: JONATHAN CROCK - OK
S/CT: JOHN SANDAGE -INFO
IO/SHA: TOM JOHNSON - OK
DRL/MLA: MIKE BUTLER
LYNN SICADE - OK
DOD/GC: COL. DIANE BEAVER OK
DOD/GC: CHUCK ALLEN - OK
DOJ/DEPUTY: PAT PHILBIN - OK
NSC/LEGAL: BRAD WIEGMANN (SUBS) - OK
NSC: SANDY HODGKINSON - OK
----------4A51D6 032341Z /38
O P 031435Z AUG 04
FM SECSTATE WASHDC
TO USMISSION GENEVA IMMEDIATE
INFO AMEMBASSY BAGHDAD PRIORITY
AMEMBASSY KABUL PRIORITY
USMISSION USUN NEW YORK

UNCLAS STATE 167220

E.O. 12958: N/A
TAGS: PHUM
SUBJECT: 1503 COMMUNICATIONS FROM AMNESTY INTERNATIONAL
RE: DETAINEES

1. Following is the response of the USG to communications from Amnesty International dated May 9, 2003, and March 9, 2004, relating to individuals detained at the U.S. Naval

Station in Guantanamo Bay, Cuba and at Bagram Air Base in Afghanistan. The U.S. mission received these communications from the Office of the High Commissioner for Human Rights under cover of U.N. Secretariat Note No. G/SO 215/1 USA 2704 dated May 23, 2003, and Note no. G/SO 215/1/ USA 2823 dated March 31, 2004. Mission is requested to transmit this response in full as soon as possible to the Office of the High Commissioner for Human Rights under cover of a diplomatic note for distribution in its entirety to the Working Group on Communications.

BEGIN TEXT:

The Government of the United States appreciates the opportunity to respond to the above-mentioned ECOSOC Resolution 1503 communications forwarded by the United Nations High Commissioner for Human Rights in Note no. G/SO 215/1 USA 2704 dated May 23, 2003, and in Note no. G/SO 215/1/ USA 2823 dated March 31, 2004, attaching letters sent by Amnesty International dated May 9, 2003, and March 9, 2004, relating to individuals detained at the U.S. Naval Station in Guantanamo Bay, Cuba ("Guantanamo") and at Bagram Air Base in Afghanistan (hereinafter "communications"). The Sub-Commission Working Group on Communications posed questions to the United States following its review of Note. No. 2704, and the underlying letters sent by Amnesty International ("Letters") express numerous concerns. The Letters conclude by referencing legal developments in the United States, notably court challenges to the United States Government's detention of enemy combatants at Guantanamo.

I.

Inadmissibility. The United States Government respectfully submits that the two 1503 communications are not admissible because they fail to meet established criteria for consideration under the 1503 procedure. Most importantly, the communications fail to demonstrate the exhaustion of available domestic remedies, as is expressly required by Sub-Commission Resolution XXIV(1) before a 1503 communication may be considered. Further, the communications do not remotely establish the existence of a consistent pattern of gross and reliably attested violations of human rights, also as required by Sub-Commission Resolution XXIV(1). Because the communications fail to meet the stated criteria for consideration under the 1503 process, the Government of the United States respectfully requests that the communications be deemed inadmissible.

The United States Government further respectfully submits that the Commission does not have jurisdiction over the communications because they raise claims under the Geneva Conventions of 1949 and the law of armed conflict, which is the law that governs the status and treatment of persons during armed conflict. The Commission's jurisdiction and competence do not extend to the laws and customs of war.

Failure to Exhaust Domestic Remedies. Supreme Court Rulings. As the Commission is aware, on June 28, 2004, the United States Supreme Court, the highest judicial body in the United States, issued its decisions in Rasul v. Bush, No. 03-334 (U.S. S.Ct. June 28, 2004), Hamdi v. Rumsfeld, No. 03-6696 (U.S. S.Ct. June 28, 2004) and Rumsfeld v. Padilla, No. 03-1027 (U.S. S.Ct. June 28, 2004). Among other issues, the Supreme Court reviewed whether the appropriate federal district court would have jurisdiction to consider a habeas corpus petition filed on behalf of enemy combatants held at Guantanamo and challenging the legality of their detention. Rasul, a case brought on behalf of two Australians and twelve Kuwaitis, and its companion case Al Odah, presented "the narrow but important question whether United States courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba." (Rasul Slip Opinion at 1). The same issue is squarely raised in the 1503 communications.

