

UNITED STATES OF AMERICA

v.

DAVID M. HICKS

**DEFENSE MOTION TO
DISMISS ALL CHARGES FOR
DENIAL OF FUNDAMENTAL
RIGHTS IN CRIMINAL
PROCEEDING**

4 October 2004

The Defense in the case of the *United States v. David M. Hicks* moves the military commission for dismissal of all charges on the ground that adequate facilities for a defense have not been provided, and states in support of this motion:

1. **Synopsis:** Mr. David Hicks' right to an adequate defense has been violated in three respects. First, he has not been given the benefit of the presumption of innocence. Second, Mr. Hicks has not been given adequate facilities for his defense as he has been denied access to counsel at critical points after he was taken into custody by U.S. forces. Third, according to the rules as presently constituted, Mr. Hicks may not be allowed to be present during all phases of his hearing, preventing him from having adequate access to evidence and witnesses. For these reasons, the procedures of the military commission deny Mr. Hicks the right to adequate facilities for a defense, which is an essential component to the right to a fair trial.

2. **Facts:** Mr. Hicks was taken into custody by U.S. forces in or around November 2001, at which point he was subjected to prolonged and uncounseled interrogation coupled with physically abusive and unconscionable treatment. After he was moved to Guantanamo Bay Naval Base, the interrogations and coercive conditions persisted. Throughout, and from at least 27 February 2002, the interrogations of Mr. Hicks were for the purpose of preparing a prosecution against him. At that point, Mr. Hicks still was not permitted have access to counsel. Ultimately, Mr. Hicks was not assigned military counsel 28 November 2003 (at the very least, 21 months after interrogation for the purposes of prosecution began).

3. **Discussion:**

A: The Presumption of Innocence

Article 14(2) of the *International Covenant on Civil and Political Rights (ICCPR)*¹ and article 75(4)(d) of *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)*² state that anyone charged with an offence shall have the right to be presumed innocent until proved guilty according to law. Thus, the burden of proof in a criminal trial is shouldered by the prosecution, and the accused is afforded the benefit of the doubt. The ICCPR does not specify

¹ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976). Ratified by the US on 8 June 1992

² Opened for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978).

the standard of proof required. However, it is generally accepted that the standard under national law applies (*i.e.*, guilt must be proved “beyond a reasonable doubt”).³

The United Nations Human Rights Committee, the expert body set up by the ICCPR to monitor that treaty’s implementation, discusses the presumption of innocence in General Comment No. 13 on the ICCPR. That Comment states that “the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”⁴ US public authorities have failed in this duty and have undermined the presumption of innocence by making public statements in regard to the detainees, including Mr. Hicks.

Detainees at Guantanamo Bay Naval Base have been labeled as “killers,” “terrorists” and “bad people” by various United States public officials, including President Bush⁵ and Attorney General, John Ashcroft.⁶ Secretary of Defense, Donald Rumsfeld, referred to them as “hard-core, well-trained terrorists,”⁷ and “among the most dangerous, best-trained, vicious killers on the face of the earth.”⁸ He also explicitly linked detainees to the attacks of 11 September 2001, stating that he would prefer them to be prosecuted rather than “having them go get into more airplanes and fly into the Pentagon and the World Trade Centre.”⁹ Vice President Dick Cheney stated that detainees were “the worst of a very bad lot. They are very dangerous. They are devoted to killing millions of Americans.” Senior Pentagon officials have also made statements to undermine the presumption of innocence. Rear Admiral John Stufflebeem stated “These are the worst of the worst and if let out on the street, they will go back to the proclivity of trying to kill Americans and others. So that is well established.”¹⁰

These public officials have been involved in convening the military commissions and appointing Panel members. Furthermore, some of them will be carrying out the review process, the only “appeal” provided (under the commission rules) to detainees who are convicted by the commission.

B: The Right to Access to Counsel

Article 14(3)(b) of the ICCPR states that in the determination of any criminal charge, an accused shall have “adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” Article 75(4)(a) of Additional Protocol I states

³ UN Human Rights Committee, ‘General Comment No. 13’, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.7 (12 May 2004), [7]. *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002), art 66.

⁴ See General Comment No. 13, above n 3, [7].

⁵ Labeled ‘killers’ and ‘terrorists’ during a speech in the White House, Meeting with Afghan Interim Authority Chairman, 28 January 2002. Labeled as ‘terrorists’ during the State of Union address on 29 January 2002. Labeled ‘killers’ again in a speech on 20 March 2002.

⁶ He also described them as being part of a ‘conspiracy’, and as ‘uniquely dangerous’: *CNN Late Edition*, 20 January 2002. See also Joint Press Conference by Tony Blair and George W Bush, British Embassy, Washington DC, 17 July 2003, available at

<http://www.britainusa.com/sections/articles_show.asp?SarticleType=1&Article_ID=3925&i=122>.

⁷ NBC, 20 January 2002.

⁸ *Rumsfeld visits, thanks US troops at Camp X-ray in Cuba*, American Forces Information Service, 27 January 2002.

⁹ Interview with *The Telegraph*, 23 February 2002.

¹⁰ Department of Defense News Briefing, 28 January 2002.

that the procedure of the court “shall afford the accused before and during his trial all necessary rights and means of defense.”¹¹

The Human Rights Committee has stressed that “all persons who are arrested must immediately have access to counsel. . .”¹² The Special Rapporteur on the Independence of Judges and Lawyers, in considering the presence of an attorney during police interrogations, stated that “[t]he absence of legal counsel gives rise to the potential for abuse, particularly in a state of emergency where more serious criminal acts are involved.” In the case of Northern Ireland “the harsh conditions found in the holding centres . . . and the pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative.”¹³

The Rules of Procedure and Evidence of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda respect the right of suspects to the assistance of counsel during detention and interrogation.¹⁴ Questioning of suspects cannot proceed without the presence of counsel, unless the suspect has voluntarily waived the right to counsel. The right of access to counsel is also preserved by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁵ and the Basic Principles on the Role of Lawyers (which requires access to counsel within 48 hours).¹⁶

Interrogations are reported to have started 23 January 2002, at Camp X-Ray at Guantanamo Bay Naval Base. On 27 February 2002 the Secretary of Defense stated that the government had begun conducting interviews of detainees with a view to possible prosecution (as opposed to earlier interrogation purportedly for intelligence purposes).¹⁷ At that stage, Mr.

¹¹ This right can also be found in the Basic Principles on the Role of Lawyers (principles 1, 5, 7 and 8) and the Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment (principle 17).

Principle 1 states that ‘All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings’. Principle 5 states that ‘Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence’. Principle 7 states that ‘Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention’. Principle 8 states that ‘All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials’. Principle 17(1) states ‘A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.’

¹² Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Georgia,” U.N. Doc. CCPR/C/7/Add.75, 5 May 1997, para. 27.

¹³ Commission on Human Rights, “Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Special Rapporteur on the Independence of Judges and Lawyers,” U.N. Doc. E/CN.4/1998/39/Add.4, 5 March 1998, para. 47.

¹⁴ See Articles 42, 44–6, 63. Rules and Procedures of Evidence: available at <http://www.un.org/icty/basic/rpe/IT32_rev22.htm>; <<http://www.ict.org/ENGLISH/rules/240404/240404.pdf>>.

¹⁵ See Principles 11, 12, 15, 17 and 18. Adopted by General Assembly Resolution 43/173 of 9 December 1988. Available at <http://www.unhcr.ch/html/menu3/b/h_comp36.htm>.

¹⁶ See Principles 5 to 8. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available at <http://www.unhcr.ch/html/menu3/b/h_comp44.htm>.

¹⁷ The Secretary of Defense stated that “We are now starting the process of doing a series of interrogations that involve law enforcement”: Interview with KSTP-ABC, St Paul, Minnesota.

Hicks had not yet been assigned military counsel, and he had been refused access to his civilian counsel (both military and civilian counsel met with Mr. Hicks for the first time in December 2003). Allowing these interrogations to go ahead without providing Mr. Hicks with access to, and the presence of, counsel violates Mr. Hicks's right to adequate facilities for a defense.¹⁸ Furthermore, the admission of any statements or evidence gained from such interrogations to the military commission would also violate this requirement.

C: The Right to Be Present at the Hearing

Article 14(3)(d) of the ICCPR, and article 75(4)(e) of Additional Protocol I provide that anyone charged with an offence shall have the right to be "tried in his presence." The International Committee of the Red Cross (ICRC) Commentary to Additional Protocol I,¹⁹ the authoritative interpretation of these conventions, stresses that in abiding by this provision, the accused must be present at the sessions of the hearing at which the prosecution presents its case, when oral arguments are heard, and when witnesses and experts are heard. Furthermore, the accused should be given the opportunity to ask questions, make objections and propose corrections.

Article 14(3)(e) of the ICCPR, and article 75(4)(g) of Additional Protocol I state that anyone charged with an offence shall have the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." The right to examine witnesses is referred to in the ICRC Commentary on Additional Protocol I as being an "essential prerequisite for an effective defense." It is also considered by academics to be essential to the right to equality of arms,²⁰ which requires that the parties be treated equally with respect to the introduction of evidence by means of interrogation of witnesses. It has also been interpreted to mean that the prosecution must inform the defense of the witnesses it intends to call within reasonable time before the trial so that the detainee may have sufficient time to prepare his defense. Finally, it also means that the defendant has the right to be present during the testimony of a witness. This right can only be taken away in exceptional circumstances (*i.e.*, only in cases where there is reasonable fear of reprisal by the defendant, which is not applicable in the case of Mr. Hicks). Similarly, the use of the testimony of anonymous witnesses at trial is considered impermissible.

Procedures for the military commission allow for Mr. Hicks to be excluded from portions of his hearing. The military commission may deny him access to secret evidence and exclude him from *in camera* hearings.²¹ Mr. Hicks has already been excluded from portions of the hearing in relation to Voir Dire. Such closure of proceedings to Mr. Hicks may be authorized by the presiding officer or the Appointing Authority, for such purposes as the protection of classified information or intelligence sources, methods and activities, or other "national security interests." The military commission procedures, by allowing the prosecution to present and argue secret evidence, in the absence of the accused, violate Mr. Hicks's right to be present at all material proceedings. These procedures would also violate Mr. Hicks' right to the assistance of counsel, because his military counsel would be prevented from disclosing any evidence

¹⁸ The evidentiary implications of the interrogations – that their fruits are inadmissible – will be addressed in a separate to be filed at the appropriate time.

¹⁹ Claude Pilloud et al, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987).

²⁰ *Ibid.*, [3115].

²¹ While generally he 'may' be present at every stage of the trial, his presence must be consistent with s 6(B)(3).

presented during a closed session to individuals, including the accused (Mr. Hicks), who would be excluded from such proceedings.

