

Current Class: UNCLASSIFIED
 Current Handling: n/a
 Document Number: 2003STATE083409

Channel: n/a

<<<>>

RELEASED IN FULL

ORIGIN SWCI-00

| | | | | | | | |
|------|---------|---------|---------|---------|---------|--------|---------|
| INFO | LOG-00 | AID-00 | AMAD-00 | CIAE-00 | CTME-00 | DOT-00 | SRPP-00 |
| | MEDE-00 | EB-00 | E-00 | FAAE-00 | UTED-00 | H-01 | TEDE-00 |
| | INR-00 | IO-00 | L-00 | DCP-01 | NSAE-00 | OIC-02 | DHS-00 |
| | OPIC-01 | PA-00 | PRS-00 | P-00 | SP-00 | SS-00 | STR-00 |
| | TEST-00 | TRSE-00 | USIE-00 | R-00 | PRM-00 | DRL-01 | G-00 |
| | SAS-00 | /006R | | | | | |

083409

SOURCE: CBLEXCLS.006149

DRAFTED BY: L/HRR:GBRANCATO -- 04/01/2003 202-647-2773

APPROVED BY: IO/SHA:JCPERRY

L/HRR:ASURENA

L/PM:JDOLAN

IO/SHA:TAJOHNSON

DRL/MLA:MPICA

S/WCI:RMILLER

DOD/GC:EDAVIDSON/JKASLER (SUBS)

-----4E6C9D 011551Z /38

O R 011543Z APR 03

FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO NSC WASHDC 0000

SECDEF WASHDC 0000

USMISSION USUN NEW YORK

UNCLAS STATE 083409

E.O. 12958: N/A

TAGS: PHUM

SUBJECT: US RESPONSE TO UNHCHR WGAD REPORT ON GTMO
 DETENTIONS

1. RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA
 TO THE DECEMBER 16, 2002 REPORT OF THE WORKING GROUP ON
 ARBITRARY DETENTION.

2. THE GOVERNMENT OF THE UNITED STATES WELCOMES THE
 OPPORTUNITY TO RESPOND TO THE ABOVE-MENTIONED REPORT RELATING
 TO DETENTION AT GUANTANAMO NAVAL BASE (GUANTANAMO). THE
 REPORT CONCLUDED THAT UNTIL A TRIBUNAL CONVENED UNDER ARTICLE
 FIVE OF THE THIRD GENEVA CONVENTION OF 1949 HAS DETERMINED
 WHETHER INDIVIDUALS DETAINED AT GUANTANAMO ENJOY
 PRISONER-OF-WAR (POW) STATUS, DETAINEES PROVISIONALLY ENJOY
 THE PROTECTION OF THE GENEVA CONVENTION, INCLUDING THE RIGHT
 TO REVIEW OF THE LAWFULNESS OF THEIR DETENTION AND THE RIGHT

Current Class: UNCLASSIFIED

Page: 1

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: ARCHIE M BOLSTER
 DATE/CASE ID: 04 NOV 2004 200303827

UNCLASSIFIED

DOS-002652

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2003STATE083409

Page: 2

Channel: n/a

TO A FAIR TRIAL UNDER ARTICLES 105 AND 106. THE REPORT FURTHER CONCLUDED THAT WHERE THE BENEFIT OF POW STATUS IS NOT RECOGNIZED BY A COMPETENT TRIBUNAL, THE RIGHT OF DETAINEES WOULD BE GOVERNED BY THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, WHICH GUARANTEES REVIEW OF THE LAWFULNESS OF DETENTION AND THE RIGHT TO A FAIR TRIAL UNDER ARTICLES 9 AND 14.

3. THE UNITED STATES GOVERNMENT REFERS TO ITS LETTER TO THE WORKING GROUP OF DECEMBER 17, 2002, RESPECTING DETENTION AT GUANTANAMO, WHICH IS INCORPORATED IN THIS RESPONSE. AS NOTED IN THAT LETTER, THE MANDATE OF THE WORKING GROUP DOES NOT INCLUDE COMPETENCE TO ADDRESS THE GENEVA CONVENTIONS OF 1949 OR MATTERS ARISING UNDER THE LAW OF ARMED CONFLICT.