The Supreme Court held in Hamdi that our nation is entitled to detain enemy combatants, even American citizens, until the end of hostilities, in order to prevent the enemy combatants from returning to the field of battle and again taking up arms. The Court stated the detention of such individuals "is so fundamental and accepted an incident to war as to be an exercise of the 'necessary and appropriate' force Congress has authorized the President to use against nations, organizations, or persons associated with the September 11, 2001 terrorist attacks." (Slip Op. at 10, 11).

The Supreme Court ruled in Rasul that the District Court for the District of Columbia had jurisdiction to consider habeas challenges to the legality of the detention of foreign nationals at Guantanamo. The Supreme Court held that the federal habeas corpus statute confers jurisdiction on the appropriate federal district court to review the legality of the detention of enemy combatants detained at Guantanamo. (Slip Op. at 15-16).

Further Court Proceedings. The Supreme Court in Rasul decided only the question of jurisdiction. The Court

accordingly remanded the proceedings to the federal district (trial) court to address the merits of the claims that the detentions at issue in those cases are unlawful. "Whether and what further proceedings may become necessary after (the United States Government) make their response to the merits of petitioners, claims are matters that we need not address now." (Slip Op. at 17). Thus, the Supreme Court ruling will result in further proceedings at the trial and also potentially appellate court levels.

It is beyond peradventure that under the 1503 procedure's exhaustion requirement, these two communications must be deemed inadmissible. The United States has an independent and impartial judicial system, based firmly on the rule of law, that is addressing precise questions raised in the 1503 communications. This fact makes clear that it is impermissible (and neither wise nor appropriate) for the Commission to entertain the 1503 communications. Under the Commission's own procedures, the communications must be dismissed so that available domestic remedies -- judicial and otherwise -- may be pursued.

CHR Principles on an Independent Judiciary. In its sixtieth session just this past spring, the Commission on Human Rights adopted by consensus two resolutions (sponsored by Hungary and Russia) affirming the critical importance of the principles of independence, impartiality, and integrity of the judiciary. For the Commission to act on these 1503 communications would signal a rejection of the principle of international respect for independent judicial processes of a sovereign State so recently embraced by the Commission. It would also contradict the Commission's very own procedures and rules for the admissibility of 1503 communications.

Principles Underlying Exhaustion. This matter quintessentially exemplifies the rationale behind the exhaustion requirement. Expressly contained in Commission 1503 procedures, the requirement of exhaustion of local remedies stems from customary international law, as a means of respecting State sovereignty. It ensures that the State where a human rights violation has allegedly occurred should have the opportunity to redress the allegation by its own means within the framework of its own domestic legal system. See Interhandel Case (Switzerland v. United States) (1959) I.C.J. 6, 26-27; Velasquez Rodriguez case, Judgment of July 29, 1988 (Inter-American Court). It is a sovereign right of a State conducting judicial proceedings to have its national system be given the first opportunity to determine the merits of a claim and decide the appropriate remedy.

As the Inter-American Court explained in Velasquez Rodgriguez, "The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction." Id. To paraphrase the Inter-American Court, international law looks to national law and national tribunals in the first instance. International tribunals were not intended to replace national adjudication.

The exhaustion requirement essentially requires that the claimant present his claim to an appropriate domestic court, support the claim with all relevant evidence and legal arguments, and take advantage of all procedures for appeal. Restatement of Foreign Relations Law (Third) section 713, reporter's note 5, and citations contained therein. In this case, through the judicial process in the Rasul case, the United States Supreme Court has affirmed the availability of federal court jurisdiction to entertain habeas claims brought on behalf of detainees at Guantanamo to challenge the legality of their detention. A habeas action in the appropriate federal court in the United States is an avenue available to each detainee at Guantanamo.