D: Conclusion

Mr. Hicks's right to an adequate defense has been violated in three respects. First, he has not been afforded the benefit of the presumption of innocence, to which he is indisputably entitled. Public, widely disseminated (by design) statements by political leaders and other officials involved in the military commission process have completely undermined the presumption. Second, Mr. Hicks has been denied access to counsel at critical points after he was taken into custody by U.S. forces. Third, Mr. Hicks may not be allowed to be present during all phases of his hearing. Therefore, he will not have adequate access to evidence and witnesses for the purpose of cross-examination and rebuttal. For these reasons, the procedures of the military commission deny Mr. Hicks the right to adequate facilities for a defense, an essential component to the right to a fair trial.

4. In making this motion, or any other motion, Mr. Hicks does not waive any of his objections to the jurisdiction, legitimacy, and/or authority of this military commission to charge, try him, and/or adjudicate any aspect of his conduct or detention. Nor does he waive his rights to pursue any and all of his rights and remedies in any and all appropriate forums.

5. Evidence:

A: The testimony of expert witnesses.

B: Attachments

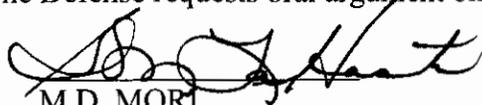
1. *International Covenant on Civil and Political Rights*, Article 14.
2. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Prosecution of Victims of International Armed Conflicts*, Article 75.
3. UN Human Rights Committee, 'General Comment No. 13' (2004).
4. *Rome Statute of International Criminal Court*, Article 66.
5. President Bush, Meeting with Afghan Interim Authority Chairman, the Whitehouse, 28 January 2002.
6. Joint Press Conference with Tony Blair at the British Embassy in Washington D.C., 17 July 2003.
7. CNN, "Ashcroft Defends Detainees' Treatment," 20 January 2002.
8. "Britain and US in Rift Over Terrorist Prisoners," *The Daily Telegraph*, 21 January 2002.
9. "Rumsfeld visits, thanks US troops at Camp X-ray in Cuba," American Forces Information Service, 27 January 2002.
10. DOD News Transcript, "Secretary Rumsfeld Interview with The Telegraph," 23 February 2002.
11. Fox News, "Rumsfeld: Afghan Detainees at Gitmo Bay Will Not Be Granted POW Status," 28 January 2002.
12. DOD News Briefing, "ASD PA Clarke and Rear Adm. Stufflebeem," 28 January 2002.
13. Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Georgia" (1997).

14. Commission on Human Rights, "Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Special Rapporteur on the Independence of Judges and Lawyers" (1998).
15. International Criminal Tribunal for the Former Yugoslavia, Rules and Procedures of Evidence.
16. International Criminal Tribunal for Rwanda, Rules and Procedures of Evidence.
17. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
18. United Nations Basic Principles on the Role of Lawyers.
19. DOD News Transcript, "Rumsfeld Interview with KSTP-ABC, St Paul, Minn."
20. Claude Pilloud et al, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 (1987).

6. **Relief Requested:** The Defense requests that all charges before the commission be dismissed.

7. The Defense requests oral argument on this motion.

By:



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**Office of the High
Commissioner for Human Rights**



International Covenant on Civil and Political Rights

**Adopted and opened for signature, ratification and accession by
General Assembly resolution 2200A (XXI) of 16 December 1966**

***entry into force* 23 March 1976, in accordance with Article 49**

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Article 14  **General comment on its implementation**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and

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when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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fulltext



**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the
Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.**

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Art 75. Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

- (i) murder;
- (ii) torture of all kinds, whether physical or mental;
- (iii) corporal punishment; and
- (iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

- (c) the taking of hostages;
- (d) collective punishments; and
- (e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

- (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- (c) no one shall be accused or convicted of a criminal offence on account or any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
- (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
- (e) anyone charged with an offence shall have the right to be tried in his presence;
- (f) no one shall be compelled to testify against himself or to confess guilt;
- (g) anyone charged with an offence shall have the right to examine, or have examined,

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the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1

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**International
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Instruments**

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**COMPILATION OF GENERAL COMMENTS AND
GENERAL RECOMMENDATIONS ADOPTED BY
HUMAN RIGHTS TREATY BODIES**

Note by the Secretariat

This document contains a compilation of the general comments or general recommendations adopted, respectively, by the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child. The Committee on Migrant Workers has not yet adopted any general comments.

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case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Twenty-first session (1984)

General comment No. 13: Article 14 (Administration of justice)

1. The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14.

2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States

parties to provide all relevant information and to explain in greater detail how the concepts of “criminal charge” and “rights and obligations in a suit at law” are interpreted in relation to their respective legal systems.

3. The Committee would find it useful if, in their future reports, States parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.

4. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14. The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14.

5. The second sentence of article 14, paragraph 1, provides that “everyone shall be entitled to a fair and public hearing”. Paragraph 3 of the article elaborates on the requirements of a “fair hearing” in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.

6. The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.
8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (sub-para. (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.
9. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.
10. Subparagraph 3 (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.
11. Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3 (d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him nor how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

13. Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

14. Subparagraph 3 (g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

16. Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14.

17. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraction", "delito", "prestuplenie") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement, and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of article 14.

18. Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should, where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

19. In considering State reports differing views have often been expressed as to the scope of paragraph 7 of article 14. Some States parties have even felt the need to make reservations in relation to procedures for the resumption of criminal cases. It seems to the Committee that most States parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a re-trial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States parties to reconsider their reservations to article 14, paragraph 7.

Twenty-third session (1984)

General comment No. 14: Article 6 (Right to life)

1. In its General comment No. 6 [16] adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observed that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.
2. In its previous general comment, the Committee also observed that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.
3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.
4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.
5. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.
6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.
7. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.



ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT*

Article 66 Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.



For Immediate Release
Office of the Press Secretary
January 28, 2002

President Meets with Afghan Interim Authority Chairman

Remarks by the President and Chairman of the Afghan Interim Authority Hamid Karzai
The Rose Garden

- [Joint Statement on New Partnership Between U.S. and Afghanistan](#)
- [Fact Sheet](#)

1:58 P.M. EST

THE PRESIDENT: It's a great honor for me to welcome to the White House the Chairman of the Afghan Interim Authority, Hamid Karzai.

Mr. Chairman, welcome.

CHAIRMAN KARZAI: Thank you very much.

THE PRESIDENT: I also want to welcome the ministers of the Interim Authority who have accompanied him to Washington. Chairman Karzai is a determined leader, and his government reflects the hopes of all Afghans for a new and better future; a future free from terror, free from war, and free from want.

The United States strongly supports Chairman Karzai's interim government. And we strongly support the Bonn agreement that provides the Afghan people with a path towards a broadly-based government that protects the human rights of all its citizens.

The Afghan people have already taken the first steps along this path by committing to rid their country of al Qaeda terrorists, and remnants of the Taliban regime who supported the terrorists. Yet, even as the war against terrorism continues, the world has also begun to help the Afghan people win the peace they deserve.

The United States is committed to building a lasting partnership with Afghanistan. We'll help the new Afghan government provide the security that is the foundation for peace. Today, peacekeepers from around the world are helping provide security on the streets of Kabul. The United States will continue to work closely with these forces and provide support for their mission. We will also support programs to train new police officers, and to help establish and train an Afghanistan national military.

The United States is also committed to playing a leading role in the reconstruction of Afghanistan. Today, I announce the United States Overseas Private Investment Corporation will provide an additional \$50-million line of credit for Afghanistan to finance private-sector projects. This announcement builds on the United States' pledge in Tokyo earlier this month to provide \$297 million this year to create jobs and to start rebuilding Afghanistan's agricultural sector, its health care system, and its educational system. Yet these efforts are only the beginning.

Two days ago, for the first time since 1979, an American flag was raised over the U.S. Agency for International Development's mission in Kabul. That flag will not be lowered. It will wave long into the future, a symbol of America's enduring commitment to Afghanistan's future.

Chairman Karzai, I reaffirm to you today that the United States will continue to be a friend to the Afghan people in all the challenges that lie ahead. Welcome to Washington.

CHAIRMAN KARZAI: Thank you very much.

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Well, thank you very much, Mr. President. Although we are here, as I mentioned in my meeting with you, invited by you, for which we are very grateful, but we are also here in a way to thank you and the American people for the great help that we were given to liberate our country once again -- this time from terrorism from the Taliban. The Afghan people recognize this help. They know that, without this help, we would have still probably been under that rule. So thank you very much to you and, through you, to the American people.

Afghanistan is a good partner. It will stay a good partner. And I'm sure that the future of the two countries will be good and a wonderful relationship should be expected to come in the future. Thank you very much for the help that you gave us during the Turkey conference, and thank you for organizing that, as well, together with other co-organizers, and thank you for the help that you announced today.

Afghanistan does need help in reconstruction. Afghanistan does need help in the rebuilding of its national army. And thank you very much for doing that, too.

I assure you, Mr. President, that Afghanistan, with your help and the help of other countries, friends, will be strong and will stand eventually on its own feet, and it will be a country that will defend its borders and not allow terrorism to return to it, or bother it, or trouble it. We'll be self-reliant. We'll do good in business. We'll be a strong country.

Afghanistan knows, Mr. President, the suffering of those people in America that saw and went through the horrors of the Twin Tower incident, the terrorism there. I believe the Afghans are the best people to see the pain exactly the way it was felt there then, at the time, because the Afghans have suffered exactly in the same way. We have sympathy, we know that pain, we understand it. Our families know that pain.

Therefore, this joint struggle against terrorism should go to the absolute end of it. We must finish them. We must bring them out of their caves and their hideouts, and we promise we'll do that.

Thank you very much, again, for having us here. It was an honor and we enjoy our trip to the U.S, myself and my colleagues. Thank you very much.

THE PRESIDENT: Thank you, Mr. Chairman.

We'll answer a couple of questions. Steve, Sonya.

Q On the issue of the detainees at Guantanamo Bay, what's wrong with formally applying the Geneva Convention to them?

THE PRESIDENT: I have -- the question is about the detainees in Guantanamo Bay. I had a very interesting meeting this morning with my national security team. We're discussing all the legal ramifications of how we -- what we -- how we characterize the actions at Guantanamo Bay. A couple of things we agree on. One, they will not be treated as prisoners of war. They're illegal combatants. Secondly, they will be treated humanely.

And then, I'll figure out -- I'll listen to all the legalisms and announce my decision when I make it. But we're in total agreement on how to -- on whether or not -- on how these prisoners -- or detainees, excuse me, ought to be treated. And they'll be treated well.

