Statement by Political Officer Todd Huizinga
Public Hearing on Guantanamo Bay Detainees
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European Parliament

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I would like to thank the European Parliament, and specifically Baroness Ludford, for inviting me here today. I appreciate the opportunity to explain U.S. policy on Guantanamo. My hope would be that, at the very least, misunderstandings about Guantanamo could be cleared up and the way opened for those in Europe who do not agree with our policy to better understand the U.S. perspective on the situation.

The first thing that one must understand about the U.S. perspective on Guantanamo is that the U.S. is at war on terrorism. The attacks of September 11, 2001 have been the most murderous of a long series of terrorist attacks organized and carried out by the al Qaida organization. Today, terrorists continue to fight coalition forces in Afghanistan and Iraq, to conduct assaults such as those in Bali and elsewhere, and to plan attacks to inflict civilian casualties on an unprecedented scale.

In this war the United States is confronted by the question of what should be done with enemy combatants captured during hostilities. The United States undertook a careful, extensive review of the complex body of law governing armed conflict to ascertain an answer.

Let me begin my review of the answers to some of the most frequent questions about the Guantanamo detainees with a reminder of the fundamental reason why we are holding them in Guantanamo: we are at war. The capture and detention of enemy combatants, to remove them from the fighting and ensure the security of our own military forces, is entirely consistent with the law of armed conflict. It is a universally recognized principle under the law of armed conflict that enemy combatants engaged in war may be captured and detained for the duration of the conflict. This has been the practice of the U.S. and its allies in every war they have fought. The detainees at Guantanamo are, in fact, enemy combatants. At the time of capture, they were bearing arms against us or otherwise acting in support of hostile armed forces engaged in an on-going armed conflict.

Under the terms of the Third Geneva Convention of 1949, the Taliban and al Qaida are not entitled to Prisoner-of-War status. Specifically, they do not qualify as lawful combatants (or POWs) under Article 4 of the Third Geneva Convention of 1949 because they fail to satisfy the conditions of that Article. They did not effectively distinguish themselves from the civilian population, for example, nor did they conduct their military operations in accordance with the law and customs of war. Nevertheless, the United States has treated and will continue to treat the enemy combatants at Guantanamo humanely and in a manner consistent with the principles of the Third Geneva Convention of 1949.

On the right to a fair trial, the title of this hearing: In this war as in any war, captured enemy combatants have no legal right to counsel or right of access to courts for the purpose of challenging their detention while hostilities are ongoing. The capture and continued detention of enemy combatants, in order to remove them from hostilities and save an untold number of innocent lives, is consistent with the law of armed conflict and critical to winning this war. If a detainee should be subsequently charged with a crime, he would have access to counsel and would receive a fair trial.

The conference participants here today have discussed the possibility that the Guantanamo detainees will be brought to trial outside the normal criminal law system. The United States has set up procedures for military commissions to deal with these cases. Trial by military commission is a common and well-established practice recognized by international law. The U.S. has used military commissions since the Revolutionary War, including in the Mexican-American War, the U.S. Civil War, and the Second World War. Europeans also used military commissions extensively in the 19th and 20th centuries, including in the First and Second World Wars. The Third Geneva Convention of 1949 expressly creates a presumption that prisoners of war "shall be tried only by a military court." U.S. military commissions, if convened, would be statutorily and constitutionally authorized.

Some have questioned whether these military commissions will uphold the right to a fair trial. The unequivocal answer is yes. As it seems that the extensive safeguards we

have taken to protect the right to a fair trial in the case of military commissions are not well known, let me outline them for you.

The military commissions will be impartial. They will provide full and fair trials. Any guilty findings in a military commission will follow the established standard of all United States courts - guilty beyond a reasonable doubt.

Additionally there are other legal protections for the accused, including:

-- The presumption of innocence;

-- Representation by defense counsel, at no cost to the accused;

-- The death penalty can only be imposed by unanimous decision of a 7-member panel;

-- Review by an impartial, 3-member panel (possibly including civilians who are temporarily commissioned);

-- The accused is not required to testify, and no adverse inference may be drawn from a refusal to testify;

-- The accused may present evidence in his defense and may cross-examine witnesses presented by the prosecution;

-- Proceedings will be open to the public "to the maximum extent practicable" (but they can be closed to protect national security interests);

-- At all times, including in any closed proceedings, the accused will be represented by counsel;

-- The prosecution will provide the accused with access to evidence the prosecution intends to introduce at trial and with access to evidence known to the prosecution that is inconsistent with the alleged guilt of the accused; and,

-- The review panel has the authority to return the case for further proceedings if a majority of its members have a definite and firm conviction that a material error of law occurred.

The use of military commissions to try the detainees at Guantanamo would be consistent with the procedural safeguards found in the Geneva Conventions of 1949 and Article 75 of Protocol 1 of 1977 to the Geneva Conventions, to which, incidentally, the United States is not a party.

The United States does not intend to hold the detainees indefinitely. Ultimately, they will be prosecuted by the United States, returned to their own country for prosecution or detention, or released if they no longer pose a threat, as we have done in the past. The process of identifying which category each detainee belongs to take careful scrutiny and time. Our foremost objective is and will remain to ensure that the enemy combatants who pose ongoing threat are not released only to strike again.

Thank you.