Whether any detainee among the 590 at Guantanamo will be able to present a meritorious claim, and, if so, the precise relief to be allowed, has yet to be determined by the courts of the United States. In accordance with the procedures applied to petitions under ECOSOC Resolution 1503, domestic processes must be afforded the opportunity to follow through the course of any such proceeding and decide the merits of the claims and any appropriate and specific remedy.

In sum, where, as here, avenues of potential domestic relief remain available, the 1503 communications before the Commission are inadmissible for failure to exhaust available domestic remedies.

DOD Combatant Status Review Tribunals. On July 7, 2004, the Department of Defense announced the formation of the Combatant Status Review Tribunal for Guantanamo detainees. See www.defenselink.mil/transcripts/ 2004/tr200440707-0981.html; (DOD Briefing on Combatant Status Review Tribunal dated July 7, 2004); www.defenselink.mil/releases/ 2004/nr20040707-0992.html (DOD July 7 Press Release). This Tribunal will serve as a forum of first resort for detainees to contest their status as enemy combatants. These Tribunals draw upon the guidance contained

in the Supreme Court decisions in Rasul and Hamdi. The Deputy Secretary of Defense issued an order establishing the Tribunals. (www.defenselink.mil/news/ Jul2004/d20040707review.pdf) (hereinafter DOD Order). A fact sheet was also published regarding the Tribunal process and procedures. (www.defenselink.mil/news/ Jul2004/d20040707factsheet.pdf).

Since the July 7, 2004, order, the Secretary of the Navy has given several press conferences regarding the procedures. See www.defenselink.mil/transcripts/ 2004/tr20040709-0986.html (Secretary of the Navy England's Briefing dated July 9, 2004); www.defenselink.mil/transcripts/ 2004/tr20040716-1006.html. Furthermore, on July 29, 2004, Secretary England issued the implementation directive for the Combatant Status Review Tribunals, giving specific procedural and substantive guidance on the implementation of the DOD Order (hereinafter DOD Implementing Directive). See www.dod.mil/releases/ 2004/nr20040730-1072.html (July 30, 2004); www.defenselink.mil/news/ Jul2004/d20040730comb.pdf.

All detainees held at Guantanamo were notified on July 12, 13 or 14, 2004, of their opportunity to contest their enemy combatant status under this process. (Enclosure 4 of DOD Implementing Directive).

The first tribunal commenced in Guantanamo on July 30, 2004. Within 30 days after the detainee's personal representative has been afforded the opportunity to review the reasonably available information in the possession of the Department of Defense and has an opportunity to consult with the detainee, a tribunal shall be scheduled to review the detainee's status as an enemy combatant.

Detainees have also been notified of the fact that a federal court has jurisdiction to entertain a petition for habeas corpus brought on their behalf.

An individual Combatant Status Review Tribunal will be comprised of three neutral officers, one of whom will be a judge advocate (legal) officer. Each detainee will be assigned a military officer as a personal representative. That officer will assist the detainee in preparing for a tribunal hearing. (Enclosure 1 to DOD Implementing Directive at paragraph C.)

Detainees will have the opportunity to testify before the tribunal or otherwise address the tribunal in oral or written form and to introduce relevant and reasonably available

witness and documentary evidence. (DOD Order, paragraph 10.) The detainee may not be compelled to testify. (DOD Order, paragraph 11; Enclosure 1 to DOD Implementing Directive at paragraph F.)

Following the hearing of testimony and other evidence, the Tribunal will deliberate in closed session and determine by a majority vote whether the detainee is classified as an enemy combatant. There will be a rebuttable presumption in favor of the Government's evidence. (DOD Order, paragraph 12). Any detainee who is determined not to be an enemy combatant will be transferred to the detainee's country of citizenship or other disposition consistent with domestic and international obligations and U.S. foreign policy. (DOD July 7 Press Release; Enclosure 1 to DOD Implementing Directive at paragraph H.)

The Combatant Status Review Tribunal will not foreclose the filing of a habeas proceeding in federal court, nor will it supplant the annualized review procedure for Guantanamo detainees announced earlier this year (discussed below). Instead, it is a fact-finding proceeding to review whether individuals detained at Guantanamo are enemy combatants.

In sum, there are several ongoing and available review processes provided under domestic law and procedure for detainees at Guantanamo seeking to challenge their detention. These review procedures amply demonstrate that domestic remedies are available to, and have not been exhausted by, Guantanamo detainees, thereby requiring a finding that the communications are inadmissible.