And yesterday, the Secretary of Defense went down to Guantanamo Bay with United States senators from both political parties. The senators got to see the circumstances in which these detainees were being held. They -- I don't want to put words in their mouth, but according to the Secretary of Defense -- I'll let him put words in their mouth -- they felt like, one, that our troops were really valiant in their efforts to make sure that these killers -- these are killers -- were held in such a way that they were safe. I noticed one of our troops last night was commenting that they are receiving very good medical care. But I'll make my decision about -- on how to legally interpret the situation here pretty soon.

Sonya.

Q Sir, are you prepared to go to court with the General Accounting Office to keep secret the records of your energy task force meetings? Attachment 5 to RE _____

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THE PRESIDENT: Well, the question about the General Accounting Office is this: Should an administration be allowed to have private conversations in this office without everybody knowing about it. This is part of how you make decisions, is to call people in and say, what's your opinion. What's your opinion on stem cell? What's your opinion on energy? What's your opinion on the war?

And in order for me to be able to get good, sound opinions, those who offer me opinions or offer the Vice President opinions must know that every word they say is not going to be put into the public record. And so I view the GAO like the Vice President does. It's an encroachment on the Executive Branch's ability to conduct business.

Now, as far as the specific case of the Energy Report goes, there is an energy report that is now in the public arena. People are free to read it. I hope they do, because it's a comprehensive report, one based upon the opinions of members of the exploration sector of the energy business; some about the infrastructure, opinions from those involved with the infrastructure; some opinions obviously from those in the environmental community. This is a report that collected a lot of opinions. And it was done in such a way that people felt free to come in and express their opinion.

And so, to answer your question, we're not going to let the ability for us to discuss matters between ourselves to become eroded. It's not only important for us, for this administration, it is an important principle for future administrations.

Gregory.

Q Mr. President, on the Middle East --

THE PRESIDENT: Medium-size Stretch. (Laughter.)

Q When you spoke to President Mubarak today and expressed your disappointment in Yasser Arafat, what did he say? And secondly, are you worried that the level of disappointment in the region is not as high as your own? Does that complicate your efforts to build a coalition against Arafat that's necessary?

THE PRESIDENT: I think members -- I think -- first of all, Mr. Mubarak can characterize the conversation the way he sees fit. I will just tell you what I told him. And I told him that in order for there to be peace in the Middle East, we must rout out terror, wherever it exists. And the U.S. effort to rout out terror around the world is going to benefit the Middle East in the long-term.

It is important for Mr. Arafat to not only renounce terror, but to arrest those who would terrorize people trying to bring peace. There are people in the region that want there to be a peaceful settlement, and yet, obviously, terrorists are trying to prevent that from happening by wanton murder. And Mr. Arafat must join the effort to arrest them.

And when the ship showed up with weapons, obviously aimed at terrorizing that part of the world, I expressed my severe disappointment because I was led to believe that he was willing to join us in the fight on terror. I took him for his word when he -- at Oslo. And so I made this very clear to my friend, Hosni Mubarak, that ridding the Middle East of terror is going to make it more likely that there be peace and stability in the region.

Q Mr. President, going to the issue of the GAO lawsuit --

THE PRESIDENT: Yes.

Q -- some in Congress, particularly Congressman Waxman, suggested that the Energy Report represented a wish list for Enron.

THE PRESIDENT: The Energy Report represented a wish -- in other words, we were doing favors for Enron?

Q That's his representation. Do you agree with that, sir?

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THE PRESIDENT: Well, Enron went bust. Shortly after the report was put out, Enron went broke. And it went broke because, it seems like to me -- and we'll wait for the facts to come out -- it went broke because there was not full disclosure of finances. This is a -- what we're talking about here is a corporate governance issue. This is a business problem that our country must deal with and must fix. That is, full disclosure of liabilities, full understanding of the effects of decisions on pension funds, reform of a pension system, perhaps.

There are some on Capitol Hill who want to politicize this issue. This is not a political issue. It is a business issue that this nation must deal with. And, you know, Enron had made contributions to a lot of people around Washington, D.C. And if they came to this administration looking for help, they didn't find any.

Now, obviously, we're interested in people's opinions about energy -- those in the energy business, those in the conservation world, those who know how to develop infrastructure. And so we solicited a lot of opinions from people. And the report is now public; everybody can read it to determine our vision about how to make our country less dependent on foreign sources of crude oil, which we must do.

Yes, Jim.

Q Mr. President, we understand that you do now want to commit American troops to peacekeeping forces in Afghanistan. Why not, sir? And do you have any concerns that there will be enough forces to give Mr. Karzai the kind of security he needs?

THE PRESIDENT: We are committing help to the ISIF in the form of logistical help, in the form of kind of a bailout -- if the troops get in trouble, we stand ready to help; in the form of intelligence. Plus, I have just made in my remarks here a significant change of policy, and that is that we're going to help Afghanistan develop her own military. That is the most important part of this visit, it seems like to me, besides the fact of welcoming a man who stands for freedom, a man who stood for freedom in the face of tyranny.

We have made a decision -- both of us have made the decision that Afghanistan must, as quickly as possible, develop her own military. And we will help. We'll help train, and Tommy Franks, our general, fully understands this and is fully committed to this idea. So, better yet than peacekeepers -- which will be there for a while, with our help -- let's have Afghanistan have her own military.

Major.

Q Mr. President, along the issue of politicizing Enron, the Majority Leader, Tom Daschle, with whom you in the past have said you have a good working relationship, said over the weekend that he was afraid your budget would Enron-ize Social Security and Medicare. That is to say, put them in specific jeopardy of collapsing. I wonder if you could comment on that, sir, and if there's any way to make this --

THE PRESIDENT: Well, sometimes there's political hyperbole here in this town. The budget I submitted is one -- will submit soon -- is one that says that the war on terror is going on and we're going to win, and we've got to make sure we spend enough money to win. It's also one that prioritizes homeland security. It is also one that wants to do something about our economy, let's get a stimulus bill. It's a bill that sets priorities.

And it is -- I think there are some still upset with the tax cut. But I want to remind you that we were in recession in March of last year. That's when they officially declared recession. The slowdown was obviously significant to reach a point where we were -- where the economists said we were in recession. And so the tax cuts came at the right time.

Now, there are some who believe if you raise taxes it makes the economy stronger. As I've told the American people several times, I don't understand what textbook they're reading. I believe by reducing taxes it makes the economy stronger. The tax relief came right at the right time. Now, our economy is still not as strong as it should be. There's still some weakness. But surely people aren't suggesting raising taxes at this point makes sense. I don't believe it does make any sense.

And so the budget I've submitted is a good, strong budget. It sets priorities and it's realistic, and the American people will understand it when I explain it tomorrow night.

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Q Mr. President, in holding the detainees in Cuba in the manner in which the United States is, is one of the signals you're sending that, in this new kind of war, as you've described it, the Geneva Conventions are outdated and don't apply in the conflict with al Qaeda?

THE PRESIDENT: No, the Geneva Conventions are not outdated, and it's a very important principle. First of all, Terry, we are adhering to the spirit of the Geneva Convention. When you say you're holding the prisoners in the manner you are -- we're giving them medical care, they're being well-treated.

There is no allegation -- well, there may be an allegation -- there's no evidence that we're treating them outside the spirit of the Geneva Convention. And for those who say we are, they just don't know what they're talking about.

And so --

Q Mr. President --

THE PRESIDENT: Let me finish. And so I am looking at the legalities involved with the Geneva Convention. In either case, however I make my decision, these detainees will be well-treated. We are not going to call them prisoners of war, in either case. And the reason why is al Qaeda is not a known military. These are killers. These are terrorists. They know no countries. And the only thing they know about countries is when they find a country that's been weak and they want to occupy it like a parasite. And that's why we're so pleased to join with Chairman Karzai to rout them out.

And so the prisoners, detainees, will be well-treated. They just won't be afforded prisoner of war status. I'll decide beyond that whether or not they can be noncombatants under the Geneva Convention, or not. I'll make that legal decision soon. But this administration has made the decision they'll be well-treated. Long before they arrived at Guantanamo Bay did we make that decision.

Plante.

Q Mr. President, the Saudi Interior Minister today said that a majority of those being held at Guantanamo, more than 100, are Saudi citizens, and asked that they be returned to Saudi Arabia for questioning.

THE PRESIDENT: Well, I appreciate his request. And we will, of course -- we'll take it under consideration. There are a lot of detainees around the world as a result of this first phase in the war against terror. There's a lot in Pakistan, there's a lot in Afghanistan, and there are 179, I believe, or whatever the number is, in Guantanamo Bay. So there's a lot Saudi citizens that chose to fight for al Qaeda, and/or the Taliban, that we want to know more about. And so we'll make a decision on a case-by-case basis as to whether they go back to Saudi Arabia, or not. I appreciate his suggestion.

Listen, I want to thank you all very much. Mr. Chairman, it's good to have you --

Q May I ask Chairman Karzai a question?

THE PRESIDENT: Ask who?

Q May I ask Chairman Karzai something about --

THE PRESIDENT: Of course you can ask Chairman Karzai a question. Thank you.

Q Mr. President, I have a question --

THE PRESIDENT: No, I'm sorry.

Q Chairman Karzai, given Afghanistan's history of fighting foreign invaders, and its pride and independence, are you concerned about any political sensitivity -- in establishing an Afghan military? And how would you describe

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the ideal partnership between the United States?

CHAIRMAN KARZAI: Well, we have no concerns there. As I mentioned in my remarks earlier, the Afghans are grateful that we were helped twice, once during the Soviet occupation by the U.S., and now to fight terrorism and liberate ourselves from that menace. We are a fiercely independent country, and the world knows that. Our neighbors know that very well, and the countries in the region know that.

The Afghan request for training of our army is nothing new. Our prime ministers were here even back in the 1950s to ask this kind of training. And it's training and a relationship between two independent, sovereign countries, and nothing to worry others.

Q Chairman Karzai, have you discussed in regards with Osama bin Laden and what can you do to gather more information to capture him?

CHAIRMAN KARZAI: We are looking for him. He's a fugitive. If we find him, we'll catch him.

Thank you very much.

END 2:22 P.M. EST

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Joint Press Conference by Tony Blair and George W Bush

British Embassy, Washington D.C., 17 July 2003



Speakers: George W Bush, President of the United States and Tony Blair, British Prime Minister, followed by Questions and Answers.

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George W Bush: Good afternoon. It is once again a pleasure to welcome the Prime Minister, Tony Blair, and Cheri Blair to the White House.

Mr. Prime Minister, fabulous speech. Congratulations.

(APPLAUSE)

In his address this afternoon, Prime Minister Blair once again showed the qualities that have marked his entire career. Tony Blair is a leader of conviction, of passion, of moral clarity and eloquence. He is a true friend of the American people.

The United Kingdom has produced some of the world's most distinguished statesmen, and I'm proud to be standing with one of them today.

