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Mr. J. L. F. Kelb

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25 July 2003

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Colin Powell, Secretary of State  
2201 C Street, N.W. Washington DC, USA  
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RELEASED IN PART  
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Dear Secretary of State,

As a lawyer and an activist in the promotion of human rights I take a neutral position in the politics of foreign countries. My activities are restricted to the most elemental forms of human justice. Therefore I would like to express my utmost concern about the situation in the US Naval Base in Guantánamo Bay, Cuba. With regard to this Amnesty International has asked me to address myself to you with the following recommendations:

To the US authorities:

- calling for repeal of the Military Order and regretting that six detainees have been named under it;
- urging that none of the six be referred for trial before military commission, as justice will neither be done nor be seen to be done in such proceedings;
- calling for the six to be charged with recognizably criminal offences, brought to trial in proceedings which meet international standards for fair trial, including the right to appeal, or else released;
- opposing any use of the death penalty;
- regretting that by such conduct, the USA is undermining its claims to be committed to the rule of law.

Feroz Ali Abbasi (m), UK national, aged 23  
Moazzam Begg (m), UK/Pakistan national, aged 35  
David Hicks (m), Australian national, aged 27  
and three other non-US nationals, identities and nationalities unknown

Amnesty International believes that the Military Order should be revoked, and that any trial before the military commissions would contravene international standards:

- The commissions will lack independence from the executive. The executive has the power to name who will be tried by the commissions, to appoint or to remove commission members, to pick the panel that will review convictions, and to make the final decision in any case.
- There will be no right of appeal to an independent and impartial court established by law. The commissions can pass death sentences. Under international standards, governments must ensure particular respect for all fair trial rights in capital cases, including the right to appeal.
- The right to counsel of choice and to an effective defence is restricted. Defendants will be provided with military lawyers and would have to pay to retain a civilian lawyer. Among other restrictions, civilian lawyers may not have access to classified information or closed proceedings. In addition, lawyer/client confidentiality is not guaranteed.
- US citizens cannot be subject to the Military Order and will not be tried by military commission, even if accused of the same offence as a foreign national. International law prohibits discrimination on the basis of nationality with regards to fair trial rights. The commissions would allow a lower standard of evidence than is admissible in ordinary courts.

I assure you that I fully agree with these recommendations and I call upon you to consider them also as results of my own considerations.

Yours sincerely,

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: FRANK E SCHMELZER  
DATE/CASE ID: 30 SEP 2004 200303827

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