II.

Without prejudice to or waiver of our position that these communications are inadmissible, we provide the Commission with the following information as a matter of courtesy and in a spirit of cooperation.

Law of War. It is important to recall the context of the Guantanamo detentions. The war against Al Qaida and its affiliates is a real (not a rhetorical) war, and the United States must fight it that way. On September 11, 2001, the United States was the victim of massive and brutal terrorist attacks carried out by 19 Al Qaida suicide attackers who hijacked and crashed four U.S. commercial jets, two into the World Trade Center towers in New York City, one into the Pentagon near Washington, D.C., and a fourth into a field in Shanksville, Pennsylvania, leaving about 3000 innocent

The United Nations Security Council condemned the terrorist attacks of September 11, 2001 as a "threat to international peace and security" and recognized the "inherent right of individual and collective self-defence in accordance with the Charter." See U.N. Security Council Resolution 1368, U.N. Doc. No. S/RES/1368 (September 12, 2001); see also U.N. Security Council Resolution 1373, U.N. Doc. No. S/RES/1373 (September 28, 2002). NATO, the Organization of American States under the 1947 Inter-American Treaty of Reciprocal Assistance (Rio Treaty), and Australia under the ANZUS Treaty, similarly considered the terrorist attacks on the United States as an armed attack justifying action in self-defense. See Statement of Australian Prime Minister on September 14, 2001 (Article IV of ANZUS applies to the 9/11 attacks); Statement of October 2, 2001 by NATO Secretary General Lord Robertson (9/11 attacks regarded as an action covered by Article 5 of the Washington treaty)); OAS publication, United Against Terrorism, www.oas.org/assembly/GAAssembly2000/Gaterrorism.htm.

On October 7, 2001, President Bush invoked the United States' inherent right of self-defense and, as Commander-in-Chief of the United States Armed Forces, ordered the U.S. Armed Forces to initiate action in self-defense against the terrorists and the Taliban regime that harbored them in Afghanistan. The United States was joined in the operation by the United Kingdom and coalition forces, comprising (as of December 2003) 5,935 international military personnel from 32 countries.

The law of war applies to the conduct of war, and allows the United States -- and any other country -- to hold enemy combatants without charges or access to counsel for the duration of hostilities. Detention is not an act of punishment but of security and military necessity. It serves the purpose of preventing combatants from continuing to take up arms against the United States. These are the long-standing applicable rules of the law of war, a fact recognized by the United States Supreme Court in its recent decisions.

Myriad Review Processes. As described above, the United States Supreme Court has determined that, under the federal habeas corpus statute, the appropriate district court has jurisdiction to hear habeas corpus petitions brought on behalf of detainees challenging their detention at Guantanamo, and DOD has instituted Combatant Status Review Tribunals to allow each Guantanamo detainee an opportunity to

contest his or her detention as an enemy combatant. Additionally, as described in detail below, the Department of Defense has established an individualized annual review procedure to determine the propriety of continued detention of persons held at Guantanamo. Moreover, as discussed below, when a detainee at Guantanamo is charged with a criminal offense, the detainee will have the right to counsel and applicable fundamental procedural due process safeguards.

In Afghanistan, approximately 10,000 individuals have been screened by the United States and released. Less than ten percent of those screened have been transferred to Guantanamo. The detainees at Guantanamo, who currently number approximately 590, see www.dod.mil/releases/ 2004/nr20040727-1062.html, include jihadists who took up arms against the United States and also senior Al Qaida and Taliban operatives who would pose a serious threat of violence to the international community if released. Still, the United States has established an extensive process for reviewing and regularly assessing detainees, status as enemy combatants and whether their continued detention is necessary in light of the threat they pose to the United States and the international community.

The United States has no interest in detaining enemy combatants longer than necessary. On an ongoing basis, it is constantly reviewing the continued detention of each enemy combatant, based on security, war crime involvement, and intelligence concerns. As a result of this process, as of July 28, 2004, 151 detainees have departed Guantanamo, with 133 transferred for release, and 18 for continued detention and prosecution. www.dod.mil/releases/ 2004/nr20040727-1062.html. The most recent announcement of transfers, dated July 27, 2004, pertains to four French nationals transferred to the control of the Government of France. Id. Individuals earlier released from Guantanamo include three juveniles under the age of sixteen, who were transferred to Afghanistan under conditions intended to provide for their safety and rehabilitation.