NEVERTHELESS, THE UNITED STATES GOVERNMENT, IN A SPIRIT OF COOPERATION, OFFERS THIS RESPONSE TO THE WORKING GROUP REPORT.

4. THE UNITED STATES GOVERNMENT RESPECTFULLY DISAGREES WITH THE CONCLUSIONS REACHED BY THE WORKING GROUP THAT THE INDIVIDUALS DETAINED AT GUANTANAMO ARE ENTITLED TO A REVIEW OF THE LAWFULNESS OF THEIR DETENTION. AS THE WORKING GROUP IS AWARE, ON SEPTEMBER 11, 2002, TERRORISTS USED UNLAWFUL AND PERFIDIOUS MEANS TO ATTACK INNOCENT CIVILIANS IN THE UNITED STATES. THESE ACTS, AS THE UNITED NATIONS SECURITY COUNCIL RECOGNIZED, CONSTITUTED A THREAT TO INTERNATIONAL PEACE AND SECURITY. SINCE SEPTEMBER 11, THE UNITED STATES HAS EXERCISED ITS INHERENT RIGHT OF SELF-DEFENSE AS RECOGNIZED IN ARTICLE 51 OF THE CHARTER OF THE UNITED NATIONS AND UN SECURITY RESOLUTIONS 1368 (12 SEPTEMBER 2001) AND 1373 (28 SEPTEMBER 2001) AND HAS USED OTHER LAWFUL AND REASONABLE MEANS TO THWART FURTHER ATTACKS BY ENEMY COMBATANTS ON AMERICAN PERSONS AND PROPERTY.

5. ENEMY COMBATANTS. INDIVIDUALS DETAINED AT GUANTANAMO ARE ENEMY COMBATANTS CAPTURED IN THE COURSE OF ONGOING HOSTILITIES OR DIRECTLY SUPPORTING HOSTILE FORCES. AS SUCH, THEY ARE BEING HELD IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR, WHICH PERMIT THE UNITED STATES TO CAPTURE AND DETAIN ENEMY COMBATANTS TO PREVENT THEIR RE-ENGAGING IN THE ON-GOING ARMED CONFLICT. AT THE TIME OF CAPTURE, THEY WERE BEARING ARMS AGAINST THE UNITED STATES OR OTHERWISE ACTING IN SUPPORT OF HOSTILE ARMED FORCES ENGAGED IN AN ON-GOING ARMED CONFLICT. INDIVIDUALS DETAINED AT GUANTANAMO INCLUDE A NUMBER OF SENIOR AL QAIDA OPERATIVES OR OTHERS COMMITTED TO KILLING AMERICANS AND OTHERS. THE UNITED STATES CONTINUES TO FIGHT AGAINST ENEMY COMBATANTS WHO ARE PLANNING AND CONDUCTING ATTACKS AGAINST IT.

6. ARTICLE FIVE TRIBUNALS. MEMBERS OF THE TALIBAN AND AL

Current Class: UNCLASSIFIED

Page: 2

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2003STATE083409

Page: 3

Channel: n/a

QAIDA DETAINED AT GUANTANAMO ARE NOT ENTITLED TO PRISONER OF WAR STATUS UNDER THE THIRD GENEVA CONVENTION, AND THERE IS NO NEED TO CONVENE AN ARTICLE 5 TRIBUNAL TO MAKE INDIVIDUALIZED STATUS DETERMINATIONS. ARTICLE 5 DOES NOT REQUIRE A PARTY TO THE GENEVA CONVENTION TO CONVENE TRIBUNALS TO CONSIDER STATUS DETERMINATIONS UNLESS THERE IS DOUBT. FOR MEMBERS OF AL QAIDA AND THE TALIBAN, CAPTURED WHILE ENGAGED IN ONGOING HOSTILITIES OR DIRECTLY SUPPORTING HOSTILE OPERATIONS, THERE IS NO DOUBT ABOUT THEIR STATUS. ARTICLE 5 STATES THAT "(S)HOULD ANY DOUBT ARISE," DETAINEES "SHALL ENJOY THE PROTECTION OF THE (GENEVA CONVENTION) UNTIL SUCH TIME AS THEIR STATUS HAS BEEN DETERMINED BY A COMPETENT TRIBUNAL."

