Behind the Wire

AN UPDATE TO ENDING SECRET DETENTIONS

March 2005

Written by Deborah Pearlstein and Priti Patel
About Us

For nearly 30 years, Human Rights First (formerly the Lawyers Committee for Human Rights) has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and make sure human rights laws and principles are enforced in the United States and abroad.

Acknowledgements

This report was written by Deborah Pearlstein and Priti Patel.

Others who contributed to the report are Michael McClintock, Elisa Massimino, Michael Posner, Avi Cover, Ken Hurwitz, Cynthia Burns, Stacy Kim, Charlotte Allen, Aziz Rana, Benjamin Hensler and Stephen Townley.


This report is available online at www.humanrightsfirst.org

For more information about the report contact:
Human Rights First Communications Department
Tel: (212) 845-5245
Behind the Wire

AN UPDATE TO ENDING SECRET DETENTIONS

March 2005

Written by Deborah Pearlstein and Priti Patel

Table of Contents

I. Preface......................................................................................................................i
II. The Known Unknowns .............................................................................................1
III. The Law .................................................................................................................13
IV. The Purpose Behind the Law ................................................................................17
V. Recommendations....................................................................................................25
VI. Partial List of Letters .............................................................................................27
Endnotes .....................................................................................................................29
When Human Rights First originally published its *Ending Secret Detentions* report last June, the Pentagon was just beginning a series of internal investigations related to allegations of torture and abuse by U.S. authorities in the course of global U.S. detention and interrogation operations. The Coalition Provisional Authority, established by the United States, still held power in Iraq. And the U.S. Supreme Court had heard but not yet ruled on the first three major terrorism-related cases to come before it.

The developments of the past nine months have yielded some significant insights about U.S. detention and interrogation operations around the world, and about the legality of the policies that have animated them. Almost a year since the photos from Abu Ghraib thrust U.S. detention operations into the international spotlight, this report updates our assessment of where U.S. operations stand.

The U.S. Government has taken several positive steps since last year in some effort to normalize detention operations overseas. The month after *Ending Secret Detentions* was published, and more than a year after U.S. military operations began in Iraq, the Pentagon announced the creation of a new Office of Detainee Affairs, charged with correcting basic problems in the handling and treatment of detainees, and with helping to ensure that senior Defense Department officials are alerted to concerns about detention operations raised by the International Committee of the Red Cross (Red Cross). While the effect of this new structure remains unclear, it has the potential to help bring U.S. detention policy more in line with U.S. and international legal obligations.

The Pentagon has also conducted a series of important investigations into abuses in detention and interrogation operations in Iraq, Afghanistan, and at the U.S. Naval Base at Guantanamo Bay. The reports that have been completed to date have helped to make clear that failures in planning and ambiguities in policy contributed to the confusion surrounding the U.S. system of global detentions. Legally suspect advice to the President that the key elements of the Geneva Conventions need not apply to the conflict in Afghanistan was not coupled with meaningful guidance to soldiers in the field about what rules or procedures did govern the capture and treatment of detainees. The Defense Department also used a rotating set of designations to describe the status of detainees in U.S. custody in Iraq – designations without clear meaning under the law of war or U.S. military doctrine. Pre-war planning for Iraq did not include adequate planning for detention operations, and no central agency existed to keep track of detainees in U.S. custody, as required by military regulations implementing the Geneva regime. The first step in correcting such failures is identifying their source, and while several investigations remain outstanding and others have proven incomplete, the reports to date have played some constructive role in this effort.

Perhaps most important among the positive developments, Congress enacted legislation in October 2004 requiring the Secretary of Defense to report regularly to the relevant committees in the U.S. House and Senate on the number and nationality of detainees in military custody, as well as on the number of detainees released from custody during the reporting period. The law, which tracks many of
the recommendations of the original Ending Secret Detentions report, requires the Secretary to report on the legal status of those detained – whether they are held as prisoners of war, civilian internees, or unlawful combatants – and to report whether detainees once held by the United States have been transferred to other countries. The legislation is, in many respects, declarative of existing law and policy. But its imposition of compliance deadlines – the first of which occurs on July 28, 2005 – provides an important opportunity for the Defense Department to make good on its statements in recent months that it is correcting the policy and operational failures it has identified.

Despite these welcome developments, the scrutiny of the past nine months has still failed to produce full answers to many of the most basic questions posed in our original report. How many individuals are held in U.S. custody – both by military and intelligence agencies – in connection with the “global war on terror,” and where are they held? Are “ghost detainees” still being held without access to visits from the Red Cross? Why are family members not promptly notified that their family member is in custody, or given information about their health or whereabouts? And significantly, what is the legal basis for these detentions, what limits exist on U.S. power to seize and detain, and what if any rights do the detainees have as a matter of law?

Far from diminishing in importance as U.S. missions in Afghanistan and Iraq mature, these questions are becoming more urgent as U.S. detention operations appear to be picking up permanence and pace. Last June, the Defense Department told Human Rights First that there were 358 individuals detained by the United States in Afghanistan. By January 2005, Combined Forces Command in Afghanistan reported the number was on the order of 500 – an increase of 40 percent. The numbers in Iraq are also increasing. The United States now maintains eight official detention facilities in Iraq – down from 11 at the height of the occupation last June. But in March 2005, the number of detainees officially reported held by U.S. forces in Iraq had risen to about 8,900 in permanent facilities and 1,300 in transient facilities – more than double the number in custody in October, and 60 percent more than the Coalition Press Information Center reported in custody nine months ago. In addition, the Pentagon has announced plans to build a new $25 million prison facility at Guantanamo Bay, where the rotation of detainees in and out continues, with new arrivals as recent as September 2004.

Beyond these well known facilities, and of particular concern, remain detentions in so-called “transient facilities” – field prisons designed to house detainees only for a short period until they can be released or transferred to a more permanent facility. Interviews conducted by Human Rights First with now-released detainees held by U.S. authorities in such facilities in Afghanistan and Iraq, consistent with the findings of official investigations, reveal conditions there that have been grossly inadequate. Many of the worst alleged abuses of detainees, including deaths in custody, have occurred in these facilities, where visits from the Red Cross are limited. Detainees are sometimes transferred from these facilities before they can be visited by the Red Cross, and deteriorating security conditions have compromised monitors’ ability to visit regularly or at all. While military officials have stated that detention in these facilities is now limited to 10-15 days maximum, the increasing numbers of detainees and deteriorating security conditions will make adhering to this commitment enormously challenging.

Finally, we have learned a great deal about the security policy consequences of U.S. detention operations. The Administration has argued that, faced with the unprecedented security threat posed by terrorist groups “of global reach,” it has had to resort to preventive detention and interrogation of those suspected to have information about possible terrorist attacks. According to the Defense and Justice Departments, a key purpose of these indefinite detentions is to promote national security by developing detainees as sources of intelligence. And while much of what goes on at these detention facilities is steeped in secrecy, some intelligence agents have insisted that “[w]e’re getting great info almost every day.”

But the past nine months have seen growing evidence of the adverse security consequences of the United States’ global detention system. As thirteen retired admirals and generals – including former head of the Joint Chiefs of Staff, General John Shalikashvili – noted in a letter to the Senate Judiciary Committee in January 2005, the United States’ equivocal observance of the Geneva Conventions and attendant procedures in U.S. military operations has put our own forces at greater risk, produced uncertainty and confusion in the field, and undermined the mission and morale of our troops. The lack of a central system for detainee information has
hindered U.S. efforts to obtain information from detainees. Pentagon investigations have also pointed to this confusion as contributing to the widespread torture and abuse now evident in U.S. detention operations; and the use of these tactics, in turn, has undermined intelligence and counterinsurgency efforts. As one U.S. Army intelligence officer now returned from Afghanistan has cautioned: "The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect." Indeed, polling in Iraq suggests that U.S. detention practices have helped galvanize public opinion in Iraq against U.S. efforts there. And the Pakistani Sunni extremist group Lashkar-e-Tayba has used the internet to call for sending holy warriors to Iraq to take revenge for the torture at Abu Ghraib. Our detention practices abroad – which have inflamed our enemies and alienated potential allies – continue to run contrary to all of these security imperatives.

This report reviews these and other developments in U.S. global detention operations in the past nine months. Updated since the original report, Chapter 2 summarizes what is known about the nature and status of U.S. detention facilities and those held within them. With the critical exception of new statutory reporting requirements, the law governing U.S. detention operations, discussed in Chapter 3, is largely unchanged. The U.S. policy interests that led to these laws, discussed in Chapter 4, remain as or more salient than they were last year, and have been expanded below to discuss recent insights from members of the military and national security communities. These professionals have observed first-hand how abstract policies play out in practice, and how an abiding commitment to the rule of law serves both the security interests of Americans and the values America seeks to protect.

Michael Posner and Deborah Pearlstein
New York
March 30, 2005
II. The Known Unknowns

In all, roughly 65,000 people have been screened for possible detention, and about 30,000 of those were entered into the system, at least briefly, and assigned internment serial numbers.