The close partnership between the United States and Great Britain has been and remains essential to the peace and security of all nations. For more than 40 years of the Cold War, we stood together to ensure that the conflicts of Europe did not once again destroy the peace of the world.

The duties we accepted were demanding, as we found during the Berlin Blockade and other crises. Yet British and American leaders held firm, and our cause prevailed.

Now we are joined in another great and difficult mission. On September the 11th, 2001, America, Britain and all free nations saw how the ideologies of hatred and terror in a distant part of the world could bring violence and grief to our own citizens.

We resolved to fight these threats actively wherever they gather, Attachment 6 to RE _____

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before they reach our shores. And we resolved to oppose these threats by promoting freedom and democracy in the Middle East, a region that has known so much bitterness and resentment.

From the outset, the prime minister and I have understood that we are allies in this war, a war requiring great effort and patience and fortitude.

The British and American peoples will hold firm once again and we will prevail.

The United States and Great Britain have conducted a steady offensive against terrorist networks and terror regimes. We are dismantling the Al Qaida network leader by leader. And we are hunting down the terrorist killers one by one.

In Afghanistan, we removed the cruel and oppressive regime that had turned that country into a training camp for Al Qaida. And now we are helping the Afghan people to restore their nation and regain self-government.

In Iraq, the United States, Britain and other nations confronted a violent regime that armed to threaten the peace, that cultivated ties to terror and defied the clear demands of the United Nations Security Council.

Saddam Hussein produced and possessed chemical and biological weapons, and was trying to reconstitute his nuclear weapons program. He used chemical weapons in acts of murder against his own people.

The U.N. Security Council, acting on information, it had acquired over many years, passed more than a dozen resolutions demanding that the dictator reveal and destroy all of his prohibited weapons. A final Security Council resolution promised serious consequences if he continued his defiance.

The former dictator of Iraq chose his course of action and, for the sake of peace and security, we chose ours.

The prime minister and I have no greater responsibility than to protect the lives and security of the people we serve.

The regime of Saddam Hussein was a grave and growing threat. Given Saddam's history of violence and aggression, it would have been reckless to place our trust in his sanity or his restraint.

As long as I hold this office I will never risk the lives of American citizens by assuming the good will of dangerous enemies.

Acting together, the United States, Great Britain and our coalition partners enforced the demands of the world. We ended the threat

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from Saddam Hussein's weapons of mass destruction. We rid the Middle East of an aggressive destabilizing regime. We liberated nearly 25 million people from decades of oppression. And we are now helping the Iraqi people to build a free nation.

In Iraq, as elsewhere, freedom and self-government are hated and opposed by a radical and ruthless few.

American, British and other forces are facing remnants of a fallen regime and other extremists. Their attacks follow a pattern. They target process and success. They strike at Iraqi police officers who have been trained to enforce order. They sabotage Iraqi power grids that we're rebuilding. They are the enemies of the Iraqi people.

Defeating these terrorists is an essential commitment on the war on terror. This is the duty we accept. This is the fight we will win.

We are being tested in Iraq. Our enemies are looking for signs of hesitation. They are looking for weakness. They will find none. Instead, our forces in Iraq are finding these killers and bringing them to justice.

And we will finish the task of helping Iraqis make the challenging transition to democracy.

Iraq's governing council is now meeting regularly. Soon the council will nominate ministers and propose a budget. After decades of tyranny, the institutions of democracy will take time to create. America and Britain will help the Iraqi people as long as necessary.

Prime Minister Blair and I have the same goal: The government and future of Iraq will be in the hands of the people of Iraq.

The creation of a strong and stable Iraqi democracy is not easy, but it's an essential part on the war against terror. A free Iraq will be an example to the entire Middle East. And the advance of liberty in the Middle East will undermine the ideologies of terror and hatred and will help strengthen the security of America and Britain and many other nations.

By helping to build and secure a free Iraq, by accepting the risks and sacrifice, our men and women in uniform are protecting our own countries and they are giving essential service in the war on terror.

This is the work history has given us, and we will complete it. We're seeing movement toward reform and freedom in other parts of the Middle East. The leadership and courage of Prime Minister Abbas and Prime Minister Sharon are giving their peoples new hope for progress.

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Other nations can add to the momentum of peace by fighting terror in all its forms. A Palestinian state will be built upon hope and reform, not built upon violence.

Terrorists are the chief enemies of Palestinian aspirations. The sooner terrorism is rooted out by all the governments in the region, the sooner the Palestinian flag will rise over a peaceful Palestinian state.

The spread of liberty in Afghanistan and Iraq and across the Middle East will mark a hopeful turn in the history of our time.

Great Britain and America will achieve this goal together.

One of the reasons I'm confident in our success is because of the character and the leadership of Prime Minister Tony Blair.

Mr. Prime Minister?

Tony Blair: Thank you, Mr. President. And first of all, as I did a short time ago, I would like to pay tribute to your leadership in these difficult times, because ever since September the 11th the task of leadership has been an arduous one. And I believe that you have fulfilled it with tremendous conviction, determination and courage.

George W Bush: Thank you, sir.

Tony Blair: And I think it's as well that we understand how this has all come about. It came about because we realized that there was a new source of threat and insecurity in our world that we had to counter. And as I was saying in my speech to Congress, this threat is sometimes hard for people to understand because it's such a different nature than the threats we have faced before.

But September the 11th taught us it was real.

And when you lead countries, as we both do, and you see the potential for this threat of terrorism and weapons of mass destruction to come together, I really don't believe that any responsible leader could ignore the evidence that we see and the threat that we face.

And that's why we've taken the action that we have, first in Afghanistan and now in Iraq.

And in Afghanistan, we acted to remove the Taliban and we still pursue the Al Qaida terrorist network there and in other parts of the world. But there is no doubt at all that but for that action Al Qaida would have retained its central place of command and control which now is denied to it.

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And in respect of Iraq, we should not forget Resolution 1441 -- it was passed in the United Nations -- in which the entire international community accepted the threat that Iraq constituted.

I think it's just worth pointing out, in these last few days Iraq has had a governing council established with the help of the United Nations representative, Sergio de Mello.

And in the last two weeks the United Nations has spoken about the numbers of missing people and mass graves. And that number, just on the present count, is around about 300,000 people.

So let us be clear, we have been dealing with a situation in which the threat was very clear and the person, Saddam Hussein, wielding that threat, someone of total brutality and ruthlessness with no compunction about killing his own people or those of another nation.

And, of course, it's difficult to reconstruct Iraq. It's going to be a hard task; we never expected otherwise.

But as the president has said to you a moment or two ago, the benefit of that reconstruction will be felt far beyond the territory of Iraq. It is, as I said earlier today, an indispensable part of bringing a new settlement in the whole of the Middle East.

And I would also pay tribute to the president's leadership in the Middle East and in rekindling the prospect of the Middle East peace process. And if I can remind people, I think many people were cynical as to whether this could ever be rekindled. Many people doubted whether the commitment was there to fairness for Palestinian people as well as the state of Israel.

And yet the president has stated very clearly the goal of a two-state solution, and now we actually have the first steps, albeit tentative, towards achieving that.

And when I met Prime Minister Sharon in London a few nights ago, I was more than ever convinced that if we can provide the right framework within which these tentative steps are made, then we do genuinely have the prospect of making progress there.

And then again as I was saying earlier, the commitment that America has now given, that the president has given, in respect of Africa and tackling some of the poorest parts of our world, is again a sign of hope.

And all these things are changing our world. And however difficult the change may be, I genuinely believe it is change for the better.

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So I am honored once again to be here in the White House with you, Mr. President. As I said earlier, we are allies and we are friends. And I believe that the work that we are embarked upon is difficult but is essential. And so far as we are concerned, we shall hold to it right the way through.

George W Bush: We'll take a couple of questions.

QUESTION: Mr. President, others in your administration have said that your words on Iraq and Africa did not belong in your State of the Union address. Will you take responsibility – personal responsibility for those words?

And to the both of you, how is that two major world leaders such as yourselves have had such a hard time persuading other major powers to help stabilize Iraq?

George W Bush: Well, first, I take responsibility for putting our troops into action. And I made that decision because Saddam Hussein was a threat to our security, and a threat to the security of other nations.

I take responsibility for making the decision, the tough decision, to put together a coalition to remove Saddam Hussein, because the intelligence -- not only our intelligence, but the intelligence of this great country -- made a clear and compelling case that Saddam Hussein was a threat to security and peace.

I say that because he possessed chemical weapons and biological weapons. I strongly believe he was trying to reconstitute his nuclear weapons program. And I will remind the skeptics that in 1991 it became clear that Saddam Hussein was much closer to developing a nuclear weapon than anybody ever imagined.

He was a threat. I take responsibility for dealing with that threat.

We are in a war against terror and we will continue to fight that war against terror. We're after Al Qaida, as the prime minister accurately noted. And we're dismantling Al Qaida. The removal of Saddam Hussein is an integral part of winning the war against terror.

A free Iraq will make it much less likely that we'll find violence in that immediate neighborhood. A free Iraq will make it more likely we'll get a Middle Eastern peace. A free Iraq will have incredible influence on the states that could potentially unleash terrorist activities on us.

And, yeah, I take responsibility for making the decisions that I made.

Tony Blair: First of all, before I answer the question you put to me about other countries helping us, let me just say this on the Attachment 6 to RE _____

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issue to do with Africa and uranium.

The British intelligence that we have we believe is genuine. We stand by that intelligence.

And one interesting fact, I think, people don't generally know, in case people should think that the whole idea of a link between Iraq and Niger was some invention: In the 1980s we know for sure that Iraq purchased around about 270 tons of uranium from Niger. So I think we should just factor that into our thinking there.

As for other countries, actually other countries are coming in.

We have with us now around about nine other countries, who will be contributing or are contributing literally thousands of troops. I think I'm right in saying the Poles, in their sector, have somewhere in the region of 20 different countries offering support. And I've got no doubt at all we will have international support in this.

Indeed to be fair even to those countries that opposed the action, I think they recognize the huge importance of reconstructing Iraq.

And it is an interest thing, I was at a European meeting just a couple of weeks ago where, as you know, there were big differences between people over the issue of Iraq. And yet I was struck by the absolutely unanimous view that whatever people felt about the conflict, it was obviously good that Saddam was out. And most people now recognize that the important thing is that we all work together to reconstruct Iraq for the better, so that it is a free and stable country.

QUESTION: I want to ask you both about one aspect of Iraq and freedom and justice, which is, as you know, is causing a great deal of concern in Britain and the British Parliament, that is what happens now in Guantanamo Bay to the people detained there, particularly whether there's any chance that the president will return the British citizens to face British justice, as John Walker Lindh faced regular American justice.

And just on a quick point, could the prime minister react to the decision of the Foreign Affairs Committee tonight that the BBC reporter, Andrew Gilligan, is a, quote, "unsatisfactory witness"?

