ORAL STATEMENTS BY THE UNITED STATES DELEGATION TO THE COMMITTEE AGAINST TORTURE

MAY 8, 2006

[John Bellinger III, Legal Advisor, U.S. Department of State]

Mr. Chairman, Distinguished Members of the Committee, Ladies and Gentlemen, my delegation is pleased to be here for another day of dialogue with this Committee. We found our Friday meeting very useful, and hope the Committee did as well. We appreciated your important questions, and my delegation worked very hard over the weekend to prepare full responses for you.

On Friday, Chairman Mavrommatis began his questions by noting that more is expected from the United States than from many other countries. We recognize that much of the rest of the world holds the United States to a strict standard when it comes to the rule of law and human rights. This is especially important when it comes to moral imperatives, such as eliminating torture. The United States acknowledges this challenge, knowing that we must always strive to improve our own record.

In this context, this Committee asked important questions about U.S. detainee operations in Guantanamo, Afghanistan and Iraq, and about alleged intelligence activities. The members also asked a number of questions about the scope of U.S. obligations under the Convention Against Torture and a wide array of other matters. We are pleased to answer those questions today. We will also highlight the strong legal protections under U.S. law for those who might be detained.

Let me be very clear about our position: U.S. officials from **all** government agencies are prohibited from engaging in torture, at **all** times, and in **all** places. Every U.S. official, wherever he or she may be, is also prohibited from engaging in cruel, inhuman or degrading treatment or punishment, as defined by our obligations under the Convention Against Torture. This is the case even in situations where the law of armed conflict applies.

We note in this context Mr. Wang's question as to whether the United States would agree with the statement that "some people are simply not entitled to humane treatment." Our answer is a clear and simple **no**. As the President stated on the UN International Day in Support of Vicitms of Torture, on June 26, 2004, "[t]he United States reaffirms its commitment to the worldwide elimination of torture. The non-negotiable demands of human dignity must be protected without reference to race, gender, creed, or nationality. Freedom from torture is an inalienable human right and we are committed to building a world where human rights are respected and protected by the rule of law."

We described on Friday our internal mechanisms for meeting our domestic and international obligations to combat torture. Our presence here highlights another, vital instrument in this effort: our dialogue with this Committee and with other interested parties. Mr. Chairman, you asked if my government has an active dialogue with non-governmental organizations on these issues. We do. Secretary Rice meets regularly with NGO officials. Numerous other senior U.S. officials, including members of this delegation, meet regularly with NGOs in Washington and wherever we travel. Indeed, I met with 19 NGO representatives this weekend to discuss these very proceedings. My government takes very seriously concerns expressed by members of the NGO community and has benefited from this dialogue.

Most of the regrettable incidents or allegations of mistreatment of detained enemy combatants occurred several years ago. I say this not to minimize their significance, but to emphasize that, without question, our record has improved. We now have more rigorous laws, more rigorous procedures, more rigorous training and more rigorous monitoring mechanisms.

We look forward to further dialogue with the Committee today. As many of the Committee's questions focused on three main themes, we will address these topics thematically before addressing each member's other questions individually. These themes are: first, legal issues about U.S. implementation of the Convention; second, treatment of detainees in the context of our operations overseas -- including accountability for abuses; and third, monitoring and oversight of alleged intelligence activities. We believe that we will address all of the Committee's questions, but if we leave something out, we apologize in advance and look forward to hearing again from the Committee after we make our presentation.

The first theme we will address deals primarily with questions of treaty law related to the scope of U.S. obligations under the Convention.

Mr. Camara asked about reservations the United States took to the Convention when we ratified it in 1994, and, in particular, whether the United States considers itself subject to the provisions of the Vienna Convention on the Law of Treaties with respect to making reservations. Although the United States is not a party to the Vienna Convention, the reservations made by the United States, including its reservations under the Convention Against Torture, conform to the provisions on reservations of the Vienna Convention.

As Article 19 of the Vienna Convention provides, a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless the reservation is prohibited by the treaty or is incompatible with the object and purpose of the treaty. The Convention Against Torture does not prohibit reservations. In fact, more than 20 countries have made reservations to the Convention. Consistent with customary international law and the Vienna Convention, the United States made two reservations when ratifying the Convention Against Torture.

Mr. Camara also inquired whether the U.S. reservations, particularly our reservation to Article 16 of the Convention, were intended to negate obligations under customary international law. I want to emphatically assure Mr. Camara and the members of this Committee that, to the contrary, the U.S. reservation to Article 16 was intended to state clearly the precise scope of the obligation that the United States was assuming under the Convention Against Torture given that the term "cruel, inhuman or degrading treatment or punishment" was not defined in the Convention.

Finally on the topic of general treaty law, Mr. Camara suggested that if there is a difference of opinion between an interpretation of the Convention advanced by the Committee Against Torture and an interpretation advanced by a State Party such as the United States, the interpretation of the Committee, as a matter of law, would prevail. With respect, we must disagree with that view. Although a party to a treaty can agree to establish a third party to render authoritative interpretations of that treaty, in this case, the United States did not agree to give the Committee such a role. While the Committee's views are entitled to respect, the Convention does not grant the Committee the authority to issue legally binding views on the nature of U.S. obligations thereunder.