Maj. Gen. Donald J. Ryder
Army Provost Marshal General
February 2005

While the United States has made it clear that it has arrested and detained tens of thousands of individuals in the “war on terrorism” since September 11, 2001, it has provided scant information about the nature of this global detention system – information critical to preventing incidents of illegality and abuse. Since the release of Human Rights First’s original report about this detention system in June 2004, the number of those held briefly declined as a result of an acceleration of detainee processing following the revelations at Abu Ghraib. But these numbers are now back on the rise – and official accounting of critical information continues to be minimal and conflicting.

As was the case last year, some detention facilities remain well known – such as the U.S. Naval Base at Guantanamo Bay, Abu Ghraib in Iraq, or the U.S. Air Force Base at Bagram, Afghanistan – but there is troubling information about inadequate provision of notice to families about detainees’ location and condition, or conflicting statements about detainees’ legal status. While the Red Cross has visited these facilities, their visits have in the past been undermined contrary to the letter and spirit of binding law. In other cases, the existence of the detention facility is acknowledged by the United States – as in the case of transient detention facilities in Afghanistan – but very little else is known, particularly how many such facilities exist and the nature of the legal status and rights of those held there.

Finally, there remain cases in which the existence of the detention facility itself is not officially acknowledged but has been reported by multiple sources – for example, Peshawar, Kohat and Alizai in Pakistan; a U.S. detention facility in Jordan; and U.S. military ships, particularly the USS Bataan and the USS Peleliu. In the absence of official acknowledgment of such locations, there is of course no information on whether they are in use, how many might be held at such facilities, whether their families have been notified, why those detained there are held, or whether the Red Cross has access to them. Indeed, the Red Cross has stated publicly that it does not.

U.S. concerns for the security of lawful detention facilities and for force protection are of course appropriate. But as the Secretary of Defense has acknowledged, it is contrary to U.S. law and policy that information be withheld or classified without a basis in law. And it remains unclear how disclosing, in a comprehensive and regular manner, the following basic information endangers legitimate U.S. missions abroad:

- How many individuals are currently held by the United States at military or intelligence detention facilities in connection with the “global war on terror;”
- What legal status have these detainees been accorded (e.g., prisoners of war, civilians who engaged directly in combat, or some other status) and what process is followed to determine this status;
- Have all detainees been afforded access to Red Cross officials;
- Have the immediate families of the detainees been notified of their loved ones’ location, status, and condition of health.
Afghanistan

Bagram was a much more depressing environment [than Kandahar]. It was, in every sense of the word, a dungeon. . . . It was impossible to spend any amount of time inside that facility and not have it affect you psychologically.

Chris Mackey (pseudonym)
U.S. Army Interrogator in Afghanistan
The Interrogators
2004

Since November 2001, the United States has operated approximately 25 detention facilities at various times in Afghanistan. According to CENTCOM, the U.S. unified military command with operational control of U.S. combat forces in the region, there remain two main detention facilities in Afghanistan: the Collection Center at the U.S. Air Force Base in Bagram and a detention center at Kandahar Air Force Base. Since June 2004, the Defense Department has upgraded the detention facility at Kandahar Air Force Base from an intermediate site – where detainees awaited transportation to Bagram – to a main holding facility.

Numerous sources continue to report an additional interrogation facility under CIA control at Bagram, reportedly known as “the Salt Pit.” In early 2002, CIA officials refused military interrogators access to prisoners detained at the CIA facility; some prisoners were eventually transferred from the CIA facility to Bagram or Kandahar. In November 2002, one Afghan detainee, held in the Salt Pit, was stripped, chained to the floor and left overnight without blankets in the cold. By morning he had frozen to death. The detainee was never registered on any detainee logs, including the CIA’s “ghost detainee” logs. The fate of others held at the CIA facility remains unknown, including that of Khalid Sheikh Mohammed, who in March 2003, was reportedly transferred from the CIA interrogation facility to an undisclosed location.

In addition to these main detention facilities, CENTCOM acknowledges a series of “field detention or transient holding areas located at the forward operating bases” that are used to hold detainees until they may be transferred to a main holding facility - either to Kandahar or Bagram. The number of these transient facilities is not publicly available, and change as “units move and combat operations change.” Some press reports put the total number of these facilities at 20.

Press reports, as well as interviews of released detainees conducted by Human Rights First in August 2004, confirm that U.S. transient facilities include sites in or near Asadabad, Gereshk, Jalalabad, Tycze, Gardez, and Khost. These facilities have at times seen extensive use since early 2002, with released detainees reporting stays of up to 30 days as recent as early 2004. Several detainees held from fall 2003 to winter 2004 report being detained in small windowless rooms; toilets were in public places and provided no privacy. Others report being detained in large areas without roofs, with intense heat or cold depending on the season. More recently, in September 2004, the family of Sher Mohammed Khan traveled to a U.S. firebase near Khost to collect Khan’s body. Mr. Khan, along with his cousin, was taken by U.S. forces during a raid on his house. His brother was reportedly killed by U.S. forces during the raid. Despite reports from the family that Mr. Khan’s body showed signs of abuse, U.S. officials contend that Mr. Khan was killed while in U.S. custody by a snake bite. His cousin’s whereabouts remain unknown.

Mehboob Ahmad lives in Afghanistan. In June 2003, he was detained by U.S. military forces in Afghanistan and taken to the U.S. run detention facility in Gardez and Bagram Air Force Base. Mr. Ahmad remained in U.S. custody for approximately five months. While in detention, U.S. officials threatened Mr. Ahmad with transferring him to Guantanamo Bay. The conditions of his detention were difficult. He charges that he was detained outside for a period of weeks without any protection from the intense cold or heat and interrogated for several hours every night in order to humiliate him. He also says that U.S. officials insulted his mother, wife, and sister and implied that they would rape his wife. He was eventually released in November 2003, with papers stating that he “pose[d] no threat to the United States Armed Forces.”

Human Rights First Interview with Mehboob Ahmad, August 18, 2004.

A report by the Army Inspector General released in July 2004 recognized that conditions in these transient facilities were inadequate for holding individuals for more than two weeks.
Combined Forces Command (CFC) in Afghanistan stated in October 2004 that by rule detainees were now to be held at these transient facilities for less than 10 days, and detention beyond this period requires the approval of a commander.\textsuperscript{34} Human Rights First was unable to confirm whether U.S. personnel were complying with this rule.

In all events, the time limit may now be tested, as the number of detainees in Afghanistan has increased significantly over the last nine months. Prior to June 2004, the Defense Department had a policy of keeping the number of detainees in Afghanistan classified, citing "ongoing military operations and force protection concerns."\textsuperscript{35} In June 2004, however, the Defense Department told Human Rights First that there were 358 individuals detained by the United States in Afghanistan,\textsuperscript{36} (Other reports at the time put the number slightly higher at about 380.\textsuperscript{37}) By October 2004, CFC officials reported the number of detainees held by the United States had increased to 550.\textsuperscript{38} Despite recent statements by U.S. officials suggesting fewer detentions, the number of detainees in Afghanistan remained well above the number last summer, at approximately 500 in January 2005.\textsuperscript{39} More recently, the Combined Forces Command has reimplemented its earlier policy of keeping the numbers of detainees in Afghanistan classified.\textsuperscript{40} No reason was provided for this change in policy.\textsuperscript{41}

It is unclear where among the known facilities the growing number of detainees is held. According to the Army Inspector General, the detention facility at Bagram can house up to 275 detainees.\textsuperscript{42} The number of detainees that can be held at Kandahar is uncertain due to ongoing construction, but the Army Inspector General reported that in August 2004 the facility at Kandahar "held anywhere from 23-40 detainees."\textsuperscript{43} In light of reported conditions at the transient sites, continued use of these facilities for extended periods of detention would raise serious concerns.

Red Cross access to detainees in Afghanistan has improved somewhat since the release of the Ending Secret Detentions report in June 2004, but it remains limited. The Red Cross continues to visit detainees in Bagram, but does not meet with detainees immediately after arrest.\textsuperscript{44} The Red Cross had visited detainees at Kandahar early in the war, from December 2001 to June 2002.\textsuperscript{45} As evidence emerged that the United States continued to hold some suspects for longer periods at Kandahar, the Red Cross asked to be allowed to visit the facility again.\textsuperscript{46} After considering the request for three weeks, the Pentagon agreed to begin making arrangements to allow the Red Cross access.\textsuperscript{47}

The United States officially allows Red Cross observers to visit all detainees held for more than 15 days.\textsuperscript{48} But the time lag in Red Cross access to detention facilities is troubling in light of Pentagon findings that significant abuse has occurred in the first two weeks of detention while interrogations and screenings closer to the point of capture are conducted.\textsuperscript{49} Among reported instances was one involving 18-year-old Afghan soldier, Jameel Naseer. Press reports indicate that he was detained at the U.S. firebase in Gardez along with seven other Afghan soldiers. All eight were tortured for approximately two weeks while in Gardez. Naseer died in U.S. custody in Gardez as a result of the torture he suffered.\textsuperscript{50}