7. REQUIREMENTS FOR POW STATUS. MEMBERS OF THE TALIBAN AND AL QAIDA ARE NOT ENTITLED TO PRISONER OF WAR STATUS UNDER THE THIRD GENEVA CONVENTION BECAUSE MEMBERS OF NEITHER MEET THE CONDITIONS FOR BEING CONSIDERED LAWFUL COMBATANTS (OR POWS) UNDER ARTICLE FOUR OF THE THIRD GENEVA CONVENTION OF 1949. AL QAIDA IS A TERRORIST ORGANIZATION AND CANNOT BE CONSIDERED A STATE PARTY TO THE GENEVA CONVENTIONS. MOREOVER, ITS MEMBERS UNLAWFULLY ENGAGE IN AN ARMED CONFLICT TARGETING CIVILIANS AND MILITARY PERSONNEL AND OBJECTS AROUND THE WORLD. AL QAIDA'S CONDUCT FLAGRANTLY VIOLATES EVEN THE MOST FUNDAMENTAL LAWS AND CUSTOMS AND WAR. IN ADDITION TO UNLAWFULLY TARGETING CIVILIANS, AL-QAIDA'S METHODS AND MEANS OF WAGING WAR ARE AT ODDS WITH EVERY REQUIREMENT APPLICABLE TO LAWFUL ARMED FORCES. IT IS IMPORTANT TO THE RULE OF LAW THAT WE NOT RECOGNIZE AL QAIDA AND THE TALIBAN AS HAVING POW STATUS. DOING SO WOULD DISSERVE THE WORLD'S INTERESTS BY DIMINISHING THE PRINCIPLES EMBODIED IN THE GENEVA CONVENTIONS.

8. ENEMY COMBATANTS ARE NOT ENTITLED TO BE RELEASED OR TO HAVE ACCESS TO COURT OR COUNSEL. SOME HAVE ERRONEOUSLY CLAIMED THAT THE UNITED STATES IS VIOLATING DOMESTIC AND INTERNATIONAL LAWS THAT PROHIBIT THE "INDEFINITE" DETENTION OF INDIVIDUALS WITHOUT TRIAL. THERE IS BROAD AUTHORITY UNDER THE LAWS AND CUSTOMS OF WAR TO DETAIN ENEMY COMBATANTS, WITHOUT ANY REQUIREMENT TO BRING CRIMINAL CHARGES WHILE HOSTILITIES LAST. THE DETENTION OF AN ENEMY COMBATANT IS NOT AN ACT OF PUNISHMENT BUT ONE OF SECURITY AND MILITARY NECESSITY. IT SERVES THE IMPORTANT PURPOSE OF PREVENTING AN ENEMY COMBATANT FROM CONTINUING TO FIGHT AGAINST US. THERE IS NO LAW REQUIRING A DETAINING POWER TO PROSECUTE ENEMY COMBATANTS OR RELEASE THEM PRIOR TO THE END OF HOSTILITIES. LIKewise, UNDER THE LAWS AND CUSTOMS OF WAR, DETAINED ENEMY COMBATANTS HAVE NO RIGHT OF ACCESS TO COUNSEL OR THE COURTS TO CHALLENGE THEIR DETENTION. SHOULD A DETAINEE BE CHARGED WITH A CRIMINAL OFFENSE, HE WOULD HAVE THE RIGHT TO COUNSEL AND APPLICABLE FUNDAMENTAL PROCEDURAL SAFEGUARDS. NO

Current Class: UNCLASSIFIED

Page: 3

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2003STATE083409

Page: 4

Channel: n/a

DETAINEE HAS BEEN CHARGED WITH A CRIMINAL OFFENSE.