George W Bush: You probably ought to comment on that one.

(LAUGHTER)

Tony Blair: Well, can I just say to you on the first point, obviously, this is an issue that we will discuss when we begin our talks tonight. And we will put out a statement on that tomorrow

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for
you.

George W Bush: We will work with the Blair government on this issue. And we're about to -- after we finish answering your questions, we're going to go upstairs and discuss the issue.

QUESTION: Do you have concerns that they'll get justice, the people detained there?

George W Bush: No, the only thing I know for certain is that these are bad people. And we look forward to working closely with the Blair government to deal with the issue.

Tony Blair: On your other point, the issue here is very, very simple. The whole debate for weeks revolved around a claim that either I or a member of my staff had effectively inserted intelligence into the dossier we put before the British people against the wishes of the intelligence services.

Now that is a serious charge. It never was true. Everybody now knows that that charge is untrue. And all we are saying is those who made that charge should simply accept that it is untrue. It's as simple as that.

QUESTION: Mr. President, in his speech to Congress, the prime minister opened the door to the possibility that you may be proved wrong about the threat from Iraq's weapons of mass destruction.

George W Bush: Yes.

QUESTION: Do you agree? And does it matter whether or not you find...

George W Bush: Well, you might ask the prime minister that -- we won't be proven wrong.

Tony Blair: No.

George W Bush: I believe that we will find the truth. And the truth is he was developing a program for weapons of mass destruction.

Now, you say, "Why didn't it happen all of a sudden?" Well, there was a lot of chaos in the country, one. Two, Saddam Hussein has spent over a decade hiding weapons and hiding materials. Three, we're getting, we're just beginning to get some cooperation from some of the high-level officials in that administration, or that regime.

But we will bring the weapons, and, of course, we will bring the Attachment 6 to RE _____

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information forward on the weapons when they find them. And that'll end up -- end all this speculation.

As I understand, there's been a lot of speculation over in Great Britain, we got a little bit of it here, about whether or not the -- whether or not the actions were based upon valid information.

We can debate that all day long until the truth shows up. And that's what's going to happen. And we based our decisions on good, sound intelligence, and the -- our people are going to find out the truth. And the truth will say that this intelligence was good intelligence; there's no doubt in my mind.

Tony Blair: Yes, if I could just -- if I could just correct you on one thing, I certainly did not say that I be would proved wrong. On the contrary, I said with every fiber of instinct and conviction I believe that we are right.

And let me just say this one other thing to you, because sometimes, again, in the debate in the past few weeks it's as if prior to the early part of this year the issue of Saddam Hussein and weapons of mass destruction was some sort of unknown quantity, and on the basis of some speculative intelligence we go off and take action.

The history of Saddam Hussein and weapons of mass destruction is a 12-year history, and is a history of him using the weapons and developing the weapons and concealing the weapons and not complying with the United Nations inspectors who were trying to shut down his programs.

And I simply say -- which is why I totally agree with the president -- it's important we wait for the Iraq survey group to complete their work. Because the proposition that actually he was not developing such weapons and such programs rests on this rather extraordinary proposition: that having for years obstructed the United Nations inspectors and concealed his programs, having finally effectively got rid of them in December '98, he then took all the problems and sanctions and action upon himself, voluntarily destroyed them but just didn't tell anyone.

I don't think that's very likely as a proposition. I really don't.

QUESTION: Mr. President, do you realize that many people hearing you say that we know these are bad people in Guantanamo Bay will merely fuel their doubts that the United States regards them as innocent until proven guilty and do a fair, free and open trial?

George W Bush: Let me just say, these were illegal combatants. They were not trying to try them in front of your cameras or in 6 to RE _____

your newspaper.

But we will talk with the prime minister about this issue. He's asked -- prior to his arrival, said, "I want to talk about this in a serious way. Can we work with you?" And the answer is, "Absolutely."

I understand the issue. And we will. We'll have a very good discussion about it right after he finishes answering this aspect of your question.

(LAUGHTER)

Tony Blair: I just think you should realize -- I mean, of course, as I said a moment or two ago, we will discuss this together and we'll put out a statement for you tomorrow.

But I think, again, it's important just to realize the context in which all this arises, without saying anything about any specific case at all. And the context was a situation in which the Al Qaida and the Taliban were operating together in Afghanistan against American and British forces.

So, as I say, we will discuss this issue, we will come back to it and you'll have a statement tomorrow.

But I want to say just in concluding, once again, that the conviction that this threat of terrorism and weapons of mass destruction is the security threat our world faces has never left me. It's with me now. And I believe it to be the threat that we have to take on and defeat. I really do.

George W Bush: Good job. Thank you. Appreciate your country.

Thank you all.

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Ashcroft defends detainees' treatment

January 22, 2002 Posted: 12:09 AM EST (0509 GMT)

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GUANTANAMO BAY, Cuba (CNN) -- Another 14 detainees arrived here Monday, bringing the total to 158 who have been transferred to this makeshift prison from Afghanistan.

The 14 new detainees were taken off the plane on stretchers. One U.S. official said the military is now focusing on bringing wounded detainees from Afghanistan to the base, where they can receive better medical attention.

U.S. officials have been careful to refer to the men as "war criminals."

That has rankled some critics. "Secretary of Defense [Donald] Rumsfeld and others insist that these are not prisoners of war and there, frankly, he's wrong," said Kenneth Roth, executive director of Human Rights Watch. "The Geneva Conventions require all prisoners to be treated as presumptive prisoners of war until a competent tribunal determines otherwise."

The 1949 Geneva Conventions, ratified but not signed by the United States, require that prisoners of war receive humane treatment, adequate food and delivery of relief supplies, and forbid anyone to pressure prisoners to supply more than a minimum of information.

But Attorney General John Ashcroft defended his classification of the detainees as "war criminals."

"These people are terrorists, they haven't fought like soldiers, they don't wear uniforms, they don't reveal themselves," Ashcroft said Sunday. "This is a part of the conspiracy where innocent women and children, innocent Americans, were destroyed not as an act of conventional war, but in the context of what I consider to be war criminality."

He defended the conditions at the U.S. naval base, saying they were necessary to protect troops stationed there.

"These individuals are being restrained and

VIDEO

Detainees at Camp X-Ray in Guantanamo Bay, Cuba, live under intense floodlights and 24-hour monitoring. CNN's Bob Franken reports (January 21)



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properly so. They are terrorists. They are uniquely dangerous," Ashcroft told CNN's Late Edition With Wolf Blitzer.

The detainees are being housed in outdoor cells surrounded by chain-link fences until other facilities are constructed. They receive three meals a day -- including one meal that meets Muslim religious requirements -- and have all other basic needs met, U.S. military officials said.

"Their basic needs are regarded, they have the right food, they have the right shelter, the right capacity to avoid injury," Ashcroft said.

Asked about a photograph in Sunday editions of the New York Times showing detainees -- crouched, wearing goggles, some with ear covers and chains on their arms -- a spokesman for the U.S. Southern Command said the pictures were taken upon their arrival at the base and that they are not similarly shackled while inside their cells.

Col. Ron Williams, director of public affairs for U.S. Southern Command, said the detainees are blindfolded, shackled and forced to wear surgical masks only when they are moved.

Williams said the measures are taken to ensure prisoners cannot hatch a plot, or pick up information about U.S. forces simply by watching.

He added that the detainees are shackled, but not blindfolded, during exercise.

U.S. soldiers have placed signs near their cells pointing eastward so the Muslim prisoners can pray in the direction of Mecca.

Williams added that a delegation from the International Committee of the Red Cross has delivered mail to the some of the detainees.

ICRC officials have been allowed access to the camps and are discussing conditions at the base, said U.S. Marines spokesman Brig. Gen. Michael Lehnert. The Red Cross has not issued a report yet, Rumsfeld said.

A total of 269 prisoners remain in Afghanistan. Another one -- American Taliban fighter John Walker -- remains aboard the USS Bataan in the Arabian Sea.

Walker is expected to be transported in the next few days to the United States, where the Department of Justice will take custody of the 20-year-old, who has admitted to fighting alongside the Taliban.

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"Ashcroft and I and the president have agreed [Walker] will be transferred from military detention over to the Department of Justice for deposition in the criminal court system of the United States, very likely in the northern district of Virginia," Rumsfeld said Sunday. "He'll arrive in that jurisdiction sometime in the days ahead."

CNN Correspondent Bob Franken and Producer Silvio Carrillo and Correspondent Jeff Levine at the Pentagon contributed to this story.

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Britain and US in rift over terrorist prisoners
 By Toby Harnden in Washington, Andrew Sparrow, Sean O'Neill and Hamida Ghafour
 (Filed: 21/01/2002)

A RIFT between the Government and the Bush administration opened up last night after Donald Rumsfeld dismissed criticism of the treatment of detainees held at Camp X-Ray at Guantanamo Bay, Cuba, as ill-informed.



US Army Military Police escort an al-Qa'eda detainee to his cell in Camp X-ray

"The people who have been the most shrill, once they have more knowledge of the subject will stop being so shrill," the American defence secretary told reporters.

Jack Straw, the Foreign Secretary, earlier expressed his concern about photographs showing shaven-headed Taliban and al-Qa'eda prisoners kneeling and tightly manacled.

"I have asked our officials in Guantanamo Bay to establish with America the circumstances in which these photographs were taken," he said.

"Prisoners, regardless of their technical status, should be treated humanely and in accordance with customary international law."

Three inmates at Guantanamo Bay are said to have claimed to be British. There have been unconfirmed reports that one is Feroz Abbasi, 22, a former computer studies student, from Croydon, south London.

Abassi vanished more than a year ago after becoming involved with Muslim extremists at Finsbury Park mosque, north London, and telling his mother that he was going to fight in Afghanistan.

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Government that it had said: "We are not going to allow terrorists to reduce us to the level of barbarians."

Abbasi's Labour MP, Geraint Davies, said that ministers should consider seeking his extradition to Britain.

"I have raised with the Prime Minister the issue of those being held in Cuba having their human rights observed."

Friends of Abbasi said he had been interested in rollerblading, music and girls until he started studying the Koran three years ago.

Michael Driver, 18, said: "He said he would take up the religion. He was a bit messed up. I don't think his life was that good. He did not have a lot of friends and he has not spoken to his father for a long time."

Mr Driver, an apprentice mechanic, said that he and Abbasi used to go on trips to central London and spend time in cafes and amusement arcades.

"We talked about school and general teenage things. He was older, so when I had a bit of trouble in a relationship he was the one I spoke to. He helped me out. He was a really good listener."

