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TAGS: PREL, PHUM, KTER, OSCE

SUBJECT: OSCE HUMAN RIGHTS AND TERRORISM INTERVENTION

REF: EMAIL USOSCE-EUR/RPM SEP 12 2003

1. POST IS AUTHORIZED TO PRESENT THE FOLLOWING STATEMENT
 AT THE SEMINAR ON HUMAN RIGHTS AND COMBATTING TERRORISM IN
 THE HAGUE. BEGIN TEXT:

THANK YOU, MR. MODERATOR.

THE <<UNITED>> <<STATES>> WISHES TO THANK THE NETHERLANDS MINISTRY
 OF FOREIGN AFFAIRS AND THE NETHERLANDS HELSINKI COMMITTEE
 FOR ORGANIZING THIS SEMINAR. IT IS A TIMELY CONFERENCE
 INDEED, OCCURRING ONLY ONE WEEK AFTER THE ANNIVERSARY OF
 THE SEPTEMBER 11 TERRORIST ATTACKS ON THE <<UNITED>> <<STATES>>.

THOSE EVENTS CONSTITUTED NOT ONLY AN ATTACK ON AMERICANS'
 FREEDOM, BUT ALSO A BLOW TO THE WORLD'S HOPES FOR PEACE.
 TO QUOTE THE BACKGROUND MATERIAL FOR THIS CONFERENCE, "A

POLICY OF ACTIVELY FIGHTING TERRORISM ALSO SERVES TO
 PROMOTE AND PROTECT HUMAN RIGHTS AND FUNDAMENTAL
 FREEDOMS." AS PRESIDENT BUSH SAID EARLIER THIS MONTH,

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"EVERYWHERE THAT FREEDOM TAKES HOLD, TERROR WILL RETREAT.",

THROUGHOUT THESE MOST DIFFICULT TIMES, THE <<UNITED>> <<STATES>> HAS UPHELD ITS TRADITIONAL RESPECT FOR HUMAN RIGHTS. WE STRONGLY BELIEVE THAT A NATION'S COMMITMENT TO THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IS THE BEST DEFENSE AGAINST THE RISE OF EXTREMISM AND TERRORISM.

BALANCING SECURITY AND HUMAN RIGHTS IS A DELICATE MATTER, AND WE LOOK FORWARD TO THIS SEMINAR TO EXAMINE THESE QUESTIONS IN DETAIL.

WE WOULD LIKE FIRST TO ADDRESS SOME OF THE SPECIFIC QUESTIONS PUT TO US BY THE CONFERENCE ORGANIZERS.

FIRST, WHILE WE RECOGNIZE THAT THERE ARE VARIOUS SOCIAL, ECONOMIC, POLITICAL AND OTHER FACTORS THAT CREATE CONDITIONS IN WHICH TERRORIST ORGANIZATIONS ARE BETTER ABLE TO RECRUIT AND WIN SUPPORT, WE MUST STRESS THAT THERE ARE NO "ROOT CAUSES OF TERRORISM."

SECOND, REGARDING THE QUESTION OF WHETHER OR NOT TERRORISTS CAN BE DETAINED INDEFINITELY, THE SIMPLE ANSWER IS: 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. THE U.S. COMPLIES WITH THE LAW OF ARMED CONFLICT, INCLUDING THE TENET OF HUMANE <<TREATMENT>> -- A PRINCIPLE THAT TERRORISTS VIOLATE FLAGRANTLY. 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.

DETENTION UNDER THE LAW OF ARMED CONFLICT DOES NOT SUBJECT TERRORISTS TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING <<TREATMENT>> OR PUNISHMENT. AS PRESIDENT BUSH HAS REAFFIRMED TO THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <<UNITED>> <<STATES>> POLICY CONDEMNS AND PROHIBITS TORTURE. U.S. PERSONNEL ARE REQUIRED TO FOLLOW THIS POLICY AND APPLICABLE LAWS PROHIBITING TORTURE. THE <<UNITED>> <<STATES>> HAS TREATED AND WILL CONTINUE TO TREAT ENEMY COMBATANTS AT GUANTANAMO HUMANELY AND, TO THE EXTENT APPROPRIATE AND CONSISTENT WITH MILITARY NECESSITY, IN A MANNER CONSISTENT

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WITH THE PRINCIPLES OF THE THIRD GENEVA CONVENTION OF 1949.

THIRD, IN RESPONSE TO THE QUESTION OF WHEN THE ARRESTED OR DETAINED PERSONS SHOULD BE BROUGHT BEFORE A JUDGE: UNDER THE LAW OF ARMED CONFLICT, CAPTURED ENEMY COMBATANTS HAVE NO RIGHT TO COUNSEL, OR OF ACCESS TO A COURT, TO CHALLENGE THEIR DETENTION DURING HOSTILITIES. IN THIS WAR, AS IN EVERY WAR, 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. IF A <<DETAINEE>> SHOULD BE SUBSEQUENTLY CHARGED WITH A CRIME, HE WOULD HAVE ACCESS TO COUNSEL AND WOULD RECEIVE A FAIR TRIAL.

