

Tillery, Monica J

From: Gorove, Katherine M (L-HRR)
Sent: Friday, September 03, 2004 7:20 PM
To: Solomon, Steven A; Harris, Robert B; Dolan, JoAnn (L-PM); Dorosin, Joshua L (L-PM);
 Cummings, Edward R (L-ACV)
Cc: Peay, Michael T
Subject: Louise Arbour and USG Legal Memos on Torture

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-----Original Message-----

From: Solomon, Steven A
Sent: Tuesday, August 31, 2004 10:47 AM
To: Harris, Robert B; Gorove, Katherine M (L-HRR); Dolan, JoAnn (L-PM); Dorosin, Joshua L (L-PM);
 Cummings, Edward R (L-ACV)
Cc: Moley, Kevin E; Cassel, Lynn L; Angelov, Bonnie A; Peay, Michael T; Delaurentis, Jeffrey A; Danies, Joel
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Subject: Louise Arbour and USG Legal Memos on Torture

All -- The Ambassador noticed and would like to respond to a recent speech by Louise Arbour ("*Security Under the Rule of Law*," attached below) and statements to the Financial Times ("*UN Rights Chief Hits at US Over Guantanamo, August 28, 2004*") where she refers to the "debate" within the USG about torture and says she is "deeply troubled" by "suggestions from within the US administration that torture might be legitimate."

Here, from the attachment, is what Ms. Arbour said in her "*Security Under the Rule of Law*" speech on August 27th to the International Commission of Jurists:

Yet we find, remarkably, that questions continue to be raised about this clear dictate of international law, including at high levels of government. You will no doubt be familiar with the intensive scrutiny this matter has received in legal memoranda prepared by senior attorneys in the United States Department of Defense and Department of Justice, addressing standards of conduct for interrogations of persons detained in counter-terrorism operations. One memo argued that the president has the authority as commander-in-chief of the armed forces to approve almost any physical or psychological actions during interrogation, despite U.S. and international laws prohibiting torture. It supplied defenses that officials could use if charged with committing torture, such as necessity, self-defense, or mistakenly relying in good faith on the advice of lawyers that their actions were legal. "Because the presence of good faith would negate the specific intent element of torture, good faith may be a complete defense to such a charge," according to the memo.

Let us recall the language of article 2 of the Convention against Torture, holding that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." I have been deeply troubled by this debate

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The Mission is prepared to draft such a response but we'd appreciate any thoughts, suggestions or pre-existing language you might have that could be useful.

Many thanks, Steve

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 REVIEW AUTHORITY: FRANK E SCHMELZER

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