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Thessin, James H (SBU)

**From:** Harris, Robert K (SBU)  
**Sent:** Tuesday, October 21, 2003 1:08 PM  
**To:** Taft IV, William H (SBU); Witten, Samuel M (SBU); Thessin, James H (SBU); Cummings, Edward R (SBU); Dolan, JoAnn (SBU)  
**Cc:** Dorosin, Joshua L (SBU); Johnson, Thomas A; Craner, Lorne W (DRL); Greene, Richard L; McKinley, Peter M; Richard, Elizabeth H; Pollack, Margaret J; Santos, Carrie T; Butler, Michael A (DRL); Kozak, Michael G (DRL); Sicade, Lynn M (DRL); Camponovo, Christopher N (DRL); Legal-L-HRR (SBU)  
**Subject:** IACHR hearing on Guantanamo detainees

Below is a brief report of yesterday's hearing at the Inter-American Commission on Human Rights concerning detainees at Guantanamo. As he had done at earlier stages before the Commission on this case, Andre Surena represented the USG ably in the hearing.

Although I am sending this message widely, recipients may wish to see if there are others in your bureaus who also would want to see this. If you would like to see a copy of the petitioners' submission, please confirm in an e-mail to my Secretary, Shahnaz Gheibi. (JoAnn, could you forward this message to your contacts at DOD and elsewhere who will be interested? Perhaps you could also see to the distribution of the submission to anyone in the interagency group who will be interested.)

Text of Report:

On October 20, 2003, the Inter-American Commission on Human Rights held a hearing in the matter concerning detainees at Guantanamo Bay, Cuba. The hearing was convened at the request of petitioners, who claimed to have new information related to the Commission's prior request to the United States to adopt precautionary measures.

Petitioners, using largely press reports and a few quotations from the ICRC website reported alleged US mistreatment of detainees and reiterated a need for the Commission to intervene. Petitioners emphasized their view that the totality of mistreatment amounted to torture and petitioners were particularly upset by reports that children were among the detainees. Petitioners asked the Commission to expand its review of this matter to include review of claims of torture and treatment of children.

USDEL responded by noting that the USG had received no advance notice of the factual allegations and was, therefore, in no position to respond to them. As to petitioners' underlying legal arguments, the USDEL reiterated its past arguments why the Commission was not competent over the matter or to interpret international humanitarian law or to request precautionary measures of the United States.

The Chair invited petitioners to comment on the USDEL presentation. Petitioners had no comments or questions.

The Chair then made three observations: (1) He believed that the Commission was not intent on interpreting the laws of armed conflict or international humanitarian law. It was interested in confirming, however, that if human rights law did apply, that it was observed; (2) the Commission was concerned that no tribunal had reviewed the fact of detention of the detainees; and (3) the Commission was concerned by the fact that this conflict appeared to be indeterminate in duration and without discernible geographic contours or limits.

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USDEL responded, first, by noting that it was difficult to respond to these views, since the basic USG position was that the Commission was not competent in this matter. If the Commission would accept that point of

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departure, the USDEL would offer brief comment.

The USDEL responded that: (1) The view of the USG was that the laws of armed conflict did govern the matter and that this was outside the competence of the Commission. If the USG participated in this proceeding before the Commission and the Commission came to, in the USG view, the correct conclusion on this point, the Commission would conclude that it lacked jurisdiction and should not have pursued the matter; (2) The Article 5 review that the Commission requested would not in any case have achieved the relief that the Commission anticipated. Enemy combatants found by Article 5 tribunals to be POWs may be detained without access to courts or counsel. Those found not to be POWs may also be detained; and (3) the indefinite nature of the conflict and the lack of geographic limits are the results of the continuing actions of those attacking the United States and its allies.



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Bob Harris

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