FOURTH, THE CONFERENCE ORGANIZERS HAVE QUESTIONED IF IT IS POSSIBLE TO DEAL WITH TERRORISTS 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. AS A MATTER OF HISTORICAL PRECEDENT, THE U.S. AND ITS EUROPEAN ALLIES HAVE CONVENED MILITARY COURTS OR COMMISSIONS PRIMARILY IN CONNECTION WITH WAR-RELATED OFFENSES.

THE THIRD GENEVA CONVENTION OF 1949 EXPRESSLY CREATES A PRESUMPTION THAT PRISONERS OF WAR SHALL BE TRIED ONLY BY A MILITARY COURT" UNLESS THE EXISTING LAW OF THE DETAINING COUNTRY EXPRESSLY PERMITS ITS CIVIL COURTS TO TRY MEMBERS OF ITS OWN ARMED FORCES. U.S. MILITARY COMMISSIONS, IF CONVENED, WOULD BE STATUTORILY AND CONSTITUTIONALLY AUTHORIZED. IN ADDITION, THE UNIFORM CODE OF MILITARY JUSTICE EXPRESSLY RECOGNIZES THE JURISDICTION OF MILITARY COMMISSIONS. MILITARY COMMISSIONS ARE APPROPRIATE FOR VIOLATIONS OF THE LAW OF ARMED CONFLICT AND DEALING WITH THE UNIQUE CHALLENGES POSED BY THE WAR ON TERRORISM.

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.

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THE MILITARY COMMISSIONS WILL BE IMPARTIAL. THEY WILL PROVIDE FULL AND FAIR TRIALS. ANY GUILTY FINDING 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 AND OTHER 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.

FINALLY, THE <<UNITED>> <<STATES>> IS PLEASED THAT THIS SEMINAR INCLUDES A DISCUSSION OF THE TEMPTATION TO SINGLE OUT, AS

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AN IMMEDIATE REACTION IN THE CONTEXT OF FIGHTING TERRORISM, MEMBERS OF A GROUP BELONGING TO THE NATIONALITIES ADHERING TO A CERTAIN RELIGION OR BELIEF. THIS IS AN ISSUE ON WHICH U.S. OFFICIALS HAVE REPEATEDLY SPOKEN OUT.

PRESIDENT BUSH HAS REPEATEDLY SAID THAT THIS WAR ON TERRORISM IS NOT A WAR AGAINST THE ISLAMIC FAITH OR ITS PRACTITIONERS. "OUR WAR ON TERRORISM HAS NOTHING TO DO WITH DIFFERENCES IN FAITH. IT HAS EVERYTHING TO DO WITH PEOPLE OF ALL FAITHS COMING TOGETHER TO CONDEMN HATE AND EVIL AND MURDER AND PREJUDICE."

THE ROAD TO COMBAT TERRORISM IS A LONG ONE. BUT AS SECRETARY OF STATE POWELL SAID LAST YEAR, "IF WE ARE TO DEFEAT THE TERRORISTS, THEN WE HAVE TO ATTACK THEM FROM THE HIGHEST PLANE--THAT HUMAN RIGHTS MUST BE PROTECTED, THE UNIVERSAL HUMAN RIGHTS THAT WE ALL BELIEVE IN, OR SHOULD BELIEVE IN, HAVE TO BE OBSERVED."

IN ORDER TO DO THIS, WE MUST NOT CONSIDER WHAT NEW OSCE COMMITMENTS ARE NEEDED, BUT RATHER TAKE THE STEPS TO FULLY IMPLEMENT THE OSCE HUMAN DIMENSION AND COUNTER-TERRORISM COMMITMENTS THAT WE CURRENTLY HAVE. THE ANSWER IS IN ACTION, RATHER THAN INACTION. LET US BEGIN THIS IMPORTANT WORK. THANK YOU.

END TEXT.

2. USE ONLY IF ISSUE IS RAISED, UNDER RIGHT OF REPLY:

-- MEMBERS OF THE TALIBAN AND AL QAIDA ARE NOT ENTITLED TO PRISONER OF WAR STATUS UNDER THE GENEVA CONVENTION ON PRISONERS OF WAR. ALTHOUGH THE U.S. NEVER RECOGNIZED THE TALIBAN AS THE LEGITIMATE GOVERNMENT OF <<AFGHANISTAN>>, PRESIDENT BUSH DETERMINED THAT, AS <<AFGHANISTAN>> IS A PARTY TO THE GENEVA CONVENTIONS, THE CONVENTIONS APPLY TO THE ARMED CONFLICT WITH THE TALIBAN.

-- UNDER THE TERMS OF THE THIRD GENEVA CONVENTION OF 1949, HOWEVER, THE TALIBAN ARE NOT ENTITLED TO POW STATUS. SPECIFICALLY, THE TALIBAN DID NOT QUALIFY AS LAWFUL COMBATANTS (OR POWS) UNDER ARTICLE 4 OF THE THIRD GENEVA CONVENTION OF 1949 BECAUSE THEY FAILED TO SATISFY THE CONDITIONS OF THAT ARTICLE. THE TALIBAN HAVE NOT EFFECTIVELY DISTINGUISHED THEMSELVES FROM THE CIVILIAN POPULATION OF <<AFGHANISTAN>>. MOREOVER, THEY HAVE NOT CONDUCTED THEIR MILITARY OPERATIONS IN ACCORDANCE WITH THE LAW AND CUSTOMS OF WAR.

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