

JUN-25-2003 21:28

DDD GENERAL COUNSEL

703 6937278 P.02



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

June 25, 2003

The Honorable Patrick J. Leahy  
United States Senate  
Washington, D.C. 20510

Dear Senator Leahy:

I am writing in response to your June 2, 2003, letter to Dr. Rice raising a number of legal questions regarding the treatment of detainees held by the United States in the wake of the September 11, 2001, attacks on the United States and in this Nation's war on terrorists of global reach. We appreciate and fully share your concern for ensuring that in the conduct of this war against a ruthless and unprincipled foe, the United States does not compromise its commitment to human rights in accordance with the law.

In response to your specific inquiries, we can assure you that it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture. Its obligations include conducting interrogations in a manner that is consistent with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") as ratified by the United States in 1994. And it includes compliance with the Federal anti-torture statute, 18 U.S.C. §§ 2340-2340A, which Congress enacted to fulfill U.S. obligations under the CAT. The United States does not permit, tolerate or condone any such torture by its employees under any circumstances.

Under Article 16 of the CAT, the United States also has an obligation to "undertake . . . to prevent other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture." As you noted, because the terms in Article 16 are not defined, the United States ratified the CAT with a reservation to this provision. This reservation supplies an important definition for the term "cruel, inhuman, or degrading treatment or punishment." Specifically, this reservation provides that "the United States considers itself bound by the obligation under article 16 to prevent 'cruel, inhuman or degrading treatment or punishment', only in so far as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.



06/25/2003 09:29PM

JUN-25-2003 21:28

DOD GENERAL COUNSEL

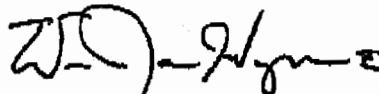
703 6937278 P.03

As your letter stated, it would not be appropriate to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism, and thus we cannot comment on specific cases or practices. We can assure you, however, that credible allegations of illegal conduct by U.S. personnel will be investigated and, as appropriate, reported to proper authorities. In this connection, the Department of Defense investigation into the deaths at Bagram, Afghanistan, is still in progress. Should any investigation indicate that illegal conduct has occurred, the appropriate authorities would have a duty to take action to ensure that any individuals responsible are held accountable in accordance with the law.

With respect to Article 3 of the CAT, the United States does not "expel, return ('refouler') or extradite" individuals to other countries where the U.S. believes it is "more likely than not" that they will be tortured. Should an individual be transferred to another country to be held on behalf of the United States, or should we otherwise deem it appropriate, United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored.

In closing, I want to express my appreciation for your thoughtful questions. We are committed to protecting the people of this Nation as well as to upholding its fundamental values under the law.

Sincerely,



William J. Haynes II