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Rumsfeld Visits, Thanks U.S. Troops at Camp X-Ray in Cuba

By Gerry J. Gilmore
American Forces Press Service

U.S. NAVAL BASE, GUANTANAMO BAY, CUBA, Jan. 27, 2002 -- Defense Secretary Donald H. Rumsfeld flew here today to visit Joint Task Force 160 troops at Camp X-Ray, where 158 Taliban and Al Qaeda detainees are now under U.S. military control.

The U.S. servicemen and women at Camp X-Ray "are doing a first-rate job," Rumsfeld noted during an afternoon press conference at the facility. "I came down to say 'thank you,'" he added.

Four U.S. senators accompanied Rumsfeld to Guantanamo: Hawaii Sen. Daniel Inouye, Alaska Sen. Ted Stevens, California Sen. Dianne Feinstein and Texas Sen. Kay Bailey Hutchison. Air Force Gen. Richard B. Myers, chairman of the Joint Chiefs of Staff, also accompanied Rumsfeld on the trip. A previous congressional delegation visited the camp Jan. 25.

During the flight to Cuba Rumsfeld told reporters he has "absolutely full confidence in the way the detainees are being handled and treated" at Camp X-Ray. U.S. service members pulling duty are performing "a tough job," the secretary said.

"There has been a lot of confusion and misinformation about what they're doing down there. These are terrific young men and women doing an excellent job, and I want to tell them that," Rumsfeld said.

The secretary noted he also wanted to talk to Camp X-Ray's senior officers about construction plans for additional, more permanent facilities for detainees. Rumsfeld also said he'd speak with members of the International Committee of the Red Cross now visiting the camp.

Rumsfeld told reporters on the flight to Cuba that Taliban and Al Qaeda detainees at the Guantanamo Bay and Kandahar, Afghanistan, facilities "are not POWs" and characterized them instead as "unlawful combatants." He emphasized the detainees are being treated humanely.

"Don't forget, he said, "we're treating these people as if the Geneva Convention applied."

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However, he added, the strict security rules in place at Camp X-Ray are warranted. He called the detainees at Guantanamo "among the most dangerous, best-trained, vicious killers on the face of the earth. This is very, very serious business."

More than 200 other detainees who are considered less dangerous than those at Guantanamo are under U.S. control at a facility near Kandahar.

Upon arrival at Guantanamo, Rumsfeld and party traveled to the camp and went inside the detainee compound to speak with guards, medical officers and other support personnel.

Afterward, the group visited other task force troops supporting the detention mission. Marine Corps Maj. Steve Cox, task force spokesman, noted that 1,500 JTF-160 service members have joined the 2,400 troops and families already at Guantanamo before the detention operation began 21 days ago.

The senators and Rumsfeld then held a press conference. All concurred that the detainees were being treated well. Feinstein said the detainees live better than inmates in some California prisons she's seen. Stevens and Inouye seemed to suggest that the detainees were getting better treatment than perhaps they deserved.

"This is not an egregious situation," said Feinstein, noting that the Guantanamo detainees are not being mistreated.

Hutchison said the Joint Task Force 160 troops are doing a good job providing religious materials and medical care to the detainees -- the same type of medical care available to U.S. troops and their family members, she noted.

Cox noted the detainees receive three meals a day -- including two hot -- have medical care, receive Korans and have the opportunity to practice their religion.

"The detainees are not being mistreated," Cox emphasized.

Rumsfeld and the senators noted that they didn't speak to the detainees and the detainees didn't speak to them.

Navy Dr. (Cmdr.) James Gallagher is an eye specialist who said he has treated Guantanamo detainees for old eye injuries, none combat-related. The detainees, he remarked, seem grateful for the medical attention.

Navy Muslim Chaplain (Lt.) Saiful Islam, who called the detainees to afternoon prayer during Rumsfeld's visit, said he has spoken with some of the detainees.

"They ask me what is going to happen to them," the chaplain said, adding he tells them, "I don't know."

Rumsfeld thanked the troops for their good work at Guantanamo, adding that information provided from interrogations of detainees has helped to prevent terrorist acts.

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The defense secretary said it was fortunate that the United States went to Afghanistan and worked with its people "to liberate that country from the Al Qaeda and the Taliban."

"We were able to capture and detain a large number of people who had been through terrorist training camps and had learned a whole host of skills as to how they could kill innocent people -- not how they could kill other soldiers. ...

"We've got a good slug of those folks off the street where they can't kill more people," he said.

Rumsfeld told reporters on the plane trip en route to Guantanamo that he would make recommendations tomorrow to President Bush about the possibility of forming a military organization that would oversee homeland defense operations.

Related Sites of Interest:

- [Secretary Rumsfeld Media Availability en route to Guantanamo Bay, Cuba, Jan. 27, 2002](#)
- [Secretary Rumsfeld Media Availability en route to Camp X-Ray, Jan. 27, 2002](#)
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http://www.defense.gov/transcripts/2002/t02262002_t0223lt.html

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Public contact: <http://www.dod.mil/faq/comment.html> or +1 (703) 428-0711

Presenter: Secretary of Defense Donald H. Rumsfeld

Saturday, Feb. 23, 2002

Secretary Rumsfeld Interview with The Telegraph

(Interview with Charles Moore, Editor of The Daily Telegraph; Sir John Keegan, Defence Editor; Toby Harnden, Washington Bureau Chief; and David Wastell, Sunday Telegraph Washington Correspondent.)

Wastell: I'm curious as to how long they're likely to be held, or do we know when the military tribunals, if there are going to be such things, will be instituted?

Rumsfeld: A short answer is that the President has issued the military order allowing commissions to be held. He has retained the authority to assign to the commissions the individuals who might be tried by the commissions and he has assigned no one yet. We have fashioned sort of preliminary rules that we're now circulating for discussion as to how they might be conducted. When the President will decide to assign someone to be tried by a commission, I do not know.

Moore: They could have capital punishment, could they?

Rumsfeld: Sure.

Second, the detainees. My goal is to have as few of them as is humanly possible. We are taking only those that we believe there is a prospect of gathering intelligence from that can save people's lives, and we have been successful. We are gaining a good deal of intelligence information that is enabling us to weave a fabric as to how this al Qaeda functions, where it functions, who's involved, how it's financed, and along with the support of dozens of countries, arresting people and interrogating them and closing bank accounts, the totality of that body of knowledge is growing every day.

When we have gotten out of them the information that we feel is appropriate and possible, very likely we'll let as many countries as possible have any of their nationals they would like and they can handle the law enforcement prosecution. I have no desire to fill up our jails and spend time and money holding people. We have let a great many people loose who seemed either to not have been appropriately detained in the first place, or whom we have looked at that the Afghans and the Pakistanis particularly have held and decided we didn't need or want.

If we do transfer people back to the countries of their national origin, needless to say we'd be interested in finding out what additional intelligence those countries might find.

But conceivably, if connections are later developed, having a chance to go back and interrogate those same people, and we'd prefer to only give them back to countries that have an interest in prosecuting people that ought to be prosecuted rather than simply turning them loose, putting them back out on the street and having them go get in more airplanes and have them fly into the Pentagon and the World Trade Center again.

<http://www.defense.gov/cgi-bin/dlprint.cgi?http://www.defense.gov/transcripts/2002/t0226...> 10/1/2004

Attachment 10 to RE



Rumsfeld: Afghan Detainees at Gitmo Bay Will Not Be Granted POW Status

Monday, January 28, 2002

FOX NEWS

GUANTANAMO BAY NAVAL BASE, Cuba — Touring Camp X-Ray where Al Qaeda and Taliban prisoners are being interrogated under U.S. custody, Defense Secretary Donald H. Rumsfeld on Sunday ruled out any possibility of granting prisoner of war status to the suspected terrorists held in the makeshift prison.

"They are not POWs. They will not be determined to be POWs," Rumsfeld told reporters accompanying him on his first visit to the detention facility on a U.S. Naval Base.

The Bush administration considers the captured fighters to be "unlawful combatants" and "detainees" because their method of terror violates internationally accepted laws and specifically targets civilians.

The distinction is significant because under the Geneva Convention, written after World War II, a POW has certain legal rights that would govern the U.S. military's interrogations of the detainees and would require that they be released when the hostilities in Afghanistan are over.

If there is any ambiguity about whether a captive should be considered a prisoner of war, the Geneva Convention says a special three-person military tribunal should be convened to decide.

Rumsfeld said that is irrelevant at Guantanamo Bay.

"There is no ambiguity in this case," he said.

Vice President Dick Cheney said Sunday that officials agree the detainees aren't prisoners of war. But administration lawyers are debating whether the Geneva Convention, which has provisions that deal with unlawful combatants, applies in this case.

"These are the worst of a very bad lot," Cheney told *Fox News Sunday*. "They are very dangerous. They are devoted to killing millions of Americans, innocent Americans, if they can, and they are perfectly prepared to die in the effort. And they need to be detained, treated very cautiously, so that our people are not at risk."

The detainee issue is likely to come up Monday at the regularly scheduled National Security Council meeting, which President Bush attends, a senior administration official said.

Rumsfeld and Gen. Richard Myers, chairman of the Joint Chiefs of Staff, traveled to the Camp X-Ray detention facility by plane, boat and bus, accompanied by four senators: Democrats Dianne Feinstein of California and Daniel Inouye of Hawaii, and Republicans Ted Stevens of Alaska and Kay Bailey Hutchison of Texas.

They came to get a firsthand look at the facilities and procedures used in handling the 158 prisoners being detained in 8-by-8 foot, open air cells.

Feinstein and the other senators told reporters after touring the camp that they agreed with the Bush administration's handling of the prisoners and saw nothing to suggest mistreatment.

Attachment 11 to RE _____

Page 1 of 3

foxnews.com; For FOX News Channel comments write to
comments@foxnews.com

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All market data delayed 20 minutes.



Attachment 11 to RE _____

Page 3 of 3

10/1/2004



United States Department of Defense.

News Transcript

On the web: http://www.defenselink.mil/transcripts/2002/t01282002_t0128asd.html

Media contact: +1 (703) 697-5131

Public contact: <http://www.dod.mil/faq/comment.html> or +1 (703) 428-0711

Presenter: Victoria Clarke, ASD PA

Monday, January 28, 2002 - 11:29

DoD News Briefing - ASD PA Clarke and Rear Adm. Stufflebeem

(Also participating; Rear Adm. John Stufflebeem, Joint Staff)

QYeah. To go to the issue of the identity of the detainees, particularly the ones in Cuba, if you're not sure who they are, how could they have been characterized as the worst of the worst? What did you know about them that allowed you to make that characterization?