Annual Individualized Review. In an action unprecedented under the laws of war, on May 18, 2004, the Department of Defense announced that it had issued an order on May 11, establishing special administrative review procedures to provide an annual individualized review of the detention of each enemy combatant at Guantanamo. See www.dod.mil/releases/ 2004/nr20040518-0806.html. The May 11, 2004 order was effective immediately. See www.defenselink.mil/news/ May2004/d20040518gtmoreview.pdf. The process permits the enemy combatant to explain why he or

she is no longer a threat to the United States and its allies in the ongoing armed conflict against al Qaida and its affiliates or supporters or to explain why release would otherwise be appropriate. Such procedures are not required by the law of war but the Department of Defense has elected to implement them in order to address some unique and unprecedented characteristics of the current conflict.

Under this order, each enemy combatant will be provided with an unclassified written summary of the primary factors favoring continued detention and the primary factors favoring release or transfer from Guantanamo. The detainee has a formal opportunity to appear in person before a board of three military officers and to present information in his or her behalf. The detainee will be provided a military officer to meet with him in advance of the hearing and to assist him in his appearance before the board. In addition, the review board will accept written information from the family and national government of the detainee. Based on all of this information, as well as submissions by other U.S government agencies, the board will, by majority vote, make a written asse.ssment of whether there is reason to believe that the enemy combatant poses a threat to the United States or its allies in the ongoing armed conflict and any other factors bearing on the need for continued detention. The board will also provide a written recommendation on whether detention should be continued. Id.

On June 23, 2004, the Defense Department announced that the Secretary of the Navy, Gordon R. England, had been named the designated civilian official to oversee the annual administrative review process described above. Secretary England will review the recommendation of the board and will then decide whether the detainee should be released or continued in detention. Secretary England has assembled a joint civilian and military team that is developing a detailed, comprehensive implementing directive to expedite the review of detainee records and establish review boards in the near future. See www.dod.mil/releases/ 2004/nr20040623-0932.html. These procedures have been circulated for public comment by the Department of Defense. See www.defenselink.mil/releases/ 2004/nr20040303-0403.html, www.defenselink.mil/news/ Mar2004/d20040303ar.pdf.

As noted above, the grant of an annual individualized process to determine whether to release a detainee is, as far as we are aware, unprecedented in the history of warfare. Similarly, the release of enemy combatants prior to the end of a war is a significant departure from past wartime practices. Enemy combatants are detained for a very

practical reason: to prevent them from returning to the fight. That is why the law of war permits their detention until the end of an armed conflict. Although military operations against Al Qaida and its affiliates in Afghanistan and globally are ongoing, the Defense Department has decided as a matter of policy to institute these review procedures, which will assist DOD in fulfilling its commitment to help ensure that no one is detained any longer than is necessary for the security of the United States (and its coalition partners). See id.

Military Commissions. As of July 7, 2004, the President of the United States had determined that 15 enemy combatants detained by the United States are subject to his military order of November 13, 2001, making them eligible for trial by military commissions. The President determined that there is reason to believe that each of these enemy combatants was a member of al Qaida or was otherwise involved in terrorist acts directed against the United States. There is evidence that the individuals designated by the President may have attended training camps and may have been involved in activities such as financing al-Qaida, building explosives, planning or facilitating maritime operations, and providing protection of Usama bin Laden. www.dod.mil/releases/2004/nr20040707-0987.html.

Military commissions have historically been used to try violations of the law of armed conflict and related offenses. The Department of Defense is prepared to conduct full and fair trials when charges are approved on an individual subject to the President's military order. Procedural safeguards during a military commission were outlined in detail in the United States' 1503 submission last year, and include the presumption of innocence; a requirement for proof of guilt beyond a reasonable doubt; representation by a military defense counsel free of charge with the option to retain a civilian defense counsel at no expense to the U.S. Government; an opportunity to present evidence and call witnesses; a prohibition against drawing an adverse inference if an accused chooses not to testify; and an appeal to a review panel. See www.dod.mil/releases/2004/nr20040707-0987.html and www.dod.mil/releases/2004/nr20040610-0893.html.