Red Cross representatives, as well as some U.S. Army officials, have also publicly expressed concern that detainees in Afghanistan continue to have no clear legal status.\textsuperscript{51} The Red Cross has emphasized that even as the periods of detention at Bagram increase, "the U.S. authorities have not resolved the questions of [the detainees'] legal status and of the applicable legal framework."\textsuperscript{52} According to Pentagon investigations into allegations of torture and abuse by U.S. officials, the lack of clarity of detainees' legal status stems from policy decisions early in the war in Afghanistan. In October 2001, CENTCOM Commander General Tommy Franks issued an appropriate order, following Army Regulations and decades of military practice, providing that the Geneva Conventions were applicable to all captured individuals in Afghanistan.\textsuperscript{53} The first detainee was seized in Afghanistan in November 2001.\textsuperscript{54} The CENTCOM policy remained in effect until February 7, 2002, when President Bush issued an order declaring that Al Qaeda detainees were not protected by the Geneva Conventions, and Taliban prisoners were not entitled to the protections of prisoner of war status under the Conventions.\textsuperscript{55}

Since then, detainees in Afghanistan have been defined variously as "unlawful combatants," "enemy combatants," or "unprivileged belligerents."\textsuperscript{56} According to the Army Inspector General, most detainees in Afghanistan are classified as civilian internees and subclassified in categories not provided for by Army doctrine, such as "Persons Under U.S. Control, Enemy Combatant, and Low-level Enemy..."
Combatant." The Army Inspector General noted that, “due to the suspension of the Geneva Conventions,” soldiers were no longer able to keep up with legal status determinations for “a large number of detainees in a short period of time as required in the Afghanistan theater.”

A separate Pentagon inquiry into torture and abuse concurred that the Administration’s policy regarding detainees was “vague and lacking.” According to the Combined Forces Command, the United States is holding detainees in Afghanistan under UN “Security Council Resolutions 1368, 1373, and 1566 directing States to take necessary steps to prevent the commission of terrorist acts”; further guidance is reportedly provided by the President, Secretary of Defense, and the Joint Chiefs of Staff. The Department of Defense has classified all “further guidance.” To date, the Administration has not publicly clarified the detainees’ legal status.

Mohammed Karim Shirullah was detained in Afghanistan by U.S. military personnel in December 2003 and remained in U.S. detention facilities in Afghanistan until his release in June 2004. Mr. Shirullah was imprisoned at the U.S.-run ‘transient facility’ in Gardez and at Bagram Air Force Base. While in detention, Mr. Shirullah says that he was placed in solitary confinement in a windowless room with limited access to other people for more than a month. At other times, he was forced to wear opaque goggles. Mr. Shirullah charges that he was severely beaten by U.S. forces. Because a resultant ear injury went untreated for six months, he lost hearing in one ear. He says that he now has difficulty sleeping without medication.

Human Rights First Interview with Mohammed Karim Shirullah, August 18, 2004.

From interviews with those released from detention facilities in Afghanistan (or interviews with their families), the United States does not appear to have followed a standard family notification policy there. For example, the family of one former detainee at Bagram Air Force Base, Saifullah Paracha (recently transferred to Guantanamo Bay), was notified of Saifullah’s detention at Bagram not by the United States, but by the Red Cross. The family of Moazzam Begg (formerly detained at Kandahar) was also informed of Begg’s detention via the Red Cross. A CFC official reached by Human Rights First was unaware of any “official” policy on family notification.

Closely linked with the requirement of notifying families of the detention of their loved ones are Army Regulations mandating the establishment of a comprehensive detainee information database. The required database is to include the personal information of each detainee, date and place of capture, “name and address of a person to be notified of the individual’s capture.” As of December 2004, no such central database had been established for Afghanistan. This apparent continuing failure comes despite military investigations finding that military personnel at points of capture and collection facilities have failed to adequately document detainees’ personal information. The Army Inspector General in particular concluded that the lack of a central system for detainee information exacerbates families’ difficulty in trying to locate their relatives and has hindered U.S. efforts to obtain information from the detainees.

Iraq

More aggressive U.S. military operations in Iraq over the past two months have generated a surge in detainees, nearly doubling the number held by U.S. forces.


The United States continues to maintain eight official detention facilities in Iraq – down from 11 at the height of the occupation last June. This number includes three main facilities in Iraq: Camp Redemption and Camp Ganci both located at Abu Ghraib near Baghdad; Camp Cropper near the Baghdad Airport; and Camp Bucca near Umm Qasr close to the Kuwaiti border. In addition, five facilities are under division or brigade command, including the 1st Infantry Division DIF; 1st Marine Expeditionary Force DIF; 1st Cavalry Division DIF; Multi-National Division-Central; and Multi-National Brigade North. (An additional facility, Camp Sheba, is run by the Multi-National Division-Southeast under British command.) By policy, detainees may be held in brigade or division facilities for up to 14 days before being released or transferred to a main facility.

In November 2004, following an increase in U.S. military engagements in Iraq, the U.S. head of Iraqi detainee operations, Maj. Gen.
Geoffrey Miller, stated that the number of detainees held by or in connection with U.S. forces in Iraq had risen to about 8,300 – more than double the number in custody in October 2004.\textsuperscript{74} Of the 8,300 detainees, according to Maj. Gen. Miller, about 4,600 were held at Camp Bucca, about 2,000 at Abu Ghraib, and about 1,700 remain in the custody of field commanders.\textsuperscript{75} By March 2005, the total number of detainees had risen again – to at least 8,900 in permanent facilities and 1,300 others held at transit facilities throughout Iraq.\textsuperscript{76} The number of total foreign detainees held in Iraq is approximately 330.\textsuperscript{77} As of December 5, 2004, multi-national forces in Iraq held 65 children under the age of 16.\textsuperscript{78} A spokesman for the multi-national forces indicated that child detainees are separated from the adult population in detention centers unless they have immediate family members detained in the same facility.\textsuperscript{79}

**Arkan Mohammed Ali** is an Iraqi citizen. U.S. military personnel detained him in Iraq over a period of almost one year, from July 2003 until June 2004. During the period of his imprisonment, he was transferred to a number of different detention facilities in Iraq, including a civil defense station and a military prison in Baghdad, and at Abu Ghraib. At least one of the detention centers in which Mr. Al-Hasnawi was detained had a “silent tent” where he says that detainees were prohibited from sleeping. According to Mr. Al-Hasnawi any individual detained in the “silent tent” appearing to fall asleep would be beaten by soldiers. In other instances, Mr. Al-Hasnawi says that he was severely beaten by U.S. officials, subjected to sleep deprivation, and threatened with transfer to Guantanamo, where he was told U.S. soldiers could kill detainees with impunity. Upon his release, Mr. Al-Hasnawi charges that a U.S. official threatened him, telling him that he would never see his family again if he spoke about the conditions of his detention.

**Human Rights First Interview with Arkan Mohammed Ali, August 11, 2004.**

The legal status accorded to U.S.-held detainees in Iraq has shifted repeatedly over the course of the conflict. In April 2003, shortly after the outset of armed conflict, the Defense Department stated flatly that the Geneva Conventions would govern detainees in Iraq – the Third Geneva Convention applying to prisoners of war and the Fourth Geneva Convention for the protection of civilians to all others.\textsuperscript{80} In May 2003, the U.S. Government seemed briefly to introduce a new category of detainees – “unlawful combatants” – a term that had been used at times to describe suspected Al Qaeda and Taliban fighters in Afghanistan.\textsuperscript{81} But the “unlawful combatant” designation was soon dropped, and on September 16, 2003, Brig. Gen. Janis Karpinski, commander of the 800th Military Police Brigade, announced that more than 4,000 people were being held as “security detainees.” This apparently new category, announced in September 2003, was separate from prisoners of war and criminal detainees. It applied to those believed to pose a threat to coalition forces in Iraq.\textsuperscript{82}

The “security detainee” designation is not mentioned in the Geneva Conventions, or in existing Army regulations. This contributes to the confusing, ambiguous – and in several respects, unlawful – procedures for the treatment and processing of detainees.\textsuperscript{83} For example, under the Fourth Geneva Convention governing the treatment of civilians by an occupying power, there are two narrow bases on which an occupying power can detain civilians: (1) if it is “necessary, for imperative reasons of security,” or (2) for criminal prosecutions.\textsuperscript{84} But, as the Army Inspector General’s report of July 2004 made clear, some fraction of those detained in Iraq were held for the purpose of intelligence collection – an impermissible basis, standing alone, for depriving Iraqis of liberty under the Geneva regime.\textsuperscript{85} The failure to follow the letter of the law – or indeed any settled policy – governing detainees’ legal status contributed to severe problems of accountability, security, and reporting now well documented in official reports.\textsuperscript{86}

The legal status of nearly 4,000 members of the Mujahideen-e-Khalq (MEK), an Iraqi-based organization seeking to overthrow the government in Iran (and listed as a terrorist organization by the U.S. State Department), was similarly unsettled. In early January 2004, Brigadier General Mark Kimmitt, Deputy Director for Coalition Operations, commented that the status of MEK detainees was being determined,\textsuperscript{87} but when Human Rights First asked the Coalition Press Information Center for information on the detainees’ status six months later in June 2004, the CPIC refused to respond.\textsuperscript{88} Then, in July 2004, immediately before the transfer of sovereignty, the Pentagon informed the MEK detainees that the MEK members were being designated “protected persons,” entitled to rights under the Fourth
Geneva Convention for the protection of civilians. Since this general determination, however, it is unclear what if any steps have been taken to resolve the status of individual MEK members still held under U.S. control.