ADM. STUFFLEBEEM: Remember again, this is an extremely -- I'm using a strong adjective, I'm sorry, and it's a "e" word, too -- this is a fully vetted process. If this is an individual who previously was under Afghani control, then there is a level of interrogation and a level of confidence that is built by those that hold them. They are then offered to the Americans. If they were captured by the Americans outright, the same process works into it. It's going to be a series of interrogations. I think I read this morning that in terms of the numbers of interrogations, where we have more than 6,000 -- now, that's not individuals that you've interrogated, that's a relatively small number compared to the force you're looking for, but you're repeatedly rescreening and determining different levels whom this individual is or what this individual has done.

So by the time it gets to a process where Afghans have screened an individual, our folks at Bagram and at Kandahar would have screened them, the process continues till you get to a level of confidence that this individual was found or picked up in this location, he had previously been associated with involvement of these people, and these were the operations that they were known to be associated with.

Since being under detention, some have lied, some have changed their stories, some have tried to attack our people. It would appear, as you had seen yesterday, that they are working to organize an organization down there, probably for no good. They've made death threats against all Americans, and those including their captors.

So these are not unknowns in the sense that they are bad guys. These are the worst of the worst, and if let out on the street, they will go back to the proclivity of trying to kill Americans and others. So that is well established. The names of who they are -- if you were to go ask an individual what his name is, he might tell you one and he tells us something different. We're cataloguing all the names, you know, for this particular detainee, but --

Attachment 12 to RE _____



International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.75
5 May 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

GEORGIA

1. The Human Rights Committee considered the initial report of Georgia (CCPR/C/100/Add.1) at its 1564th, 1565th and 1566th meetings, on 26 and 27 March 1997, and adopted ¹/ the following concluding observations:

A. Introduction

2. The Committee notes with interest the initial report submitted by Georgia and welcomes the dialogue it has had with a high-level delegation. It notes with satisfaction that the delegation of Georgia was able to supplement the report and provide clarifications concerning the legal provisions in force and their scope, and on the reform that is under way, which has enabled the Committee to have a somewhat clearer picture of the human rights situation in Georgia.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that Georgia is still experiencing the influence of the totalitarian past, which has created feelings of mistrust and insecurity among the citizens. In addition, the State party is still suffering from the effects of conflicts in South Ossetia (1992) and Abkhazia (1993-1994), which gave rise to serious violations of human rights, including massive population displacements, and the Government is having difficulty exercising its jurisdiction in those areas in respect of the protection of human rights.

¹At its 1583rd meeting, on 9 April 1997.

13. The Committee fears that the moratorium that has been instituted on the carrying out of death sentences is a weak palliative. In spite of the reduction in the number of offences carrying the death penalty, these are still too numerous and some of them do not come within the category of the most serious crimes envisaged in article 6 of the Covenant. It also deplores the fact that some capital sentences appear to have been imposed in cases where confessions were obtained under torture or duress or following trials where the guarantees provided under article 14 of the Covenant were not respected, particularly the right to have a case reviewed by a higher court (art. 14, para. 5, of the Covenant).

14. The Committee is deeply concerned by cases of torture inflicted on individuals deprived of their liberty, including for the purpose of extracting confessions. It deplores the fact that these and other acts of torture usually go unpunished and that in many cases a lack of confidence in the authorities keeps the victims from lodging complaints.

15. The Committee deplores the abuse of pre-trial detention and police custody. The limits placed on those measures by the Constitution, are often not observed in practice, in disregard also of the provisions of article 9 of the Covenant.

16. The Committee is deeply concerned at the disastrous prison situation; crowding, poor sanitary conditions and lack of medical care have resulted in a high rate of infectious disease and a very alarming mortality rate, in particular among juvenile detainees. The Committee stresses that the State party does not comply with the provisions of article 10 of the Covenant according to which all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

17. The Committee is concerned at the continuing close relationship between the procurator and the judges; it fears that, in the absence of any statute enforcing the independence of the judiciary, the impartiality of decisions cannot be guaranteed and that the executive may exert pressure on the judiciary.

18. The Committee notes with disquiet that court proceedings do not meet the conditions required by article 14 of the Covenant for example, although the law provides for access to the assistance of counsel, in practice this is made difficult because of excessive bureaucracy.

19. The Committee regrets that, despite the elimination of the propiska, there remain obstacles to freedom of movement within the country. It notes with concern that there continues to be a great deal of corruption in this area.

20. The Committee emphasizes that the vague and overly general characterizations of crimes and the difficulty of determining their constituent elements (insubordination, sabotage, etc.) have allowed political opponents of the Government to be prosecuted.

21. The Committee regrets that because of the absence of legislation concerning the exercise of the freedom of association, it has not been possible to establish free trade unions so that workers may exercise their rights under article 22 of the Covenant.

22. The Committee is concerned at the increase in the number of children affected by poverty and social dislocation and the concomitant increase in the number of street children, delinquents and drug addicts.

E. Suggestions and recommendations

23. The Committee invites the Government to provide all individuals under its jurisdiction with an effective remedy and compensation for violations of their human rights found to have occurred since independence in 1991.

24. The Committee recommends that the State party appoint an ombudsman as soon as possible and that procedures be established to give effect to the Committee's findings under the Optional Protocol. The Committee urges the Government to ensure the legitimacy and authority of the Committee for Human Rights and Ethnic Relations and to define the relationship between that Committee and the Ombudsman.

25. The Committee urges the authorities to continue the moratorium on executions and to continue the serious efforts that have been made towards abolishing the death penalty.

26. The Committee recommends that the State Party undertake systematic and impartial investigations into all complaints of ill-treatment and torture, bring to trial persons charged with violations as a result of these investigations, and compensate the victims. Confessions obtained under duress should be systematically excluded from judicial proceedings and, given the admission of the State party that torture had been widespread in the past, all convictions based on confessions allegedly made under torture should be reviewed.

27. The Committee recommends that detention and pre-trial detention should be carried out in accordance with the requirements of the Constitution and the Covenant. It stresses, inter alia, that all persons who are arrested must immediately have access to counsel, be examined by a doctor without delay and be able to submit promptly an application to a judge to rule on the legality of the detention.

28. The Committee urges the State party to take urgent steps to improve the situation in prisons, in particular, sanitary conditions. It invites the State party to cut down on the use of imprisonment as a punishment for minor violations and on pre-trial detention for excessive periods.

29. The Committee recommends that the authorities put an end, once and for all, to the restrictions on freedom of movement within the country and on the right to leave the country.

30. The Committee urges the State party to enact a law guaranteeing the independence of the judiciary and providing for its total autonomy vis-à-vis the procurator and the executive.

31. The Committee urges the State party to guarantee the rights set forth in article 14 of the Covenant, in particular by remedying the deficiencies with regard to the exercise of the right to defence and the right to appeal. The creation of an independent legal profession is, in the Committee's view, a necessary precondition for the effective enjoyment of such rights.

32. The Committee earnestly recommends that the State party, in connection with the revision of the Penal Code, repeal those provisions which make it possible to prosecute political opponents for their beliefs under cover of upholding the law.

33. The Committee invites the State party to enact laws making it possible for trade unions to be formed and to carry out their activities freely in defence of the rights of workers.

34. The Committee urges the State party to take urgent steps to protect children in accordance with the provisions of article 24 of the Covenant.

35. The Committee recommends that educational and training programmes be drawn up with a view to developing a culture of respect for human rights in all sectors of the population, inter alia, judges, the security forces and prison personnel. These programmes should also emphasize that women are entitled to full enjoyment of their fundamental rights.

36. The Committee recommends that the report of the State party, together with the concluding observations adopted by the Committee, should be widely disseminated and that the text of the Covenant be disseminated in all languages commonly used in the country.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1998/39/Add.4
5 March 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Special Rapporteur on the independence of judges
and lawyers, Mr. Param Cumaraswamy, submitted pursuant to
Commission on Human Rights resolution 1997/23

Addendum

Report on the mission of the Special Rapporteur to the
United Kingdom of Great Britain and Northern Ireland

GE.98-10716 (E)

Attachment 14 to RE _____
Page 1 of 2

Practice issued under section 61 of the 1991 Act was to the same effect. Nowhere was there reference to any right for a person arrested under terrorism provisions to have a solicitor present during interview. The House of Lords concluded that the differential treatment of persons suspected of having committed offences under the terrorism provisions in Northern Ireland was plainly part of a deliberative legislative policy.

45. The United Nations Basic Principles on the Role of Lawyers do not explicitly address the issue as to whether a detainee has the right to have a lawyer present during a police interrogation. Principle 7 provides that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention." Principle 8 provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

46. Similarly, the jurisprudence of the Human Rights Committee provides little guidance on this question. Article 14 (3) (b) provides that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." While the Human Rights Committee has found impermissible interference with the right to preparation of defence in a large number of cases, none address the issue as to whether a detainee has the right to have counsel present during police interrogations.

47. In the view of the Special Rapporteur, it is desirable to have the presence of an attorney during police interrogations as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse, particularly in a state of emergency where more serious criminal acts are involved. In the case at hand, the harsh conditions found in the holding centres of Northern Ireland and the pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative.

C. Closed visits

48. In England and Wales, but not Northern Ireland, the Home Office has instituted a policy under which certain prisoners are designated as exceptional high risk category and are allowed legal visits in prisons only where the prisoner was separated from his lawyers by a transparent screen. In particular, the closed visits have been put in place in the Special Secure Units (SSUs) of Belmarsh, Full Sutton and Whitemoor prisons. They are applied to any prisoner who has been designated as being at "exceptional high risk" of escape. Elaborate security measures are in place, with lawyers being searched several times as they enter and exit SSUs and prisoners are strip-searched before and after visits, despite the fact that they had no contact with their lawyers or anyone apart from the prison staff.