I now turn to a question asked by Messrs. Mariño, Camara, and Mavrommatis, regarding why the United States has not created the crime of "torture" within the United States. The United States has taken very seriously its obligation under Article 4 to ensure that all acts of torture are offences under its criminal law. Before ratifying the Convention, the United States undertook an exhaustive review of its existing criminal laws and expressly determined that "existing law is sufficient to implement Article 4 of the Convention, except to reach torture occurring outside the United States."[1] The United States supported this determination by a long and specific list of criminal statutes that – together -- prohibit ***all*** conduct that would constitute torture. Thus, acts of torture -- as well as other appalling violent or abusive acts -- are made criminal in the United States. As Chairman Mavrommatis observed Friday, several other States Parties have also relied on previously-existing criminal laws to satisfy their obligations under Article 4.

Mr. Mariño asked why the United States has limited torture to "extremely severe" pain or suffering. We have not done this. In its criminal statute for the extraterritorial offense of torture, the United States utilized the term "extreme" as a synonym for the term "severe." It did not use the term "extremely severe."

With respect to Mr. Mariño's question about the U.S. understanding defining the term "severe mental pain or suffering" in Article 1, this understanding recited elements implicit in the text to provide the specificity needed to meet the requirements of a criminal statute. There was, and is, no intent to limit the scope of Article 1.

Mr. Mariño also questioned the U.S. understanding of the term "lawful sanctions" in the Convention's first paragraph of Article 1. The U.S. understanding merely clarified

[1] President's Transmittal of the CAT at 9; Senate Report on the CAT, Exec. Rep. 101-30 at 19.

the scope of that term; namely, that it included judicially imposed actions as well as other enforcement action authorized by law. The United States considers that this understanding is compatible with the object and purpose of the Convention. We note that no State Party to the Convention has objected to this understanding.

Several members of the Committee asked questions regarding the application of the law of armed conflict to U.S. actions in Afghanistan and Iraq.

First, Mr. Mariño asked whether the United States is engaged in an ongoing armed conflict against terrorism and if that is so, whether the Convention Against Torture applies during the course of that armed conflict. These are very important issues and we are glad to have the opportunity to address them.

The United States is engaged in a real, not rhetorical, armed conflict with al Qaeda and its affiliates and supporters, as reflected by al Qaeda's heinous attack on September 11, 2001, an attack that killed more than 3000 innocent civilians.

It is important to clarify the distinction we draw between the struggle in which all countries are engaged in a "global war on terrorism" and the legal meaning of our nation's armed conflict with al Qaeda, its affiliates and supporters. On a political level, the United States believes that all countries must exercise the utmost resolve in defeating the global threat posed by transnational terrorism. On a legal level, the United States believes that it has been and continues to be engaged in an armed conflict with al Qaeda, its affiliates and supporters. The United States does not consider itself to be in a state of international armed conflict with every terrorist group around the world.

Even while we are engaged in an armed conflict, the Convention Against Torture continues to apply, in accordance with its terms. For example, the Convention obviously applies to the treatment of prisoners in domestic U.S. prisons that are not governed by the law of armed conflict. Our view is simply that U.S. detention operations in Guantanamo, Afghanistan, and Iraq are part of ongoing armed conflicts and, accordingly, are governed by the law of armed conflict, which is the *lex specialis* applicable to those particular operations.

Regardless of the legal analysis, both the law of armed conflict and human rights treaties, such as the Convention Against Torture, have provisions that prohibit torture and other mistreatment. Let me be perfectly clear: applying the law of armed conflict does not permit the United States to engage in such acts. Those who are found to have committed such acts are held accountable.

Mr. Mariño also asked about the United States' statement about its understanding that the Convention "was never intended to apply to armed conflicts," which forms part of the *travaux préparatoires* of the Convention. The United States made this statement over twenty years ago, during the final session of the Working Group negotiations on the

draft convention in February 1984[2] and confirmed that statement in its final observations contained in the Secretary-General's October 1984 report to the General Assembly on the draft convention.[3]

As I explained on Friday, the United States was concerned that application of the Convention to situations governed by the law of armed conflict, which also prohibits torture, "would result in having an overlap of the different treaties which would undermine the objective of eradicating torture."[4] It is important to note that we were not alone in expressing this concern. Indeed, the *travaux* contain similar statements by other countries, including Switzerland,[5] Norway,[6] and Israel.[7] We will provide the Committee with citations to all of these documents in writing.

With these legal principles as a foundation, I want to turn now to a second area of concern to the Committee -- our laws, policies, and procedures regarding the treatment of detainees in the context of our armed conflicts with al Qaeda and in Iraq. For this discussion I would turn to Mr. Cully Stimson from the Department of Defense.

[Charles Stimson, Department of Defense]

As we stated on Friday, the Detainee Treatment Act of 2005 is a significant development in this area. With regard to persons under Department of Defense control, the Act statutorily prohibits any treatment or interrogation technique not authorized by, and listed in, the United States Army Field Manual on Intelligence Interrogation. The techniques contained in the Army Field Manual are the **only** techniques currently authorized for use at DoD facilities.

