

UNCLASSIFIED
RELEASED IN PART
B6, B1, 1.4(D)

LF125

The Department of State acknowledges receipt of a note dated September 12, 2002 and Diplomatic Note No. 922 dated October 21, 2002 from the Embassy of [] transmitting questions on behalf of an attorney, [] concerning an individual said to be detained by United States forces in Guantanamo Bay. For operational and security reasons, the Department of State is not in a position to respond to inquiries of this nature concerning the specific circumstances pertaining to the detention of any particular individual detained at Guantanamo Bay.

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As a general matter, the Government of [] may advise [] that individuals detained under the control of United States military authorities at Guantanamo Bay are enemy combatants captured while engaged in ongoing hostilities or directly supporting hostile forces. Enemy combatants pose a serious threat to the United States, NATO nations, and coalition partners. They are being held in accordance with the laws and customs of war, which permit the United States to capture and detain

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B6

UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, L. R. LOHMAN, DAS, A/RPS
REVIEW AUTHORITY: HARRY R MELONE
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)
DECLASSIFY AFTER: 29 OCT 2012
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DIPLOMATIC NOTE

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enemy combatants to prevent their re-engaging in the on-going armed conflict.

As long as hostilities continue, the United States, as a matter of military necessity and common sense, and consistent with the laws and customs of war, has a right to detain enemy combatants who could rejoin the fight if provided the opportunity. The United States treats all enemy combatants humanely and in a manner consistent with the principles of the Geneva Convention of 1949.

There is no law requiring a detaining power to prosecute enemy combatants or to release them prior to the end of hostilities. The authority to detain enemy combatants exists in law independent of the judicial or criminal justice system. While the United States Government and its coalition partners are doing everything they can to determine whether particular combatants should be tried for crimes in accordance with international norms, the decision whether, or when, to prosecute a combatant has no impact on the underlying authority to detain them during the armed conflict.

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Likewise, under the laws and customs of war, captured enemy combatants have no right of access to counsel or the courts to challenge their detention. If and when a detainee is charged with a crime, he would have the right to counsel and fundamental procedural safeguards. To date, no detainee at Guantanamo has been charged with any particular crime.

With respect to access to detainees at Guantanamo Bay, representatives of the International Committee for the Red Cross individually and privately visit the enemy combatants on a regular basis. Some detainees have also met with government officials from their country of nationality. The United States maintains that access to counsel by enemy combatants, in the absence of criminal charges, would directly interfere with the ongoing efforts of the United States and its coalition partners to gather and evaluate intelligence about the enemy, its capabilities, and its plans. Gaining such intelligence is critical to the war effort and instrumental in preventing further attacks against the United States, the NATO nations and our coalition partners. This is our legal position in judicial proceedings whenever the issue is raised.

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Department of State,

Washington, OCT 30 2002



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Approved: EUR/FO:RBradtke
EUR/UBI:MNorman
DOD/OGC:EDavidson
DOD/SOLIC:RHays
DOJ:Mincontro
PM:SPeters
L/NESA:JDolan
P:AGordon
NSC/LEGAL:JScharfen
S/CT:DScott
CIA/CTC:LVogt
S/ES-O:Mscheland
S/ES-CR:EHardy (draft)

OK *Adl*

OCT 29 2002

(per State 204847)

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