The use of novel status designations to avoid Geneva Convention obligations extended beyond military personnel to include CIA officials working in the region. A March 2004 memorandum by Jack L. Goldsmith III, then U.S. Assistant Attorney General, sought to establish a legal basis for the transfer by U.S. military and intelligence officials of certain “protected persons” seized in Iraq to locations outside of Iraq for interrogation. Article 49 of the Fourth Geneva Convention categorically prohibits the forcible transfer or deportation of “protected persons” outside occupied territory. Nonetheless, CIA officials had begun transferring detainees in April 2003, and reportedly transferred as many as a dozen people out of Iraq.

Among these was an Iraqi detainee known as Triple X, whose transfer and interrogation was authorized by Secretary of Defense Rumsfeld. Triple X was eventually returned to Iraq for further detention, but the Red Cross was not informed of his whereabouts for eight months. The ambiguity about the application of Geneva protections in Iraq extends beyond just a handful of high-value captives. Roughly 330 foreign fighters are currently in U.S. custody in Iraq and “have been deemed by the Justice Department not to be entitled to protections of the Geneva Conventions.”

Article 49 of the Fourth Geneva Convention categorically prohibits the forcible transfer or deportation of “protected persons” outside occupied territory. Nonetheless, CIA officials had begun transferring detainees in April 2003, and reportedly transferred as many as a dozen people out of Iraq. Among these was an Iraqi detainee known as Triple X, whose transfer and interrogation was authorized by Secretary of Defense Rumsfeld. Triple X was eventually returned to Iraq for further detention, but the Red Cross was not informed of his whereabouts for eight months.

The ambiguity about the application of Geneva protections in Iraq extends beyond just a handful of high-value captives. Roughly 330 foreign fighters are currently in U.S. custody in Iraq and “have been deemed by the Justice Department not to be entitled to protections of the Geneva Conventions.” The foreign detainees, whose numbers swelled by more than 140 after U.S. troops entered Fallujah in early November, may soon “be transferred out of the country for indefinite detention elsewhere.”

If the legal status of U.S.-held detainees in Iraq was unsettled during the invasion and occupation, it remains so following the United States’ June 28, 2004 transfer of sovereignty to the Interim Government of Iraq. The United States today asserts the power to detain individuals in Iraq not as an occupying force, but pursuant to UN Security Council Resolution (SCR 1546), which recognizes Iraq’s request for ongoing security assistance and gives multinational forces “the authority to take all necessary measures to contribute to the maintenance of security . . . in Iraq.” In a letter to the President of the UN Security Council annexed to the UN Resolution, former Secretary of State Colin Powell seemed to adopt the Geneva Convention standard for detention by an occupying power, writing that the United States would interpret SCR 1546 as authorizing “internment where . . . necessary for imperative reasons of security.” He added that U.S. and allied forces in Iraq “remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.”

Despite this statement, the thousands still held in Iraq today remain governed by an ambiguous set of legal strictures. Of the approximately 8,000 prisoners of war the CPIC says were processed during the occupation, the CPIC stated in July 2004 that all had either been released, transferred to Iraqi custody to face criminal charges (as in the case of Saddam Hussein and eleven of his senior associates), or reclassified as “security detainees.” The United States itself now officially holds only “security detainees” — a category that may refer to those who may be held “for imperative reasons of security” under SCR 1546, but that remains unclear. At a minimum, the United States is bound in its detention operations by relevant U.S. law constraining government conduct, as well as by Common Article 3 of the Geneva Conventions and customary international law (barring torture and humiliation, and requiring a basic level of humane treatment).

The ambiguity about the application of Geneva protections in Iraq extends beyond just a handful of high-value captives. Roughly 330 foreign fighters are currently in U.S. custody in Iraq and “have been deemed by the Justice Department not to be entitled to protections of the Geneva Conventions.”

Sherzad Kamal Khalid was detained by U.S. forces in Iraq for approximately two months. He was incarcerated in at least two separate detention facilities— at al-Qasr al-Jumhouri and al-Qasr al-Sujood. While in U.S. detention, he developed a stomach infection, which went untreated. Upon his release, he was diagnosed with a stomach illness caused by lack of medical attention to his stomach infection and may need stomach surgery.

Human Rights First Interview with Sherzad Kamal Khalid, August 11, 2004.

During the war and occupation, Red Cross access to detainees held in U.S.-run facilities in Iraq was incomplete. While the United States afforded Red Cross access to some facilities, it hid particular prisoners within those facilities from Red Cross monitors. Some detainees were never registered on official logs as present in detention facilities at all. General Paul J. Kern, commander of U.S. Army Materiel Command, has suggested that this practice of keeping “ghost detainees,” at least once authorized by the Secretary of Defense himself, extended beyond a handful of “high-value” de-
tainees to include as many as 100 held in U.S. custody. Military personnel today deny the existence of ghost detainees in Iraq and state that all detainees in U.S. military custody are fully accounted for. Pentagon officials indicated they were unable to answer whether ghost detainees were still held by other government agencies, such as the CIA. It remains unclear whether the Red Cross has access to all detainees. Late last year, a U.S. public affairs officer with multinational forces in Iraq indicated that the Red Cross still had limited access to detainees in U.S. custody. According to a spokesperson for the multi-national forces in Iraq, Red Cross access to detainees held at facilities under division and brigade command is often limited due to concerns regarding the security of Red Cross officials in specific areas of Iraq.

Information on detainees held by the United States prior to the transfer of sovereignty on June 28, 2004, was poor – making it extremely difficult for families to find those detained. ‘Capture cards’ containing biographical information, required for prisoners of war under the Third Geneva Convention, were often incomplete, compounding the problems for the Red Cross to effectively notify families. Official databases of detainees were neither comprehensive nor accurate. They often did not contain detainees’ full names; translation rendered some names unrecognizable; and identification numbers for detainees did not correspond with lists of names. Inadequate procedures created situations where detainees could exchange identification tags with others while being moved from a collection point to a detention facility. The failure to establish a central location for detainee tracking led to confusion over the location of specific detainees.

Today, Iraqi families have only limited access to a list of detainees in U.S. custody; the lists are generally not current and names are often wrongly recorded. A Coalition Provisional Authority website providing a list of detainees in Arabic ceased operations in June 2004. An official with the Multi-National Forces in Iraq (the entity called CJTF-7 before the transfer of sovereignty) indicates a list of detainees is available through the Iraqi Assistance Center, a military-run center in Baghdad providing assistance to Iraqis and non-governmental organizations. But the list of detainees available at the Iraqi Assistance Center’s website is infrequently updated.

March 2005, the list had last been updated on October 7, 2004.
Echo, until recently, also housed detainees on trial before military commissions under the purview of the Defense Department, including Salim Ahmed Hamdan. The Defense Department has indicated plans to build a permanent detention facility on Guantanamo. The new 200-cell facility, called Camp 6, would serve portions of the detainee population currently housed in the makeshift 1000-cell Camp Delta.

After a hiatus of announced prisoner transfers to Guantanamo, the Defense Department announced on September 22, 2004, the arrival of 10 new detainees from Afghanistan. One of the new arrivals is believed to be Saifullah Paracha, whose family learned of his transfer from Afghanistan to Guantanamo Bay the same day as the Defense Department announcement of the transfer of 10 detainees. Mr. Paracha was originally detained at Bagram Air Force Base, following his July 2003 disappearance en route from Karachi, Pakistan to Bangkok, Thailand. On September 22, 2004, Mr. Paracha’s family received a call from the Red Cross informing them that Mr. Paracha had been transferred to Guantanamo Bay. Mr. Paracha’s wife recently filed a habeas corpus petition in U.S. federal court on her husband’s behalf challenging his detention.

I n June 2002, I was flown to Guantanamo Bay, Cuba. In Guantanamo Bay, Cuba, I was put in a large prison with many other men. I was held in a single cell in a cellblock of 48 men... In December 2003, I was moved from Camp Delta, and put in a new cell, this cell was enclosed in a house, and from that time I have not been permitted to see the sun or hear other people outside the house or talk with other people. I am alone except for the guard in the house. They allow me to exercise three times per week but only at night and not in the day. They gave me the Quran only but not other books. When I asked why I had been moved to this place no one told me anything until I asked for a translator because I do not speak English and the guard does not speak Arabic. The translator is supposed to come twice a week but the translator did not come except when I demanded urgently. I am alone and I do not talk with anyone in my cell because there is no one else to talk to... Being held in the cell where I am now is very hard, much harder than Camp Delta. One month is like a year here, and I have considered pleading guilty in order to get out of here.

Sworn Affidavit of Salim Ahmed Salim Hamdan, February 9, 2004, as translated by Dr. Charles P. Schmitz.