With respect to a question from Dr. Sveaass, the Department of Defense has finalized several key policy documents related to detainees, including the revised Army Field Manual. We are in the midst of final consultations with our Congress about them at

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[2] *See* Report of the Working Group on a Draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, E/CN.4/1984/72 at para. 5 (Mar. 9, 1984).

[3] *See* Report of the Secretary-General, A/39/499 at p. 20 (Oct. 2, 1984).

[4] *See* E/CN.4/1984/72, *supra* note 1, at para. 5.

[5] *See* Summary Prepared by the Secretary-General in Accordance with Commission Resolution 18 (XXXIV), E/CN.4/1314 at para. 55 (noting that "human rights regulations and the law of armed conflicts" are "two complementary but distinct legal systems…the characteristics of which vary according to the specific situation in which they are applied).

[6] *See* A/39/499, *supra* note 2, at p. 15 (referring to United States statement).

[7] *See* J. Herman Burgers and Hans Danelius, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 106 (1988) (noting statement of the Israeli delegation after adoption of General Assembly resolution 39/46).

this time. We hope that we will be able to publish these documents soon. We will supply the Committee with a copy of new detainee policies and the unclassified Army Field Manual when they are published.

Regarding the Committee's questions about waterboarding, I want to make two points. First, waterboarding is not listed in the current Army Field Manual and therefore is not permitted for detainees under DoD control. Second, waterboarding is specifically prohibited in the revised Army Field Manual. It would not be appropriate for me to discuss further specifics of the revised Army Field Manual at this time.

I can also confirm, in response to Mr. Mariño's and Chairman Mavrommatis' questions, that the Department of Defense has conducted investigations of allegations relating to detainee abuse, including those at Abu Ghraib. These investigations also reviewed the conduct of people in the chain of command. Of the hundreds of thousands of service members who are or have been deployed in Afghanistan and Iraq, there have been approximately 800 investigations into allegations of mistreatment, including approximately 600 criminal investigations. After many of these investigations were completed, no misconduct was found. In many others, however, the Department of Defense did discover misconduct and took action: more than 270 actions against more than 250 service members. In addressing these cases, the full range of administrative, disciplinary, and judicial measures have been available and used as appropriate. Approximately 170 of those investigations also remain open.

Mr. Mariño noted an apparent inconsistency between the numbers provided by Human Rights Watch (among others), and those provided by the Department of Defense. The numbers Human Rights Watch provided to the Committee were: *only* 54 courts martial; *only* 40 service members sentenced to prison; *only* a small percentage of convicted service members given long sentences; and *only* 10 persons sentenced to one year or more. Let me be clear: these numbers are simply wrong. The **facts** are these: to date, there have been 103 courts-martial; 89 service members were convicted – an 86% conviction rate. Moreover, 19 service members received sentences of one year or more. Furthermore, more than 100 service members have received non-judicial punishment; more than 60 were reprimanded; and to date, 28 service members were involuntarily separated from military service. Accountability is ongoing.

And finally, in answer to Mr. Mariño's question about whether supervisors have been investigated or held accountable, the answer is emphatically **yes**.

Mr. Camara requested information regarding Martin Mubanga, a British citizen who sought and received extensive terrorist training at camps in Afghanistan and Bosnia. He used this training to fight in Bosnia and against U.S. forces in Afghanistan in 2001. In March of 2002, Mr. Mubanga was arrested by Zambian officials after fleeing from Afghanistan. Based upon those activities, the United States detained Mr. Mubanga as an enemy combatant.

Mr. Mubanga alleged that, while at Guantanamo Bay, he had been subjected to racial insults and was intimidated by a guard on July 31, 2003. The investigation into these allegations found them to be without merit. Mr. Mubanga had engaged in aggressive behavior towards the guards – indeed, on June 22, 2003, he grabbed an interrogator's hand and put it in a pressure hold. Further, the investigation did not discover evidence that he had been subjected to racial insults.

Madame Belmir questioned whether inadequate training or misinterpretation of the rules and policies may have led to abuses. Let me first say that when the shocking events of Abu Ghraib were discovered, the Department of Defense set out to investigate all aspects of detainee operations. To this end, the Department conducted major investigations, inspections, or reviews that examined issues ranging from training, policy and personnel to operations and leadership. The conclusion of these investigations, specifically, those that focused on the cause of detainee mistreatment, was that the abuse was the result of the wholly unauthorized and abhorrent conduct of a relatively small number of servicemembers. We have acknowledged, however, that the abuses at Abu Ghraib were not merely the failure of individuals to follow known standards but also resulted from leadership failures compounded by poor advice from staff officers responsible for overseeing detentions operations in Iraq.

The Department conducts comprehensive training programs on treatment and interrogation of detainees -- now improved by the recommendations of the various independent panels. Of course, no training program, however extensive, will be able to prevent all incidents of abuse.