The Defense Department has announced that charges were approved against four Guantanamo detainees, including David Hicks of Australia. All of those against whom charges have been approved will be tried by military commission. The charges against Hicks include conspiracy to commit war crimes; attempted murder by an unprivileged belligerent; and

aiding the enemy. A trial date and commission panel members will be selected at a later time. See id. If Hicks is convicted, the prosecution will not seek the death penalty. Id.

Hicks has access to an Australian lawyer with an appropriate security clearance as a foreign attorney consultant; subject to any necessary security restrictions, two appropriately cleared family members of Hicks will be able to attend the trial, as well as representatives of the Australian government. If Hicks is convicted, the Australian government, as well as the defense team, may make submissions to the review panel on appeal. The United States and Australia will continue to work towards putting arrangements in place to transfer Hicks, if convicted, to Australia to serve any penal sentence in accordance with Australian and U.S. law. Id.

Charges have also been approved and referred to a military commission on enemy combatants Ali Hamza Ahmed Sulayman al Bahlul of Yemen, Ibrahim Ahmed Mahmoud al Qosi of Sudan, and Salim Ahmed Hamdan of Yemen. The charges are conspiracy to commit war crimes. Al Bahlul is alleged to be a key al Qaida propagandist who produced videos glorifying the murder of Americans to recruit, inspire and motivate other al Qaida members to continue attacks against Americans, the United States, and other countries. Al Bahlul is also alleged to have served as a bodyguard for Usama bin Laden. Al Qosi is alleged to be a key al Qaida accountant, bin Laden bodyguard and long-time bin Laden assistant and associate (dating back to the time when bin Laden lived in Sudan), and weapons smuggler. Hamdan is alleged to be a key al Qaida member who delivered weapons, ammunitions and supplies to al Qaida members and associations, served as a driver for Usama bin Laden and other high-ranking al Qaida members and associates, and acted as a bodyguard for Usama bin Laden.

Al Bahlul, al Qosi and Hamdan are charged with willfully and knowingly joining an enterprise of persons who shared a common criminal purpose and conspired with Usama bin Laden and others to commit the following offenses: violent physical attacks against civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.
www.dod.mil/releases/ 2004/nr20040224-0363.html;
--www.dod.mil/releases/ 2004/nr20040629-0951.html and
www.dod.mil/releases/ 2004/nr20040714-1030.html.

The cases were referred to a panel consisting of a presiding officer, Retired Army Colonel Peter E. Brownback III, and

four other members. The presiding officer will be contacting attorneys in the cases in the near future to set an initial trial schedule. Id.

Mistreatment of Detainees. Concerns have been raised about conditions of detention at Guantanamo, and there have been reports of abuse of detainees in United States custody in Afghanistan. The United States deeply regrets any instances of abuse and cruel treatment of detainees. Allegations of abuse are investigated and prosecuted by the United States as appropriate (see, e.g., discussion below of prosecution of USG contractor for alleged abuse at Bagram).

On United Nations International Day in Support of Victims of Torture, June 26, 2004, the President stated:

"The United States reaffirms its commitment to the worldwide elimination of torture. To help fulfill this commitment, the United States has joined 135 other nations in ratifying the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments. America stands against and will not tolerate torture. We will investigate and prosecute all acts of torture and undertake to prevent other cruel and unusual punishment in all territory under our jurisdiction.

"The United States also remains steadfastly committed to upholding the Geneva Conventions.

"The American people were horrified by the abuse of detainees at Abu Ghraib prison in Iraq. These acts were wrong. They were inconsistent with our policies and our values as a Nation. I have directed a full accounting for the abuse of the Abu Ghraib detainees, and investigations are underway to review detention operations in Iraq and elsewhere.

"These times of increasing terror challenge the world. Terror organizations challenge our comfort and our principles. The United States will continue to take seriously the need to question terrorists who have information that can save lives. But we will not compromise the rule of law or the values and principles that make us strong. Torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere."