The legal status of those held at Guantanamo remains the subject of active review and dispute in an eclectic collection of military and judicial proceedings. Shortly after the first detainees’ arrival in 2002, President Bush issued a blanket statement designating those detained at Guantanamo as “enemy” or “unlawful combatants,” a status with unclear legal meaning. In February 2002, a number of family members of the detainees filed petitions for habeas corpus in U.S. federal court, challenging the government’s authority to detain prisoners indefinitely at Guantanamo Bay. In late June 2004, the U.S. Supreme Court ruled that U.S. courts indeed had jurisdiction to review the habeas challenges to the legality of the detentions. The cases were remanded to the federal district court in Washington, D.C. for consideration of the detainees’ claims on the merits. District courts hearing detainees’ habeas petitions reached opposite conclusions about the detainees’ rights on the merits. Those decisions are now on appeal and the cases are certain to be again before the Supreme Court in the coming year. Since the Supreme Court decision, more than 60 detainees have filed habeas corpus petitions in U.S. courts raising similar challenges, arguing in some cases that they are innocent victims, being in the wrong place at the wrong time.

While continuing actively to dispute the detainees’ right to full habeas proceedings in the federal courts, the Defense Department responded to the Supreme Court’s ruling by creating novel Combatant Status Review Tribunals (CSRTs) at Guantanamo Bay. According to the Defense Department, the CSRTs determine whether detainees are in fact “enemy combatants.” Once the tribunal reaches a decision, the decisions are then referred to an Admiral for approval. As of March 2005, the tribunal decided on 487 cases and 71 cases are pending review by Rear Admiral J.M. McGarrah. After spending several years in detention, twenty-two individuals so far have been determined not to be enemy combatants through this process.

Third, and separate from the CSRTs, the Pentagon has also launched annual status review tribunals – announced by the Secretary of Defense shortly before the Supreme Court heard oral arguments in the habeas case – to revisit the status each year of those who continue to be held at Guantanamo. Announced in May 2004, the annual review tribunals commenced on December 14, 2004. As of December 20,
2004, the Defense Department had completed four annual review tribunals.\textsuperscript{146}

Finally, military commission war crimes trials for a handful of detainees – first announced in November 2001 – began proceedings in four cases in August 2004.\textsuperscript{147} Human Rights First was permitted to observe proceedings in the cases during the late summer and fall of 2004, before a federal court in Washington, D.C. stayed the trials indefinitely based on the Pentagon’s failure to provide Guantanamo detainees Article 5 hearings as required by the Geneva Conventions. The federal court also cited the commissions’ failure to comply with U.S. and international fair trial standards.\textsuperscript{148} That court’s decision, too, is now pending appeal.\textsuperscript{149}

\begin{center}
\begin{tabular}{|p{1\textwidth}|}
\hline
Dear Mom, Farhat, Muneeza, Mustafa and Zahra,  

Assalam o Alaikum. I pray to Almighty God for your health and well being. May God always keep you safe and sound. I received your two letters dated Feb. 14 and 27. Happy Valentine’s Day to you too. Here all days are same. By blessing of God my health is good, but you don’t mention about your health. Please write in detail. Whenever you write place a carbon paper for your own record, I put you (sic) letters in front of me and reply, so you can also refer back to your copies in you (sic) record. I have replies (sic) Eid Activities, you must have received by now. Happy to know about kids are doing fine in their studies and other activities. Zahra’s sport noted. It is good to know her participation. Zahra, keep it up! Delays in letters is not in our control, we have to live with it. But now it is getting efficient some what. . . . May God keep you happy healthy, wealthy and long life.  

Allah Hafiz,  
Best Regards,  
Ma-Assalam  

Letter of March 24, 2003 from Saifullah Paracha to his family, as transmitted through the International Committee of the Red Cross. 

\hline
\end{tabular}
\end{center}

The existing patchwork of proceedings seems unlikely to produce a resolution of the legal status of the 500-plus Guantanamo detainees anytime soon. In the meantime, the three varieties of military proceedings putatively underway – the CSRTs, annual review tribunals, and military commission trials – fail to bring the United States in line with Geneva Convention requirements, or with the standards set forth by the Supreme Court in its ruling last summer. Under the Geneva Conventions, individuals captured during an armed conflict are either prisoners of war or civilians; both categories come with specific protections delineated in the Geneva Conventions.\textsuperscript{150} Prisoners of war are entitled, for example, to be treated humanely at all times, send and receive letters, and be free from physical or mental torture in the course of interrogations.\textsuperscript{151} Civilians who engage directly in combat but do not follow the laws of war are not entitled to prisoner of war protections, but are entitled to basic protections such as the right to be treated humanely; they may be prosecuted for crimes under the domestic laws of the captor, or for war crimes under international law.\textsuperscript{152} If there is any doubt as to the status to which a detainee is entitled, he must be afforded an Article 5 hearing (referring to Article 5 of the Third Geneva Convention) to determine, on an individual basis, the rights to which he is entitled.\textsuperscript{153}

None of the detainees currently held at Guantanamo has been afforded a standard Article 5 hearing. The CSRTs, which Human Rights First became the first independent non-governmental organization to observe this past November, are held in many cases almost three years after the initial detention, making it close to impossible for detainees to advance witnesses and evidence in support of their positions. The annual review tribunals recently began meeting. And the military commission trials – which have been plagued by translation problems, the removal of several panel members for the appearance of bias, and unequal rules for prosecution and defense – have now been suspended in part because of the same failure to hold Article 5 hearings.\textsuperscript{154}

Finally, while the Red Cross continues to be afforded access to those held in military custody at Guantanamo Bay, it has issued at least one confidential report to the U.S. Government expressing serious concerns about interrogation techniques used for some of those detained.\textsuperscript{155} According to press accounts of a confidential June 2004 Red Cross report, the Red Cross expressed concern that detainees had been subject to treatment that was “tantamount to torture.” The treatment detailed in press accounts of the confidential report included prolonged solitary confinement, exposure to loud and persistent noise, prolonged cold, and beatings.\textsuperscript{156} The account also indicated that medical personnel at Guantanamo aided military interrogations by releasing prisoners’ medical records to the interrogators.\textsuperscript{157} Immediately following press accounts of the Red Cross report, General Myers, the chairman of the Joint Chiefs of Staff, rejected concerns that interroga-
tion tactics used at Guantanamo were “tanta-amount to torture.”

At the same time, there still does not appear to be an official family notification policy for detainees held at Guantanamo Bay. Rear Admiral J.M. McGarrah, Director of the Combatant Status Review Tribunals at Guantanamo Bay, refused to confirm or deny whether Saifulullah Paracha was detained at Guantanamo Bay when asked by Mr. Paracha’s lawyer. The Red Cross has largely played the role of informing families of detainees. In Mr. Paracha’s case, his wife was informed of her husband’s transfer from Bagram Air Force Base to Guantanamo Bay by the Red Cross.

U.S. policy on communication between family members and detainees has compounded families’ fears for the health of their loved ones. Lawyers for Guantanamo detainees report that communications from detainees to family members take almost six months. Outgoing mail are reportedly blocked for detainees determined to be recalcitrant.

Incoming and outgoing mail are reportedly blocked for detainees determined to be recalcitrant. Family members cite to communication with detainees as essential; the family of Fawzi al-Odah, a prisoner at Guantanamo, reports that the messages from their son give them “an indication that [their] son is still alive.”

Jordan

Following the release of Ending Secret Detention in June describing a U.S. detention facility in Jordan, a Jordanian government spokeswoman, Asma Khader, flatly denied the report, stating that “[t]here are no American detention centers in Jordan.” CENTCOM likewise denies any knowledge of U.S.-run detention facilities in Jordan, and the CIA has not responded to Human Rights First’s requests that it clarify whether there is a CIA-run facility in Jordan. Despite this, Yossi Melman, a well-known military and security reporter, in an October 2004 article in Ha'aretz described the CIA’s holding of 11 high-level Al Qaeda prisoners at a CIA-run interrogation facility in Jordan. And investigative reporters who identified the Al Jafr Prison in the southern Jordanian desert as a CIA interrogation facility continue to stand by their story.

Pakistan

Nine months ago, Human Rights First documented the existence of detention facilities in the border region between Pakistan and Afghanistan. At the time, the report identified two facilities — one in Kohat and the other in Alizai — both near the Pakistani city of Peshawar. The Department of Defense and the CIA refused to confirm or deny the existence of these facilities. Yet at least one recently released report from the U.S. Army Criminal Investigation Command (received by Human Rights First in response to a FOIA request), reflects the existence of a U.S. detention facility in Peshawar, Pakistan, as late as July 2002. The report describes an inquiry into the abuse of an Afghan while in U.S. custody in Peshawar. The detainee alleged that he was beaten on his hands, feet and chest by U.S. forces while he was incarcerated in the Peshawar detention facility. Army investigators could not subsequently locate the detainee to verify his story, and the investigation was closed as inconclusive.

United States

Of the three known individuals held by the U.S. Government as “enemy combatants” on U.S. soil last June, two remain in military custody at the U.S. Naval Consolidated Brig in Charleston, South Carolina: U.S. citizen Jose Padilla and Qatari national Ali Saleh Kahlah al-Marri. The third designated “enemy combatant” held in Charleston, U.S. citizen Yaser Esam Hamdi, was released to Saudi Arabia after negotiations between his lawyer and the U.S. Government spurred by a U.S. Supreme Court decision (discussed below) against the Government in late June 2004.