In response to your question on this topic, Mr. Chairman, the United States is carefully monitoring its detention operations to prevent any recurrence of the Abu Ghraib abuses. The Department of Defense takes very seriously its obligations to conduct safe, secure, and humane detention operations. We were shocked, as you were Mr. Chairman, about the events at Abu Ghraib. It should not have happened. Any wrongdoers need to be punished, procedures evaluated, and problems corrected. We feel terrible about what happened to these Iraqi detainees. They were people in U.S. custody and our country had an obligation to treat them properly. We didn't do that. That was wrong.

One of the great strengths of a nation is its ability to recognize problems, to deal with them effectively and transparently, and to strive to make things better. Indeed, a measure of a strong free society is confronting problems in a transparent manner. Of course, we wish that all persons in our government and Armed Forces had conducted themselves in accordance with American values, which reflect the highest standards. But the reality is that some did not, and the misconduct at Abu Ghraib occurred.

With respect to the Chairman's question suggesting the need for more visible and independent Department of Defense investigations, let me assure the Committee that the

Department's 12 major investigations have been honest and impartial. These investigations, inspections, and reviews looked exhaustively into all aspects of our detention operations. This included a wholly independent review by a panel chaired by former Secretary of Defense James Schlesinger. No investigators were restricted or influenced by DoD leadership in their inquiries into the facts or in making their findings and recommendations. They had full access to all materials and individuals.

The United States Congress has also extensively reviewed these issues. It has conducted numerous hearings, and more than 150 Members of Congress have visited our detention facilities. The Department has already instituted numerous reforms and improvements in response to these investigations.

Should information come to light that an additional investigation is warranted, DoD will, as it has before, investigate fully.

With respect to Madame Belmir's question about juveniles detained at Guantanamo and the reason for their detention, there are currently no juvenile detainees at Guantanamo.

At one point we detained three juveniles at Guantanamo. They returned to their home country in January 2004. We returned them to an environment where they have an opportunity to reintegrate and we did so with the assistance of non-governmental organizations. We are aware one returned to the fight.

Let me briefly speak about the conditions of detention we provided them while at Guantanamo. After medical tests determined their ages, they were housed in a separate detention facility, separated at a significant distance from the other detainees, and the other detainees were not permitted to have access to them. Indeed, they were housed in a communal facility, rather than cells. They underwent assessments from medical, behavioral, and educational experts to address their needs. Furthermore, we taught them mathematics, English, and reading, and provided daily physical exercise and sports programs.

It is unfortunate that al Qaeda and the Taliban use juveniles as combatants. The United States detains enemy combatants engaged in armed conflict against it and the juveniles were detained to prevent further harm to them and to our forces.

I will now return the floor to Mr. Bellinger.

[John Bellinger]

Before turning our attention to each member's individual questions, I will now address the third general theme of your questions, which involve matters related to U.S. intelligence agencies.

Messrs. Mariño, Wang, and Mavrommatis each asked related questions regarding intelligence activities, which we will answer together, because they overlap to some extent. We appreciate the Committee's recognition and forbearance that we cannot discuss specific alleged intelligence activities, but we are pleased to provide the following information.

First, it is certainly the view of the United States that every agency of the U.S. Government, including its intelligence agencies, must comply with U.S. obligations under the Convention Against Torture, as well as with the requirements of the Detainee Treatment Act. Second, in answer to your questions regarding whether U.S. intelligence activities are subject to monitoring and oversight, all of the activities of our Central Intelligence Agency are subject to inspection and investigation by the CIA's independent Inspector General and to oversight by the intelligence committees of the United States Congress.

The CIA continues to review and, where appropriate, revise its procedures, including training and legal guidance, to ensure that they comply with U.S. Government policies and all applicable legal obligations, including the Convention Against Torture and the Detainee Treatment Act. To this end, the CIA has put new guidelines and procedures in place during the last several years.

We will now turn our attention to answering your questions that did not fit within those three broad themes. We will try to address them in the order we received them.

I first want to address a common question asked by several members of the Committee: whether specific practices might constitute torture or other cruel, inhuman or degrading treatment or punishment. As we have explained before, both categories are prohibited by United States law, whether they occur within the United States or outside the country. We provided many examples of crimes that could potentially be charged in our oral responses and written materials.

That said, as the example Mr. Kovalev gave shows, it is difficult to look at broad categories of practices -- totally divorced from the specific facts of any given case -- and label them in the abstract as being in all cases either torture or cruel, inhuman or degrading treatment or punishment. Moreover, as Mr. Mariño noted, even when the facts are known, drawing the line can be a difficult exercise.

Mr. Mariño raised two hypotheticals -- forced disappearances and incommunicado secret detention -- and asked if they constitute torture. From a legal perspective, it depends on the facts of the case and whether the facts meet the relevant legal standards. We are therefore reluctant to speculate about these difficult questions in the abstract.

The issue of incommunicado detention, however, is one that has been raised frequently and I would just note that the Fourth Geneva Convention, while not directly applicable here, specifically recognizes that in certain circumstances, individuals, such as

spies and saboteurs, or other individuals suspected of activity hostile to the security of the detaining power, shall be regarded as having forfeited their rights of communication.