On June 22, 2004, upon the release of numerous government documents related to U.S. laws regarding torture and to interrogation techniques, White House Counsel Alberto Gonzales stated the following:

"The administration has made clear before, and I will reemphasize today that the President has not authorized, ordered or directed in any way any activity that would transgress the standards of the torture conventions or the torture statute, or other applicable laws. (L)et me say that the U.S. will treat people in our custody in accordance with all U.S. obligations including federal statutes, the U.S. Constitution and our treaty obligations. The President has said we do not condone or commit torture. Anyone engaged in conduct that constitutes torture will be held accountable." White House Press Release of June 22, 2004.

In a White House memorandum of February 7, 2002 (released on June 22, 2004), the President stated United States policy as follows:

"Of course our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment (under the Geneva Conventions). . . . . As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

With respect to the principle of non-refoulement, it is United States policy not to 'expel, return ('refouler') or extradite' individuals to other countries where the United States believes it is 'more likely than not' that they will be tortured. Should an individual be transferred to another country to be held on behalf of the United States, or should we otherwise deem it appropriate, the United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. This is United States policy as well as United States law. The United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored. Further, if a case were to arise in which the assurances the United States has obtained from another government are not sufficient when balanced against an individual's specific claim, the United States would not transfer a detainee to the control of that government unless the concerns were satisfactorily resolved.

To prevent instances of misconduct, it is United States policy that military personnel are trained, disciplined, and informed on the laws and customs of armed conflict. United States forces are subject to the Uniform Code of Military

Justice, which contains penalties for many military offenses that are more severe if committed during an armed conflict. A Department of Defense Directive requires that reportable incidents involving violations of the law of war committed by United States persons be promptly reported, thoroughly investigated, and when appropriate, remedied by corrective action.

In its review of the United States reply to the 2003 1503 communication on Guantanamo, the Sub-Commission Working Group on Communications inquired about interrogation techniques used at Guantanamo. On June 22, 2004, the United States Department of Defense issued a press release with extensive accompanying documentation explaining in detail the various interrogation techniques approved and disapproved for use at Guantanamo from the period beginning January 2002. See www.dod.mil/releases/ 2004/nr20040622-0930.html ("DOD Provides Details on Interrogation Process" dated June 22, 2004). The Commission is referred to this site and accompanying documents for a comprehensive treatment of the subject of interrogation techniques at Guantanamo. The Department of Defense concluded its press release on interrogation techniques at Guantanamo by noting that:

"Individuals who have abused the trust and confidence placed in them will be held accountable. There are a number of inquiries that are ongoing to look at specific allegations of abuse, and those investigations will run their course."

www.dod.mil/releases/ 2004/nr20040622-0930.html ("DOD Provides Details on Interrogation Process" dated June 22, 2004).

With respect to Afghanistan, the Department of State announced in a press release issued on March 8, 2004, regarding Afghan detainees:

"The United States takes seriously reports of excessive use of force and allegations of inappropriate or wrongful behavior by U.S. forces, including violations of international law. The U.S. investigates all credible reports and, where substantiated, has taken appropriate action against those that have engaged in wrongful conduct.

Afghanistan remains a combat zone and forces there are engaged in combat operations against determined enemy forces. Combat operations are conducted in accordance with the Law of Armed Conflict and relevant rules of engagement."

On June 17, 2004, Department of Justice officials announced that a contractor working for the CIA has been indicted on charges stemming from the death of a prisoner in Afghanistan. The four-count indictment says the contractor, David Passaro, beat an Afghan prisoner identified as Abdul Wali, who had surrendered voluntarily at the front gate of a U.S. detention facility near Asadabad in the northeastern Kunar Province on June 18, 2003. The indictment includes two counts of assault causing serious injury and two counts of assault with deadly weapon. Each count carries a maximum penalty of ten years in prison and a $250,000 fine upon conviction.

Attorney General Ashcroft stated that the case would be fully investigated. "President Bush has made clear that the United States will not tolerate criminal acts of brutality such as those alleged in this indictment." See "Prepared Remarks of Attorney General John Ashcroft, Passaro Indictment Announcement," June 17, 2004, at www.usdoj.gov/ag/speeches/ 2004/ag061704.htm. The Department of Justice has reported that the CIA inspector general and DOD have referred additional prisoner abuse allegations to the Justice Department for investigation, which are ongoing. www.usdoj.gov/ag/speeches/ 2004/ag061704.htm.