Both Mr. Padilla and Mr. al-Marri were abruptly removed from the U.S. criminal justice system – Mr. Padilla from the Metropolitan Correctional Center in New York and Mr. al-Marri from the custody of U.S. Marshals at a federal prison in Peoria, Illinois – to military custody in June 2002 and June 2003, respectively. Jose Padilla was originally provided a public defense attorney, and his case entered into the U.S. criminal justice system. While proceedings were pending, the President declared Mr. Padilla an “enemy combatant” and ordered him transported to a military brig in South Carolina – without informing his lawyer. Mr. al-Marri was originally detained as a material witness, later charged with credit card fraud in Illinois, and declared an “enemy combatant” shortly before his criminal case was to come to trial in U.S. courts.

The designation “enemy combatant” continues to have unclear meaning in law. In addressing
the Government’s use of the term in the cases of Messrs. Padilla and Hamdi late last June, the Supreme Court stated that “[t]here is some debate as to the proper scope of ["enemy combatant"], and the Government has never provided any court with the full criteria that it uses in classifying individuals as such.”

In the case of Mr. Padilla, the Supreme Court failed to reach the merits of his claim challenging the legality of his detention; the Court ruled instead on the technical ground that his lawyers should have filed their case in South Carolina, not New York. A similar result was reached in the case of Mr. al-Marri, and his lawyers filed a habeas petition on his behalf in July 2004 in South Carolina. In February 2005, the federal court in South Carolina hearing Mr. Padilla’s case ordered the Government to bring criminal charges against Padilla, hold him as a material witness, or release him within 45 days.

In the case of Mr. Hamdi, the Supreme Court held by a vote of 8-1 that U.S. citizens seized in Afghanistan have some due process rights to challenge the factual basis for their detention before a “neutral” official. The negotiated release of Mr. Hamdi followed soon after this ruling was handed down. Under his signed release agreement, Mr. Hamdi was required to renounce his U.S. citizenship and is restricted from visiting Afghanistan, Pakistan, Iraq, Israel, Syria, the Gaza Strip, or the West Bank. In addition, he is restricted from traveling to the United States for ten years.

Mr. Padilla’s ability to communicate with the outside world improved somewhat as his case made its way through the courts. After almost two years in incommunicado detention, Mr. Padilla was granted a visit with his lawyers in March 2004 (following the Supreme Court’s decision to hear his case). Since then, Mr. Padilla has had limited meetings with his counsel, and the U.S. Government continues to permit Mr. Padilla access to his lawyers only on a discretionary basis. The government has also afforded the Red Cross access to Mr. Padilla.

Following his removal from the criminal justice system, Mr. al-Marri was denied access to his lawyer from May 29, 2003, until October 14, 2004. Mr. al-Marri’s lawyer was required to sign an agreement allowing the government to electronically monitor all meetings, review all mail, and restrict telephone access. The first meeting with Mr. al-Marri was electronically monitored, and two military personnel were present in the room the entire time.

There appears to be no clear procedure for the Government to inform families that their loved one has been designated an “enemy combatant.” Both Mr. Padilla’s and Mr. al-Marri’s lawyers informed their respective families of their detention while they were still in the criminal justice system. As far as lawyers for Mr. Padilla and Mr. al-Marri are aware, the U.S. Government did not officially inform their respective families.

Other Suspected Locations

In June 2004, Human Rights First reported that detainees were suspected to have been held by the United States in locations on the island of Diego Garcia and on U.S. ships, particularly the USS Peleliu and the USS Bataan. In early 2002, at least eight known detainees were held on the USS Bataan. The whereabouts of the majority of those detainees remains unknown. In January 2004, the U.S. Navy seized vessels carrying drugs, including one with fifteen individuals “with possible links to Al Qaeda,” and reportedly held “ten of the individuals … [seized in]…a secure, undisclosed location for further questioning by U.S. officials.”

Recent news reports support the existence of a CIA-run facility on Diego Garcia. There is also growing evidence of U.S. officials using Thailand as a way station for high-level detainees en route to undisclosed locations. Despite these new reports, the U.S. Government has provided no additional information on these sites since June 2004. The Defense Department continues to evade questions regarding the existence of these facilities. For example, when asked last July following the release of the Ending Secret Detentions report whether there were detainees held on Diego Garcia, Lawrence DiRita, Deputy Assistant Secretary of Defense for Public Affairs, stated: “I don’t know. I simply don’t know.”
III. The Law

[There] may be instances arising in the future where persons are wrongfully detained in places unknown to those who would apply for habeas corpus on their behalf. . . . These dangers may seem unreal in the United States. But the experience of less fortunate countries should serve as a warning.

Ahrens v. Clark, 335 U.S. 188 (1948) (Rutledge, J., dissenting)

In its recently released Country Reports on human rights conditions abroad, the U.S. Department of State once again criticized the practice of holding individuals incommunicado in secret detention facilities.201 For a nation founded on the principle of limited government, the reason for the criticism is not difficult to understand. As one federal court put it, rejecting efforts to secretly deport individuals from the United States: “The Executive Branch seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors.”202

For this reason, the major international treaties that govern the use of detention by the United States recognize the fundamental necessity of maintaining openness in government detention – whether of civilians or of prisoners of war, and whether they are detained in the course of international armed conflict or not. Longstanding U.S. law and policy reflect adherence to these obligations.

Under the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR), which the United States ratified more than a decade ago, makes clear that all state parties have a duty to institute procedures that will minimize the risk of torture.203 At the top of the list of required procedures are: maintaining officially recognized places of detention, keeping registers of all in custody, and disclosing the names of all individuals detained to their families and friends.204

To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.205

Such requirements are imposed because prisoners are “particularly vulnerable persons,” who can easily become subject to abuse. In fact, incommunicado detention, especially by denying individuals contact with family and friends, violates the ICCPR obligation to treat prisoners with humanity.206 States are thus required to implement provisions “against incommunicado detention” that deter violations and ensure accountability.207

The Human Rights Committee (HRC), the independent ICCPR monitoring body (whose members are human rights experts elected by state parties), has consistently recognized the import of these obligations. For example, in El-Megreisi v. Libya, the HRC found that the Libyan government in detaining an individual for six years, the last three of which were incommunicado and at an unknown location, had violated the ICCPR’s prohibition of torture and its requirement that prisoners be treated with dignity.208 This, despite the fact that the family
knew that the detainee was alive and his wife had been allowed to visit him once. The HRC nonetheless found that the detainee’s prolonged incommunicado imprisonment, as well as the government’s refusal to disclose El-Megreisi’s whereabouts, amounted both to arbitrary detention and to a state failure to minimize the risks of torture.209

Under the Geneva Conventions

The Geneva Conventions of 1949, which the United States has also signed and ratified, are the primary instruments of international humanitarian law protecting all those caught up in the course of armed conflict. The U.S. Government has generally taken the position that the Geneva Conventions apply in the U.S. armed conflict in Iraq.210 Since the transfer of power to the Interim Government of Iraq, former Secretary of State Colin Powell has asserted the continuing application of the Geneva Conventions to the actions of U.S. forces in Iraq.211 Despite this, both conflicting public statements, discussed in Chapter 2, and internal Administration dispute over the applicability of these treaties, have left the Conventions’ role in these conflicts deeply unclear.212

The Administration’s position regarding the applicability of the Geneva regime in Afghanistan has been even less clear. In press statements in early January 2002, Defense Secretary Donald Rumsfeld stated that as a matter of policy, but not of legal obligation, the United States intended to treat detainees from Afghanistan in a manner “reasonably consistent with the Geneva Conventions,” and would “generally” follow the Geneva Conventions, though only to “the extent that they are appropriate,” as “technically unlawful combatants do not have any rights under the Geneva Convention.”213 Following an internal review of this position at the urging of former Secretary of State Colin Powell (concerned about the potential effect on U.S. forces of a blanket renunciation of the Geneva Conventions), the Administration modified its position slightly.214 On February 7, 2002, White House Spokesman Ari Fleischer announced President Bush’s decision “that the Geneva Convention applies to members of the Taliban militia, but not to members of the international al-Qaeda terrorist network.”215 Despite the stated application of the Conventions, however, the Administration determined that Taliban fighters were not eligible for prisoner of war status because the government had violated international humanitarian law; this allegation had never previously stopped the United States from affording enemy government forces prisoner-of-war protections.