Mr. Mariño asked a question about the Detainee Treatment Act, which, as I have said, is an important development in the treatment of those in United States Government custody. First, I'd like to address Mr. Mariño's question regarding habeas corpus access to U.S. courts and the judicial remedy provisions in the Detainee Treatment Act of 2005. The Act provides unprecedented procedural protections -- in our nation's domestic courts of law -- to enemy combatants captured during an ongoing armed conflict and held by the Department of Defense at Guantanamo Bay, Cuba. Historically, captured enemy combatants have not been able to challenge their detention before domestic courts of the nation holding them, a worldwide tradition that had been reflected in decisions of the United States Supreme Court.

Under the Detainee Treatment Act, a U.S. court of appeals may evaluate whether the already extensive procedures by which the United States determines that a detainee is an enemy combatant are consistent with the Constitution and laws of the United States. This review also extends to the final decisions of military commissions. In imposing this uniform review procedure, the Act forecloses whatever limited statutory habeas corpus jurisdiction may have applied because of the location of their detention at Guantanamo. Instead, the Act provides Guantanamo detainees with a standardized definite form of judicial review in a United States domestic court -- a protection that is extraordinary in the history of armed conflict.

Mr. Mariño also asked whether the statement issued by the President at the time the President signed the Detainee Treatment Act indicated an intention to take actions that would violate the Act. The question reflects a common misunderstanding, both within the United States and internationally, about the President's signing statement. Mr. Mariño, I can assure you and the Committee that the answer to this question is a clear and emphatic "**no**". As the President stated on the day he signed the Detainee Treatment Act, the policy of the United States has "been not to use cruel, inhuman or degrading treatment, at home or abroad." That remains our policy and is also now a matter of U.S. statute. Under our legal tradition Presidents regularly issue such signing statements; the President has no intention of taking actions that would contravene the Detainee Treatment Act.

Mr. Mariño additionally asked about the U.S. legal position on the territorial application of Article 3 in light of the Convention's goal to prevent torture. We agree that Article 3's *non-refoulement* provision is an essential safeguard to prevent torture. However, as a legal matter, we note that the affirmative obligation in Article 2 is limited to "any territory under [a State Party's] jurisdiction." As we noted previously, Article 3 of the Convention in our view does not apply as a matter of law to individuals located outside of U.S. territory. This view is supported by the text of the Convention, its negotiating history, and the U.S. record of ratification. Let me be clear: torture is abhorrent and, as the President has repeatedly said, we are committed to its elimination

worldwide. As we have emphasized again before the Committee -- notwithstanding our legal position on the territorial reach of Article 3 -- the U.S. worldwide policy is not to transfer persons to countries where it determines that it is "more likely than not" that they would be tortured. This is the same standard we apply in implementing our Article 3 obligations under the CAT. This policy applies to all components of the U.S. Government and to all individuals in U.S. custody or control, regardless of where they may be detained.

Mr. Mariño also inquired, in light of the U.S. legal interpretation of Article 3's territorial application, how the U.S. ensures that the non-refoulement protection is afforded to those who need such protection. Our legal views on the territorial scope of Article 3 do not prevent the United States from providing this important protection as a matter of policy. Rather, as just noted, the U.S. policy to provide this protection applies to all components of the U.S. government and to individuals in U.S. custody or control regardless of where they may be detained. For example, it is longstanding U.S. policy to afford migrants interdicted at sea with a meaningful opportunity to seek and receive protection against persecution or torture. In addition, with respect to transfers and returns of individuals from Guantanamo Bay, the United States has gone to great lengths to give effect to its policy not to transfer a person to a country if it determines that it is more likely than not that the person will be tortured. This policy is described in great detail in declarations that were annexed to the U.S. *Second Periodic Report*. U.S. Government departments and agencies have strengthened their internal procedures to ensure compliance with this policy.

Mr. Mariño further inquired about the meaning of the standard "more likely than not", which the United States adopted for implementation of Article 3. In applying this standard in the context of implementing Article 3, United States officials determine whether it is probable that the foreign national would be tortured if returned or extradited to a particular country. It is a standard that is familiar in U.S. law and has long been applied by immigration tribunals in the United States (at least since the enactment of the Refugee Act of 1980). In fact, immigration judges apply the standard in approximately 20,000 adjudications per year under regulations implementing Article 3.

Regarding Mr. Mariño's and Chairman Mavrommatis' question about whether diplomatic assurances are a substitute for case-by-case determinations, the answer, as we have explained before, is "**no**." Diplomatic assurances are simply a tool that may be used in appropriate cases and are not a substitute for a case-specific assessment as to whether it is more likely than not that a person would be tortured if returned. In such cases, they are one factor in the analysis. That said, if, taking into account all relevant information including any assurances received, the United States believed that a person more likely than not would be tortured if returned to a foreign country, the United States **would not approve the return** of the person to that country.