The General Counsel of the Department of Defense has stated that if illegal conduct occurred in relation to two deaths of persons in United States custody at Bagram, the appropriate authorities would have a duty to take action to ensure that any individuals responsible are held accountable in accordance with law. Letter from William J. Haynes II to the Honorable Patrick Leahy dated June 25, 2003. And as noted above, the President confirmed on June 26, 2004, "We will investigate and prosecute all acts of torture."

Additional Corrective Actions. The Department of Defense has taken several actions in an attempt to address allegations of any prisoner abuse by United States military personnel. On May 7, 2004, Secretary Rumsfeld announced that four citizens have agreed to review DOD detention operations and will provide independent, professional advice to the Secretary on issues related to the treatment of detainees. They will address issues such as force structure, training, organization, detention policy and procedures, interrogation policy and procures, command relationships and operational practices. The individuals, who include two former Secretaries of Defense, James Schlesinger and Harold Brown, will have access to all relevant DOD investigative reports

and other information to the maximum extent possible. They will be asked to report their findings within 45 days of taking up their duties. www.dod.mil/releases/ 2004/nr20040507-0744.html.

Additionally, on June 10, 2004, the Secretary of Defense issued new guidance on procedures for investigations into deaths of any person held as a detainee in the custody of the U.S. Armed Forces. The guidance details very strict procedures to ensure that the U.S. Department of Defense can establish and record an official cause and manner of death in all cases involving persons in U.S. custody. The new directive is part of a series of efforts to strengthen policies and eliminate procedural weaknesses that have come to light as a result of the deplorable events at Abu Ghraib prison. www.dod.mil/releases/ 2004/nr20040610-0892.html.

In response to further specific questions raised by the Sub-Commission Working Group on Communications and in the communications, the United States advises that it is providing detainees at Guantanmo with excellent medical care. In March 2003, a special mental health unit was opened in Guantanamo where detainees suffering from depression or other psychological difficulties or diseases receive individualized care and supervision. Although there have been suicide attempts by detainees, discovery and rapid intervention by military guards have prevented detainee deaths. These individuals were also seen by medical personnel. These attempts are taken seriously and the United States makes every effort to prevent them.

The detainees are not being held incommunicado. Representatives of the International Committee of the Red Cross (ICRC) have visited detainees at Guantanamo. Detainees are also permitted to communicate with family and friends at home via petitions and postcards. They use either the U.S. military postal service, or the ICRC, which delivers mail via its offices in each country. The volume of communications is substantial and numbers well over 6,000 since detainees began arriving at Guantanamo in January 2002.

Subject to certain restrictions, the detainees can engage in exercise and recreation periods and can communicate with one another. Some have met and consulted with a U.S. chaplain of Muslim faith. Some have met with government officials from their country of nationality. There is no requirement under international law for detainees held under the law of armed conflict to be permitted to meet with family members or consular representatives.

Summary. For the foregoing reasons, the United States respectfully requests that the two 1503 communications G/SO 215/1 USA 2704 dated May 23, 2003, and G/SO 215/1 USA 2823 dated March 31, 2004, be declared inadmissible, because inter alia, they fail to establish the exhaustion of available domestic remedies, a core principle under customary international law and expressly incorporated in Commission 1503 procedural requirements. They also wholly fail to establish the existence of a consistent pattern of gross and reliably attested violations of human rights. For all of the reasons stated in the submission above, the communications must be deemed inadmissible.

Without prejudice to this position, the United States underscores that there are several available and ongoing judicial and administrative procedures for Guantanamo detainees to seek review of their detention.

Further, the President has reaffirmed the policy of the United States that all detainees held by the armed forces in connection with the war on terror be treated humanely. The United States has instituted additional measures to prevent any prisoner abuse and has reaffirmed that persons responsible for acts of torture against detainees in United States custody will be investigated and prosecuted.

In conclusion, the United States respectfully submits that the two 1503 communications are inadmissible.
POWELL

NNNN