The U.S. obligation to record and account for all wartime detainees is clear. Under the Third Geneva Convention, prisoners of war are to be documented, and their whereabouts and health conditions made available to family members and to the country of origin of the prisoner.216 The Fourth Geneva Convention (governing the treatment of civilians) establishes virtually identical procedures for the documentation and disclosure of information concerning civilian detainees.217 These procedures are meant to ensure that “[i]nternment . . . is not a measure of punishment and so the persons interned must not be held incommunicado.”218

The disclosure required by the Geneva Conventions is done in the first instance through a system of capture cards. “Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card . . . informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.”219 The United States’ failure to observe the capture card system in Iraq was the subject of Red Cross criticism in its 2004 report.220

The Central Agency described in Article 123 is a body meant to be established in a neutral country whose purpose is “to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend.”221 The Red Cross has historically established the Central Agency and “[w]henever a conflict has occurred since the Second World War, the International Committee has placed the Agency at the disposal of the belligerents, and the latter have accepted its services.”222

U.S. Domestic Law and Policy

[The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the


House of Representatives a report for the preceding 12-months containing the following . . . (A) The best estimate of the Secretary of Defense of the total number of detainees in the custody of the Department as of the date of the report. (B) The best estimate of the Secretary of Defense of the total number of detainees released from the custody of the Department during the period covered by the report. (C) An aggregate summary of the number of persons detained as enemy prisoners of war, civilian internees, and unlawful combatants, including information regarding the average length of detention for persons in each category. (D) An aggregate summary of the nationality of persons detained. (E) Aggregate information as to the transfer of detainees to the jurisdiction of other countries, and the countries to which transferred.

Enacted October 28, 2004

U.S. domestic law and policy have long required clear accounting and processing of detainees captured by U.S. Armed Forces, as well as the provision of Red Cross access to prisoners, in order to ensure that U.S. Geneva Convention obligations have been fulfilled. These principles are enshrined in binding military regulations and field manuals dating back half a century. In addition, in response to revelations of a disturbing pattern of noncompliance with these principles in U.S. global detention operations since September 11, the past nine months have seen both Congress and the U.S. Army take steps to reaffirm these obligations. Detainee accounting and reporting requirements are clear.

Army regulations in place before the start of the war in Afghanistan provide detailed procedures for accounting for detainees in U.S. custody. Defense Department Directive 2310.1 – currently in force – affirms the United States’ obligation to comply with the Geneva Conventions and establishes a framework for information disclosure.\(^{(223)}\) Under this Directive, the Secretary of the Army must develop plans for “the treatment, care, accountability, legal status, and administrative procedures to be followed about personnel captured or detained by, or transferred from the care, custody, and control of, the U.S. Military Services.”\(^{(224)}\) In particular, the Secretary of the Army is required to plan and operate a prisoner-of-war and civilian internment information center to comply with the United States’ Geneva Convention obligations (described above), and “serve to account for all persons who pass through the care, custody, and control of the U.S. Military Services.”\(^{(225)}\) The Undersecretary of Defense for Policy (a position currently held by Douglas Feith) has “primary staff responsibility” for overseeing the detainee program.\(^{(226)}\)

To implement its obligations under Article 122 of the Third Geneva Convention, requiring each detaining power to establish a national information bureau,\(^{(227)}\) and to fulfill Directive 2310.1, the Army established the National Prisoner of War Information Center (NPWIC).\(^{(228)}\) According to binding Army Regulation 190-8, the NPWIC is charged with maintaining records for both POWs and detained civilians.\(^{(229)}\) The center functioned during the 1991 Gulf War, and has been used in subsequent U.S. military operations. As an information processor, the NPWIC ensures full accounting of persons who fall into U.S. hands. It does not make decisions regarding whether an individual is entitled to prisoner of war or other legal status.\(^{(230)}\)

In April 2003, W. Hays Parks, Special Assistant to the Army JAG, maintained that the NPWIC would be employed in Iraq: “Once the theater processing is accomplished, those reports are sent back here to the National Prisoner of War Information Center, which is run under the Army Operations Center. Those lists are all collated, put together and we ensure that we have proper identification, the best information we can get from that. And thereafter, that information is forwarded by the United States government to the International Committee of the Red Cross.”\(^{(231)}\)

But in his investigative report, Major General Antonio Taguba noted that such regulations had not been fully complied with, since the reporting systems – such as the National Detainee Reporting System (NDRS) and the Biometric Automated Toolset System (BATS) – which traditionally provide information to the NPWIC were “underutilized and often [did] not give a ‘real time’ accurate picture of the detainee population due to untimely updating.”\(^{(232)}\) An investigative report into prisoner abuse in Iraq by former Secretary of Defense James Schlesinger also found that the failure to implement a comprehensive detainee collection database created a large backlog where “some detainees had been held 90 days before being
interrogated for the first time.” 233 In some cases, the release of innocent detainees took significantly longer because of inadequate accounting systems and general backlogs. 234

More than a year after military operations began in Iraq, on July 16, 2004, the Pentagon announced the creation of an Office of Detainee Affairs (ODA) within the Office of the Undersecretary of Defense for Policy to advise the Secretary of Defense on policy and strategy in the area. 235 The ODA is charged with correcting such basic operational problems for detainees, working with policy makers on torture and interrogation policy, and building relationships with Congress, other countries, and non-governmental organizations. According to an ODA official, the ODA has instituted new policies and procedures for addressing concerns raised in Red Cross reports to higher levels of the Defense Department. 236 The effectiveness of these new procedures is now being tested.

In addition, in the wake of rising counterinsurgency activities in Iraq, the U.S. Army published a new, interim field manual on counterinsurgency operations in October 2004. 237 The interim manual explains that it “establishes doctrine (fundamental principles and [tactics, techniques, and procedures]) for military operations in a counterinsurgency environment. It is based on existing doctrine and lessons learned from recent combat operations.” 238 Among other things, the interim manual affirms the obligation to account for all in U.S. custody – whatever their legal status. “Detaining personnel carries with it the responsibility to guard, protect, and account for them.” 239

For this and other purposes, the interim manual specifies as “critical” the need for “[c]learly documenting the details surrounding the initial detention and preserving evidence.” 240 Documentation to be recorded must be “detailed and answer the six W’s – who, what, when, where, why, and witnesses.” 241

Congress also took action in October 2004, enacting as part of the Ronald W. Reagan National Defense Authorization Act provisions requiring the Secretary of Defense to report to Congress on U.S. compliance with these basic standards. The statute requires the Secretary, by the end of March 2005, to prescribe detailed regulations for Defense Department personnel, including contractors, to ensure that all detainees held in Defense Department custody receive humane treatment in accordance with U.S. and international law. Among other things, the regulations must provide for training in the applicable law of war, including the Geneva Conventions; establish standard operating procedures for detainee treatment; ensure that all detainees receive information in their own language regarding the protections due them under the Geneva Conventions; and provide for periodic announced and unannounced inspections of detention facilities. 242 The new law also requires the Secretary to provide to the Senate and House Armed Services Committees, by July 28, 2005, and annually thereafter, a report disclosing investigations into violations of domestic or international law regarding detainee treatment; and general information on foreign national detainees in Defense Department custody, including the numbers, nationalities, and average length of detention of such detainees, as well as information regarding detainees who have been released during the year and detainees transferred to the jurisdiction of other countries. 243

Finally, since 1956, the Army’s field manual has explicitly recognized the Red Cross’s right to detainee information and access, and its special role in ensuring Geneva Conventions compliance. The manual stipulates: “The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.” 244 The Navy’s operations handbook likewise authorizes the Red Cross to monitor “the treatment of prisoners of war, interned civilians, and the inhabitants of occupied territory.” 245 It describes the Red Cross’s special status and access to detainees:

[The Red Cross’s] principal purpose is to provide protection and assistance to the victims of armed conflict. The Geneva Conventions recognize the special status of the Red Cross and have assigned specific tasks for it to perform, including visiting and interviewing prisoners of war, providing relief to the civilian population of occupied territories, searching for information concerning missing persons, and offering its “good offices” to facilitate the establishment of hospital and safety zones. 246

Army regulations make even more explicit the rights of detainees, both civilians and combatants, to contact the Red Cross and ensure adequate access and disclosure. With respect to detained combatants, prisoner representatives have the right to correspond with the Red Cross. 247 Similar internee committees representing detained civilians also have rights to unlimited correspondence with the Red Cross.
“Members of the Internee Committee will be accorded postal and telegraphic facilities for communicating with . . . the International Committee of the Red Cross and its Delegates. . . . These communications will be unlimited.”
IV. The Purpose
Behind the Law

It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general.

Former Secretary of State Colin Powell
Internal Memo on Disregarding Geneva Conventions in Afghanistan
January 26, 2002

The U.S. global detention practices described above have undermined both the protection of human rights, and the U.S. interest in national security. The United States has failed to meet its obligation to keep registers of all in custody, and to disclose the names of all individuals detained to their families and friends. The United States has also failed to fulfill its obligation under longstanding U.S. policy and law to afford the Red Cross access to all detainees held in the course of armed conflict. And the United States has failed to afford every individual in its custody some recognized legal status – some human rights – under law.

The laws requiring these protections were enacted in part to meet essential policy interests – and our failure to adhere to them has jeopardized these interests. The revelations of torture at Abu Ghraib and elsewhere in Iraq and Afghanistan have made clear anew, for example, that unregulated and unmonitored detention and interrogation practices invite torture and abuse. Moreover, as military leaders have emphasized in the wake of these revelations, these abuses put the United States’ own forces abroad at greater risk of suffering abuses even more serious than those they already face at the hands of a violent enemy. Perhaps most important to U.S. national security, the secrecy surrounding the U.S. global detention system and the abuses it has produced have also seriously undermined the United States’ ability to “win the hearts and minds” of the global community – a goal essential to effective intelligence gathering in the short term, and to defeating terrorism over the long term. This chapter discusses these policy interests that underlie the law on detention.