RULES OF PROCEDURE AND EVIDENCE

(Adopted On 11 February 1994)
(As Amended 5 May 1994)
(As Further Amended 4 October 1994)
(As Revised 30 January 1995)
(As Amended 3 May 1995)
(As Further Amended 15 June 1995)
(As Amended 6 October 1995)
(As Further Amended 18 January 1996)
(As Amended 23 April 1996)
(As Amended 25 June and 5 July 1996)
(As Amended 3 December 1996)
(As Further Amended 25 July 1997)
(As Revised 12 November 1997)
(As Amended 10 July 1998)
(As Amended 4 December 1998)
(As Amended 25 February 1999)
(As Amended 2 July 1999)
(As Amended 17 November 1999)
(As Amended 14 July 2000)
(As Amended 1 and 13 December 2000)
(As Amended 12 April 2001)
(As Amended 12 July 2001)
(As Amended 13 December 2001)
(Incorporating IT/32/Rev. 22/Corr.1)
(As Amended 23 April 2002)
(As Amended 12 July 2002)
(As Amended 10 October 2002)
(As Amended 12 December 2002)
(As Amended 24 June 2003)
(As Amended 17 July 2003)
(As Amended 12 December 2003)
(As Amended 6 April 2004)
(As Amended 10 June 2004)
(As Amended 28 July 2004)

Attachment 15 to RE Page 1 of 5

Rule 42**Rights of Suspects during Investigation**

(Adopted 11 Feb 1994, revised 30 Jan 1995, revised 12 Nov 1997)

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect speaks and understands:

(i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;

(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and

(iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Attachment 15 to RE _____

Page 2 of 5

Section 2 : Of Counsel**Rule 44****Appointment, Qualifications and Duties of Counsel**

Adopted 11 Feb 1994, amended 25 July 1997, revised 12 Nov 1997, amended 14 July 2000, amended 1 Dec 2000 and 13 Dec 2000, amended 13 Dec 2001, amended 12 July 2002, amended 28 July 2004)

(A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. Subject to any determination by a Chamber pursuant to Rule 46 or 77, a counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that he or she:

- (i) is admitted to the practice of law in a State, or is a university professor of law;
- (ii) has written and oral proficiency in one of the two working languages of the Tribunal, unless the Registrar deems it in the interests of justice to waive this requirement, as provided for in paragraph (B);
- (iii) is a member in good standing of an association of counsel practicing at the Tribunal recognised by the Registrar;
- (iv) has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;
- (v) has not been found guilty in relevant criminal proceedings;
- (vi) has not engaged in conduct whether in pursuit of his or her profession or otherwise which is dishonest or otherwise discreditable to a counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the International Tribunal or the administration of justice, or otherwise bring the International Tribunal into disrepute; and
- (vii) has not provided false or misleading information in relation to his or her qualifications and fitness to practice or failed to provide relevant information.

(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate, including the requirement that the counsel or accused undertake to meet all translations and interpretation costs not usually met by the Tribunal, and counsel undertakes not to request any extensions of time as a result of the fact that he does not speak one of the working languages. A suspect or accused may seek the President's review of the Registrar's decision.

(C) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel adopted by the Registrar and approved by the permanent Judges.

(D) An Advisory Panel shall be established to assist the President and the Registrar in all matters relating to defence counsel. The Panel members shall be selected from representatives of professional associations and from counsel who have appeared before the Tribunal. They shall have recognised professional legal experience. The composition of the Advisory Panel shall be representative of the different legal systems. A Directive of the Registrar shall set out the structure and areas of responsibility of the Advisory Panel.

Rule 45Attachment 15 to RE _____Page 3 of 5

Assignment of Counsel

(Adopted 11 Feb 1994, revised 30 Jan 1995, amended 25 June 1996 and 5 July 1996, revised 12 Nov 1997, amended 10 July 1998, amended 14 July 2000, amended 12 Apr 2001, amended 28 July 2004)

(A) Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges.

(B) For this purpose, the Registrar shall maintain a list of counsel who:

(i) fulfil all the requirements of Rule 44, although the language requirement of Rule 44 (A)(ii) may be waived by the Registrar as provided for in the Directive;

(ii) possess established competence in criminal law and/or international criminal law/international humanitarian law/international human rights law;

(iii) possess at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings; and

(iv) have indicated their availability and willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel, under the terms set out in the Directive.

(C) The Registrar shall maintain a separate list of counsel who, in addition to fulfilling the qualification requirements set out in paragraph (B), are readily available as "duty counsel" for assignment to an accused for the purposes of the initial appearance, in accordance with Rule 62.

(D) The Registrar shall, in consultation with the permanent Judges, establish the criteria for the payment of fees to assigned counsel.

(E) Where a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel.

(F) A suspect or an accused electing to conduct his or her own defence shall so notify the Registrar in writing at the first opportunity.

Rule 45 bis**Detained Persons**

(Adopted 25 June 1996 and 5 July 1996)

Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal.

Attachment 15 to RE

Page 4 of 5

Rule 63
Questioning of Accused
(Adopted 11 Feb 1994, amended 3 Dec 1996)

(A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.

(B) The questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42 (A)(iii).

Attachment 15 to RE _____

Page 5 of 5

RULES OF PROCEDURE AND EVIDENCE
RÈGLEMENT DE PROCÉDURE ET DE PREUVE

Adopted on 29 June 1995; as amended on

12 January	1996	
15 May	1996	
4 July	1996	
5 June	1997	
8 June	1998	
1 July	1999	
21 February	2000	
26 June	2000	
3 November	2000	
31 May	2001	
6 July	2002	
27 May	2003	and
14 May	2004	

Adopté le 29 juin 1995 et modifié successivement les

12 janvier	1996	
15 mai	1996	
4 juillet	1996	
5 juin	1997	
8 juin	1998	
1 juillet	1999	
21 février	2000	
26 juin	2000	
3 novembre	2000	
31 mai	2001	
6 juillet	2002	
27 mai	2003	et
14 mai	2004	

Attachment 16 to RE _____

Page 1 of 4

Rule 42: Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:
- (i) The right to be assisted by counsel of his choice or to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it;
 - (ii) The right to have the free assistance of an interpreter if he cannot understand or speak the language to be used for questioning; and
 - (iii) The right to remain silent, and to be cautioned that any statement he makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 44 bis: Duty Counsel

- (A) A list of duty counsel who speak one or both working languages of the Tribunal and have indicated their willingness to be assigned pursuant to this Rule shall be kept by the Registrar.
- (B) Duty counsel shall fulfill the requirements of Rule 44, and shall be situated within reasonable proximity to the Detention Facility and the Seat of the Tribunal.
- (C) The Registrar shall at all times ensure that duty counsel will be available to attend the Detention Facility in the event of being summoned.
- (D) If an accused, or suspect transferred under Rule 40 *bis*, is unrepresented at any time after being transferred to the Tribunal, the Registrar shall as soon as practicable summon duty counsel to represent the accused or suspect until counsel is engaged by the accused or suspect, or assigned under Rule 45.
- (E) In providing initial legal advice and assistance to a suspect transferred under Rule 40 *bis*, duty counsel shall advise the suspect of his or her rights including the rights referred to in Rule 55 (A).

Rule 45: Assignment of Counsel

- (A) A list of counsel who speak one or both of the working languages of the Tribunal, meet the requirements of Rule 44, have at least 10 years' relevant experience, and have indicated their willingness to be assigned by the Tribunal to indigent suspects or accused, shall be kept by the Registrar.
- (B) The criteria for determination of indigence shall be established by the Registrar and approved by the Judges.
- (C) In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:
 - (i) A request for assignment of counsel shall be made to the Registrar;
 - (ii) The Registrar shall enquire into the financial means of the suspect or accused and determine whether the criteria of indigence are met;
 - (iii) If he decides that the criteria are met, he shall assign counsel from the list; if he decides to the contrary, he shall inform the suspect or accused that the request is refused.
- (D) If a request is refused, a further reasoned request may be made by the suspect or the accused to the Registrar upon showing a change in circumstances.

Rule 63: Questioning of the Accused

- (A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.
- (B) The questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42 (A)(iii).



**Office of the High
Commissioner for Human Rights**

Français | Español



**Body of Principles for the Protection of All Persons under Any Form of
Detention or Imprisonment**

Adopted by General Assembly resolution 43/173 of 9 December 1988

Attachment 17 to RE _____

Page 1 of 4

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:
 - (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
 - (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

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Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

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Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

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**Office of the High
Commissioner for Human Rights**
· Français | Español



Basic Principles on the Role of Lawyers

**Adopted by the Eighth United Nations Congress on the Prevention of Crime and the
Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990**

Attachment 18 to RE

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Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

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United States Department of Defense.

News Transcript

On the web: <http://www.dod.mil/cgi-bin/dlprint.cgi?>

http://www.dod.mil/transcripts/2002/t02282002_t0227sd6.html

Media contact: +1 (703) 697-5131

Public contact: <http://www.dod.mil/faq/comment.html> or +1 (703) 428-0711

Presenter: Secretary of Defense Donald H. Rumsfeld

Wednesday, February 27, 2002

Rumsfeld Interview with KSTP-ABC, St. Paul, Minn.

(Interview with Cale Ramaker, KSPT-ABC, St. Paul, Minn.)

Question: And the situation in Camp X-Ray right now in Guantanamo Bay, Cuba with the detainees, give us an update on where that's at in terms of the investigation, interrogating all of them, and then what happens to the detainees once you're done with them.

Rumsfeld: You bet. There are, I don't know, 300 or 400 people down there at the present time, I suppose 300 something, and they have all now, except for one or two, been questioned and interrogated, looking for intelligence information so that we could stop other terrorist threats, people from attacking our country and our friends and allies and our deployed forces.

We're now starting the process of doing a series of interrogations that involve law enforcement. That is to say to determine exactly what these individuals have done. Not what they know of an intelligence standpoint, but what they've done from a law enforcement standpoint. That process is underway.

Question: What can the average American person assume is going to happen to these detainees? Are they going to be let go eventually? Or you talk about law enforcement, you're talking about investigating them for crimes?

Rumsfeld: Well, they will fall into four or five baskets. One is if we find that someone's an innocent and shouldn't have been brought there, why they would be released. If we find that someone is very low level and we simply want to keep them off the streets so they don't go out and kill more people but that they're not masterminds, we might turn them back to Afghanistan to be imprisoned or Pakistan. We might send them back to their country of origin, whatever their nationality may be, to be detained and processed.

Those that their behavior suggests that they should be put through some justice system, criminal justice system, they might very well be put in the U.S. criminal justice system; they might be put into the U.S. military justice system; or they might be sent to another country to be put in a criminal justice system; or last, the President may decide that the more important ones conceivably could be tried by a so-called military commission.

Attachment 19 to RE _____



commentaries



**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the
Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.**

Introduction to the Commentary on the Additional Protocols I and II of 8 June 1977

Claude PILLOUD[†] - Jean DE PREUX -
Yves SANDOZ - Bruno ZIMMERMANN -
Philippe Eberlin - Hans-Peter Gasser - Claude F. Wenger
(Protocol I)
Philippe EBERLIN *(Annex I)*
Sylvie-S. JUNOD *(Protocol II)*

with the collaboration of
Jean PICTET

—
Commentary
on the Additional Protocols
of 8 June 1977
to the Geneva Conventions
of 12 August 1949

—
Editors
Yves SANDOZ - Christophe SWINARSKI -
Bruno ZIMMERMANN

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International Committee of the Red Cross

—
Martinus Nijhoff Publishers

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Geneva 1987

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[p.884] ' Sub-paragraph ' (g)

3113 This clause has the same wording as the corresponding clause of the Covenant (Article 14, paragraph 3(e)).

3114 According to the Rapporteur of Committee III, this provision was worded so as to be compatible with both the system of cross-examination of witnesses and with the inquisitorial system in which the judge himself conducts the interrogation.

3115 It is clear that the possibility of examining witnesses is an essential prerequisite for an effective defence.

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