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B7(C)

Ms. Margot Kessler
Mitglied Des Europaeschen Parlaments
Europaeisches Parlaments
Hauptstrasse 48
99752 Bleicherode
Germany

Dear Ms. Kessler:

Thank you for your letter of February 14 to Secretary
Powell expressing concern related to

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The United States and its Coalition partners are at war with the al Qaida network and remnants of the Taliban who continue to support them. The al Qaida network today is a multinational enterprise with operations in more than 60 countries. Active hostilities are ongoing daily in Afghanistan and around the world. We continue to fight against enemy combatants who are planning and conducting attacks against us. In this context, operational and security concerns compel me to refrain from confirming or commenting on the circumstances of capture, transfer or detention of specific individuals believed to be held as enemy combatants in the course of that conflict.

Let me assure you, however, that President Bush has affirmed on any number of occasions that al Qaida and Taliban detainees, regardless of their lack of status as POWs under the Third Geneva Convention of 1949, will be treated consistent with American values and the principles of the international law of armed conflict. He has determined that United States Armed Forces will treat enemy combatants humanely, and, to the extent consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949. United States Government personnel are not permitted to torture detainees or participate in torture by others. Torture is a violation of

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the laws of the United States. Allegations of torture will be thoroughly investigated. In cases where the United States Government transfers detainees to other countries for detention or questioning on our behalf, we seek and receive assurances that the detainees will not be tortured.

The authority to detain enemy combatants for the duration of hostilities exists in law independent of the civil judicial or criminal justice system. In this war, as in every war, enemy combatants have no legal right to counsel or access to courts for the purpose of challenging their detention while hostilities are ongoing. While some enemy combatants may face criminal prosecution before the end of hostilities, nations at war traditionally have waited until hostilities cease to bring such charges. If and when an enemy is charged with a crime, he would then be entitled to access to counsel and would receive a fair trial.

The United States is strongly committed to protecting and advancing human rights. Our detainee policy is no exception. We have been vocal on this issue and unwavering in our efforts to urge governments to stop the practice. The law that applies in the context of an armed conflict is the international law of armed conflict. As the International Court of Justice explained in the *Legality of the Threat or Use of Nuclear Weapons*, to the extent human rights law is applicable during armed conflict, it must be interpreted in light of the relevant *lex specialis* as set forth in the body of international humanitarian law. Accordingly, the law to be applied in the context of an armed conflict to determine the legality and conditions of detention is the law and customs of war.

Sincerely,

Pierre-Richard Prosper

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Cleared:

L/PM:JADolan - ok

D:Dpittman - ok

P:Bbrink - ok

SA/PAB:JMCNaught - ok

EUR/ERA:Drochman - ok

DRL:Mpica - ok

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