Mr. Mariño also asked whether it would be prudent to rely on "international bodies" to determine whether torture is systematically practiced in certain countries,

suggesting that the assessment by the international bodies would be dispositive about whether any individuals could properly be transferred to such countries. As we stated in our opening presentation last Friday, Article 3 requires the United States to make an individualized determination as to whether **a particular individual** would "more likely than not" face torture in a **particular country**. Although a systematic practice of torture in a country would be highly relevant, it does not obviate the need to conduct an individual review to determine whether the standard is met in a particular case. Moreover, Article 3 does not accord a role to third-party "international bodies" to make the individual determination on behalf of the State Party. Rather, it is the State Party's obligation to ensure that the Convention's standard is met.

In response to Mr. Mariño's question on who is the decision-maker for the application of Article 3 in extradition cases, he was correct. It is in fact the Secretary of State, or the Deputy Secretary of State by delegation, who is the decision-maker. The State Department regulations governing the extradition process provide fugitives with the opportunity to submit whatever documentation they consider relevant for consideration of their claims. The Department will examine materials submitted by the fugitive, persons acting on his behalf, or other interested parties, and will examine other relevant materials that may come to its attention. Whenever allegations relating to torture are raised by the fugitive or other interested parties, appropriate policy and legal offices within the State Department with regional or substantive expertise review and analyze the information. The Department's Bureau of Democracy, Human Rights and Labor, which drafts the annual human rights reports, is a key participant in this process. All relevant bureaus will then participate in the process to make a recommendation to the Secretary of State. Mr. Mariño is correct: consistent with U.S. law and practice governing extraditions, we do not believe that the decision of the Secretary of State regarding claims for protection under regulations implementing Article 3 of the Convention is subject to judicial review. U.S. courts are currently reviewing the issue in a number of cases.

Mr. Kovalev, in response to your question regarding the International Criminal Court, which I will refer to by its acronym the "ICC," the United States strongly supports accountability for war crimes and crimes against humanity, and is steadfast in its promotion of international justice worldwide. The U.S. position on the ICC is well-known, and is not relevant here; however, the United States does respect the right of other nations to be party to the ICC. The United States played a key role in drafting the substantive elements of the crimes in the Rome Statute. Furthermore, the United States continues to lead the way in promoting accountability for these atrocities by being the largest financial contributor to both international and domestic war crimes tribunals, by finding that genocide has occurred in Darfur, and by supporting countries in their apprehension of fugitives such as Mladic, Karadic, and Taylor. We do agree that international and domestic mechanisms for accountability are an important method of eradicating torture, among other crimes, and in promoting accountability and the rule of law.

At this point, I am pleased to turn the floor over to Mr. Monheim.

[Thomas Monheim, Department of Justice]

Thank you. I will first turn to several of Dr. Sveaass's questions related to implementation of the Prison Rape Elimination Act. As an initial matter, we can all agree that the elimination of prison rape is an important objective for all countries. In this context, I can reassure you that, there has not been a delay in the implementation of the Act in the United States. The Act specifically requires the collection of statistical data, a survey on the prevalence of sexual assault, the formation of a Commission, and a final report to the United States Attorney General by June 2007. We are making steady progress, and to date we have:

- Initiated a massive survey of federal, state and local prisons and other detention centers;
- Conducted extensive research on the nature of the problem of prison rape;
- Disbursed over 22 million dollars in grant money to the states in an effort to reduce the problem; and
- Convened the Prison Rape Commission for hearings on the matter. The first hearings were held in June of 2005 and the next public hearing is scheduled for this June.

Accordingly, the United States Government is working to implement fully the Act's important requirements to better detect, prevent, and punish prison rape.

As Dr. Sveaass noted, the prevention of sexual violence against individuals in immigration custody is also a serious matter requiring the attention of all governments. With respect to individuals in U.S. immigration detention, the Department of Homeland Security, which I will refer to by its acronym "DHS," has taken significant steps to prevent sexual violence and abuse in immigration detention facilities. These steps include a comprehensive classification and screening system used to segregate nonviolent detainees from those with violent tendencies, and widespread posting of instructions on how to report sexual misconduct by detention officers and other detainees. All immigration detention facilities, including contract facilities, must meet each of DHS's National Detention Standards, including those Standards that specifically serve to protect the health, safety, and well-being of detainees. DHS immigration detention facilities also provide Prison Rape Elimination Act training to detention officers.

We would also like to assure the Committee that the prevention and punishment of sexual abuse against prisoners remains a high priority for law enforcement at both the federal and state level. The federal Bureau of Prisons has repeatedly affirmed the agency's zero tolerance policy for sexual abuse of federal inmates and the federal government conducts thorough investigations of alleged abuses occurring within state prisons pursuant to the Civil Rights of Institutionalized Persons Act. When abuses are found, the federal government has the authority to initiate legal actions against a state institution and then closely monitors the jurisdiction (via on-site inspections, interviews of inmates and staff, and review of investigatory documents) to ensure that reforms are thoroughly and systemically implemented.