9. WE CANNOT HAVE AN INTERNATIONAL LEGAL SYSTEM IN WHICH HONORABLE SOLDIERS WHO ABIDE BY THE LAW OF ARMED CONFLICT AND ARE CAPTURED ON THE BATTLEFIELD MAY BE DETAINED AND HELD UNTIL THE END OF A WAR, BUT TERRORISTS WHO VIOLATE THE LAW OF ARMED CONFLICT MUST BE RELEASED AND ALLOWED TO CONTINUE THEIR BELLIGERENT, UNLAWFUL OR TERRORIST ACTIVITIES. SUCH A LEGAL REGIME WOULD SIGNAL TO THE INTERNATIONAL COMMUNITY THAT IT IS ACCEPTABLE FOR ARMIES TO BEHAVE LIKE TERRORISTS.

10. HUMANE TREATMENT OF DETAINEES. THE UNITED STATES TREATS ENEMY COMBATANTS AT GUANTANAMO HUMANELY AND, TO THE EXTENT APPROPRIATE AND CONSISTENT WITH MILITARY NECESSITY, IN A MANNER CONSISTENT WITH THE PRINCIPLES OF THE THIRD GENEVA CONVENTION. DETAINEES GET EXCELLENT MEDICAL AND DENTAL CARE ON A PAR WITH THAT PROVIDED TO U.S. ARMED FORCES. SINCE DETENTION OPERATIONS BEGAN WE HAVE TREATED WOUNDS SUSTAINED IN BATTLE AND RELIEVED PAIN AND SUFFERING THAT PRE-DATES DETENTION. THE UNITED STATES IS PROVIDING DETAINEES WITH APPROPRIATE SHELTER; CLOTHING AND SHOES; SHOWERS, SOAP, AND TOILET ARTICLES; AND THREE CULTURALLY APPROPRIATE MEALS A DAY. DETAINEES ARE PROVIDED THE MEANS TO SEND AND RECEIVE MAIL, SUBJECT TO SECURITY SCREENING. THEY ARE GIVEN THE OPPORTUNITY TO WORSHIP FREELY.

11. THE INTERNATIONAL COMMITTEE OF THE RED CROSS HAS VISITED AND WILL CONTINUE TO BE ABLE TO VISIT THE DETAINEES.

12. THE UNITED STATES SECRETARY OF DEFENSE HAS STATED HIS INTENTION NOT TO HOLD ANYONE LONGER THAN NECESSARY. TO THAT END, THE DEPARTMENT OF DEFENSE HAS PROCEDURES IN PLACE TO ASSESS, SYSTEMATICALLY AND PERIODICALLY, THE GUANTANAMO DETAINEE POPULATION AND DETERMINE, AMONG OTHER THINGS, IF CONTINUED DETENTION IS NECESSARY FOR EACH INDIVIDUAL. THE DEPARTMENT OF DEFENSE HAS ALREADY APPROVED THE RELEASE OF A NUMBER OF DETAINEES AT GUANTANAMO AND ANTICIPATES THAT THERE WILL BE ADDITIONAL DETAINEE RELEASES IN THE FUTURE. PRIOR TO ANY RELEASE, CONSISTENT WITH MILITARY REQUIREMENTS, THE DEPARTMENT OF DEFENSE GENERALLY NOTIFIES THE RECEIVING STATE AND THE ICRC IN ORDER TO ENABLE THEM TO MAKE NECESSARY ARRANGEMENTS PRIOR TO THE DETAINEES, DEPARTURE FROM GUANTANAMO.

13. FOR THE REASONS DISCUSSED ABOVE, THE UNITED STATES GOVERNMENT RESPECTFULLY DISAGREES WITH THE CONCLUSIONS OF THE WORKING GROUP AND REQUESTS THAT THIS RESPONSE, TOGETHER WITH ITS LETTER OF DECEMBER 17, 2002, BE PUBLISHED BY THE COMMISSION.

Current Class: UNCLASSIFIED

Page: 4

UNCLASSIFIED

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2003STATE083409

Page: 5

Channel: n/a

POWELL

NNNN

Current Class: UNCLASSIFIED

Page: 5

UNCLASSIFIED

DOS-002656