Regarding Dr. Sveaass' question about prosecutions of law enforcement officers involved in sexual assaults, the Department of Justice vigorously investigates and, where appropriate, prosecutes cases involving sexual misconduct by law enforcement officers. Furthermore, the Department can, and does, prosecute state and federal law enforcement officers and prison officials for deprivations of constitutional rights. Sexual assaults are among the cases prosecuted under federal law. Since October 1999, the Criminal Section of the Civil Rights Division, working in conjunction with United States Attorneys Offices around the country, has charged 44 defendants with acts of sexual misconduct ranging from inappropriate sexual contact to forcible rape. Of these defendants, 16 were prison officials and most of the rest were police officers.

The Department of Justice has obtained lengthy sentences against law enforcement officers and prison officials convicted of sexual assault.

- For example, in 2005 a former Jackson, Mississippi police officer was sentenced to 20 years in prison for raping a 19-year old woman in his custody.
- In addition, a sheriff in Latimer County, Oklahoma, was sentenced to 25 years in prison for sexually assaulting several female inmates and employees.

We believe that aggressive prosecution protects all persons, including prisoners, from such egregious and unlawful behavior by removing the individual offender and sending a strong message of deterrence to other officials.

The United States firmly believes that all detainees should be safe and free from sexual assaults, and it does not tolerate such behavior by its employees or contractors.

Dr. Sveaass also inquired about the training provided to U.S. law enforcement personnel to emphasize the need to respect human dignity, especially with regard to gender issues. While any question about law enforcement training in the United States necessarily involves a wide variety of law enforcement agencies and training regimes, I would highlight some prominent examples that demonstrate our commitment to training and our emphasis on respecting human integrity:

- The federal Bureau of Prisons provides extensive training for staff that is focused on issues specific to the treatment of female inmates.
- At DHS, detention officers receive extensive training in the proper use of force and best practices in arresting and searching female subjects. Similarly, DHS immigration inspectors are specifically trained to "treat all minors with dignity and sensitivity to their age and vulnerability," and to generally keep males and females, as well as adults and minors, segregated at all times during the immigration inspections process.

More generally, law enforcement personnel are trained to comply with a wide variety of Constitutional provisions, statutes, regulations, and policies, including civil rights protections that safeguard the rights of individuals. Training law enforcement personnel to comply with this robust set of individual rights effectively promotes respect for human integrity.

Regarding Dr. Sveaass' question about "especially vulnerable individuals in detention," we share her concern about the need to protect such people. Indeed, in the United States there are numerous safeguards in place for their protection. While practice varies within the many prisons in the United States, prisoners are generally classified and housed within a prison to ensure inmate safety, including consideration of real or perceived vulnerabilities. Relevant classification factors may include gender, age, medical condition, affiliations, seriousness and nature of the charge, criminal history, and history of violence. In addition, any prisoner who is subject to threats or acts of violence can be separated from the general prisoner population and, if necessary, transferred to another facility.

As a general rule, the state prison populations do not include "juveniles." However, this issue is complicated by the fact that state laws and policies vary regarding the age by which an individual may be charged with a crime as an adult, and thus incarcerated with other adult offenders. Federal law prohibits juvenile offenders held in Bureau of Prisons custody from being housed in correctional institutions or detention facilities in which they could have regular contact with adult offenders. When a juvenile must be temporarily detained in an adult facility, as, for example, immediately following arrest, it is only for a minimal period of time and the juvenile remains separated from the adult offenders within the institution.

The United States recognizes that training for staff is essential to protect individuals in custody and to prevent abuse. The federal Bureau of Prisons has a **zero tolerance policy** for any type of inmate abuse, and these strict standards are also imposed on the private providers of detention services. With respect to private facilities, the Bureau has taken a very active role in explaining its expectations to the contractors. The Bureau has, for example, sponsored national training meetings with private contract providers and has conducted a substantial amount of formal and informal training of contractors.

DHS also undertakes a number of measures to protect potentially vulnerable aliens held under its authority. For example, Special Management Units are available to allow for the administrative segregation of vulnerable detainees upon request, such as when the detainee is a victim of assault by another detainee. Importantly, while in DHS custody, children may be housed with their adult family members, and unaccompanied juveniles are kept completely segregated from adults.

Dr. Sveaass also asked about measures taken to monitor the treatment and conditions in U.S. prisons, jails, and detention facilities. For example, the United States continues to vigorously enforce the Civil Rights of Institutionalized Persons Act, which deals with these matters. Since 2001, DOJ has concluded formal investigations of 42 jails, prisons, and juvenile facilities. It is currently monitoring agreements involving 97 jails, prisons and juvenile facilities. Furthermore, DHS annually reviews every immigration detention facility's compliance with the DHS National Detention Standards.

In response to Dr. Sveaass' question regarding redress and compensation measures, prisoners in federal and state facilities have recourse through private civil actions. Remedies for these actions may involve monetary damages or equitable or declaratory relief. In addition, any inmate subject to any abuse or violence is generally provided an extensive medical exam and psychological assessment, as well as counseling. Aliens in DHS' custody who are victims of sexual assault are referred immediately to an Emergency Department in the community for medical treatment, to include collection of forensic evidence, and for mental health evaluation and crisis intervention, if necessary. Similarly, aliens who experience violence while in DHS custody or who are suspected to be victims of abuse receive medical treatment -- including off-site medical care at DHS expense, if necessary -- and are referred to a mental health professional, such as a psychiatrist, psychologist, or licensed clinical social worker for evaluation and treatment.

Regarding Dr. Sveaass' question about women giving birth in custody, we reiterate that it is not the general practice of the United States Government to shackle female prisoners during childbirth. While the use of restraints is not constitutionally prohibited, the federal Bureau of Prisons does not, as a matter of policy, employ shackles on pregnant women or those in labor. Depending on the facility, an inmate could be restrained in the unlikely event that she posed a threat to herself, her baby, or others around her.

Allegations of the misuse of shackles or other restraints in both federal and state prisons are investigated by the Department of Justice, and may be the subject of civil litigation in U.S. courts. For example, there is pending private litigation in Arkansas in the case of Shawanna Nelson. While the federal government is not involved in that case, following reports of this incident, the Department of Justice conducted an inquiry at the facility and asked the inmates about any other occurrences, and none were reported. We currently have a private Memorandum of Agreement to monitor the facility where Ms. Nelson had been held in Arkansas to make certain that no unconstitutional conditions exist for the inmates.

Dr. Sveaass asked whether the United States believes the Committee's questions about domestic violence are beyond its mandate. To clarify our position, the United States does not believe that all acts of domestic violence are necessarily beyond the scope of the Convention. Nor do we believe that all acts of domestic violence are *per se* within that scope. An issue may arise, for example, whether the acts at issue would constitute torture and whether there is the requisite involvement of public officials or persons acting in an official capacity. In order to determine whether a specific act of domestic violence might fall within U.S. obligations under the Convention, one would have to look closely at the particular facts in a given case.

In any event, in our written response to the Committee's Question 59, the United States referred the Committee to the lengthy discussion on violence against women, including domestic violence, contained in its latest periodic report to the Human Rights Committee. Additionally, the United States' written response did not purport to address possible application of Article 3 of the Convention to any particular claim of domestic violence. Whether an individual could establish eligibility for such protection based on a likelihood of severe pain or suffering endured in the context of domestic violence is an unsettled question in U.S. immigration law. Also, victims of domestic violence may be eligible for asylum under current U.S. law. As with any applicant for asylum, those individuals must satisfy the full range of requirements established by Congress before asylum may be granted.

I would also note that, under U.S. law perpetrators of acts of domestic violence are subject to a wide array of criminal sanctions and civil remedies.

Moving to additional questions of Chairman Mavrommatis, the United States appreciates the opportunity to discuss prior incidents of alleged physical abuse in Chicago, Illinois. It is our understanding that an Illinois state judge has appointed a special prosecutor to investigate allegations against Chicago Police Department Lt. Jon Burge. To date, several convictions based on allegedly coerced confessions have been overturned. This confirms a fundamental tenet of U.S. law that no one is above the law, and while the vast majority of police officers display courage in a difficult and often dangerous job, anyone who violates the rights of a citizen whom they are charged with protecting will be prosecuted to the full extent of the law. We can assure the Committee, however, that U.S. law enforcement authorities will continue to follow the state special prosecutor's progress.

We also appreciate the Chairman's question regarding what some refer to as the "death row phenomenon." As the Chairman recognized, the Convention does not prohibit the imposition of the death penalty. To this effect, the United States included an understanding with its instrument of ratification that the Convention does not "restrict or prohibit the United States from applying the death penalty consistent [with the Constitution], *including any constitutional period of confinement prior to the imposition of the death penalty.*" The Supreme Court has considered and upheld as constitutional delays between an initial death sentence and the eventual imposition of that penalty.

Despite the inapplicability of the Convention to this issue, the United States is aware of the possible psychological toll exacted by a period of incarceration before the execution of a sentence. There is a balance of interests here, as the delay is most commonly produced by the very procedural safeguards that ensure that the sentence is justly imposed. We also recognize that some believe that the segregation of inmates sentenced to death from the rest of the prison population may exacerbate this effect. There are interests to be balanced here as well -- some correctional facilities regard inmates sentenced to death as more dangerous to fellow prisoners, both because of their violent backgrounds and because of the inability of the prison to deter misconduct by

increasing the sanction. As you know, the prevention of inmate-on-inmate violence is a priority for the United States and an issue that is of concern to this Committee.

I now return the floor to Mr. Bellinger.

[John Bellinger]

Mr. Chairman, ladies and gentlemen of the Committee, this concludes our responses to the questions you posed to us at our hearing on Friday. We have made every effort to respond to these questions as comprehensively as possible within the time period allowed. If we misunderstood any of your questions, or if you wish for further clarifications on any of these points, we will be happy to receive your follow-up questions.

In closing, let me reiterate the U.S. Government's absolute commitment to complying with its obligations under the Convention Against Torture and to the implementation of policies that provide protections that extend beyond those obligations. I hope that our delegation's appearance before the Committee today and on Friday, together with the extensive written materials we have provided to the Committee, are a manifestation of that commitment and the importance we place on these issues. We hope the Committee will be able to take this information into account when you prepare your final conclusions and recommendations.

Thank you.