Current Practice Sets Conditions for Torture & Abuse

The U.S. government and military capitalizes on the dubious status [as sovereign states] of Afghanistan, Diego Garcia, Guantanamo Bay, Iraq and aircraft carriers, to avoid certain legal questions about rough interrogations. Whatever humanitarian pronouncements a state such as ours may make about torture, states don’t perform interrogations, individual people do. What’s going to stop an impatient soldier, in a supralegal location, from whacking one nameless, dehumanized shopkeeper among many?

Unnamed U.S. Intelligence Officer, as quoted in Newsweek
May 17, 2004

When governments cloak detention in a veil of secrecy, by holding prisoners incommunicado or at undisclosed locations, the democratic system of public accountability cannot function. As former UN Special Rapporteur on Torture Nigel Rodley has written, the more hidden detention practices there are, the more likely that “all legal and moral constraint on official behavior [will be] removed.”
These concerns produced a series of international standards governing detention, expressed in the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). In order to maintain public accountability and minimize the chance for abuse, international law requires families to be notified of both arrest and detainee whereabouts. For the same reason, governments must hold detainees only in publicly recognized detention centers and maintain updated registers of all prisoners. By ensuring that state detention practices are subject to public scrutiny, these disclosure requirements constrain state violence and provide basic safeguards for prisoner treatment.

Without these protections, the safety and dignity of prisoners are left exclusively to the discretion of the detaining power – circumstances that have repeatedly produced brutal consequences. For instance, during Saddam Hussein’s rule of Iraq, secrecy was an essential component of detention practices. Individuals were arbitrarily arrested; tracing their whereabouts was a virtual impossibility. As Amnesty International reported in 1994: “Usually families of the ‘disappeared’ remain[ed] ignorant of their fate until they [were] either released or confirmed to have been executed.” Thus, in the March 1991 uprising after the first Gulf War, “opposition forces broke into prisons and detention centres” across northern and southern Iraq and released hundreds of prisoners “held in secret underground detention centres with no entrance or exit visible.”

The United States’ own recent experiences provide a more apt case in point. U.S. detention officials have used various unlawful interrogation techniques on Iraqi, Afghan, and Guantanamo prisoners, including severe beatings, humiliation, nudity, manipulating detainees’ diets, imposing prolonged isolation, military dogs for intimidation, exposure to extreme temperatures, sensory deprivation, and forcing detainees to maintain “stress positions” for prolonged periods. More than 130 U.S. soldiers have been charged or punished in cases involving abuse of prisoners in Iraq, Afghanistan or Guantanamo Bay, with scores of allegations still under investigation. The Red Cross reported in June 2004 that detention and interrogation practices at Guantanamo Bay were “tantamount to torture.” Through FOIA litigation, the public has gained access to hundreds of documents detailing abuses including food deprivation, gagging, and sexual abuse from as recently as July 2004. In a number of documented instances, joint task forces comprising different military branches and government agencies have threatened military members who sought to report or document abuses.

Policies of secrecy and non-disclosure have also made subsequent investigations into wrong-doing – and efforts to hold violators accountable – more difficult. Investigations into reports of abuse and even deaths of detainees in custody have been scattered and insufficient. For example, the New York Times reported on two deaths in U.S. custody at Bagram Air Force that occurred in December 2002; according to the Times, the Army pathologist’s report indicated the cause of death was “homicide,” a result of “blunt force injuries to lower extremities complicating coronary artery disease.” The U.S. Army Criminal Investigation Command completed its investigations into the deaths almost two years after the deaths occurred. The investigation identified 28 military personnel with possible culpability. As of March 2005, only two U.S. soldiers had been charged for the death of the two men in U.S. custody. And none of the released investigations has examined the role the CIA played in detention operations.

The limits on oversight by the Red Cross also help set conditions for torture and abuse. The Red Cross meets with detainees and monitors general prison conditions, bringing to the attention of senior officials conditions or treatment that violate U.S. legal obligations. The Red Cross specifically alerted military authorities in Iraq to the abusive treatment of detainees, indicating the role military intelligence played in the abuses in Abu Ghraib. This notification led to some of the military’s first disciplinary actions regarding detainee treatment. Limiting Red Cross access to detainees increases the likelihood that mistreatment will continue.

Such experiences underscore the urgency of adhering to disclosure requirements regarding detention practices. They also make the recency of the United States to disclose detainees’ whereabouts or numbers particularly disconcerting. By keeping its practices hidden from view, the United States creates conditions ripe for the torture and abuse now in evidence.
Current Practice Undermines Protections for Americans Abroad

*It is critical to realize that the Red Cross and the Geneva Conventions do not endanger American soldiers, they protect them. Our soldiers enter battle with the knowledge that should they be taken prisoner, there are laws intended to protect them and impartial international observers to inquire after them.*

Senator John McCain
*Wall Street Journal Commentary*
*June 1, 2004*

The United States’ official compliance with the Geneva Conventions since World War II has been animated by several powerful concerns that remain equally important in the struggle against terror. First and foremost is the belief that American observance of rule-of-law protections drives our enemies to reciprocate in their treatment of American troops and civilians caught up in conflicts overseas. As the U.S. Senate recognized in ratifying the Conventions:

> If the end result [of ratification] is only to obtain for Americans caught in the maelstrom of war a treatment which is 10 percent less vicious than what they would receive without these conventions, if only a few score of lives are preserved because of the efforts at Geneva, then the patience and laborious work of all who contributed to that goal will not have been in vain.268

Secretary of State John Foster Dulles agreed that American “participation is needed to . . . enable us to invoke [the Geneva Conventions] for the protection of our nationals.”269 And Senator Mike Mansfield added that while American “standards are already high:”

> The conventions point the way to other governments. Without any real cost to us, acceptance of the standards provided for prisoners of war, civilians, and wounded and sick will insure improvement of the condition of our own people.270

The fundamental self-interest behind ratification of the Geneva Conventions has proven salient in conflicts preceding the “war on terrorism.” General Eisenhower, for example, explained that the Western Allies treated German prisoners in accordance with the principles of international humanitarian law because “the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing.”271

During the Vietnam War, North Vietnam publicly asserted that all American prisoners of war were war criminals, and thus not entitled to the protections of the Geneva Conventions.272 Still, the United States applied the Geneva Conventions’ principles to all enemy prisoners of war – both North Vietnamese regulars and Viet Cong – in part to try to ensure “reciprocal benefits for American captives.”273 U.S. military experts have made clear their belief that American adherence to the Geneva Conventions in Vietnam saved American lives:

> [A]pplying the benefits of the Convention to those combat captives held in South Vietnam did enhance the opportunity for survival of U.S. service members held by the Viet Cong and North Vietnamese. While the enemy never officially acknowledged the applicability of the Geneva Convention, and treatment of American POWs continued to be brutal, more U.S. troops were surviving capture. Gone were the days when an American advisor was beheaded, and his head displayed on a pole by the Viet Cong. On the contrary, the humane treatment afforded Viet Cong and North Vietnamese Army prisoners exerted constant pressure on the enemy to reciprocate, and the American POWs who came home in 1973 survived, at least in part, because of [that].274

The U.S. government’s allegiance to basic international law obligations continued during the 1991 Gulf War, in which the U.S. Armed Forces readily afforded full protection under the Geneva Conventions to the more than 86,000 Iraqi prisoners in its custody.275

It is in large measure for the Conventions’ role in protecting America’s own that many former American prisoners of war today support the U.S. government’s adherence to the principles of the Geneva Conventions. As Senator (and former prisoner of war) John McCain has explained:

> The Geneva Conventions and the Red Cross were created in response to the stark recognition of the true horrors of unbounded
war. And I thank God for that. I am thankful for those of us whose dignity, health and lives have been protected by the Conventions . . . . I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.276

Even in the context of the recent violence, Senator McCain reaffirmed this belief that our failure to abide by our own obligations puts our troops in danger abroad: “While our intelligence personnel in Abu Ghraib may have believed that they were protecting U.S. lives by roughing up detainees to extract information, they have had the opposite effect. Their actions have increased the danger to American soldiers, in this conflict and in future wars.”277

Commenting on recent events in the “war on terrorism,” former U.S. Ambassador to Vietnam (and former prisoner of war) Pete Peterson agreed, explaining: “There can be no doubt that the Vietnamese while consistently denying any responsibility for carrying out the provisions of the Geneva Accords, nevertheless tended to follow those rules which resulted in many more of us returning home than would have otherwise been the case.”278

Current Practice Undermines U.S. Intelligence and Counterinsurgency Efforts

The abuses at Abu Ghraib are unforgiveable not just because they were cruel, but because they set us back. The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect.

Chris Mackey (pseudonym), U.S. Army Interrogator in Afghanistan
The Interrogators
2004

The Interim Field Manual on mounting a counterinsurgency published by the U.S. Army in October 2004 highlights the detrimental effect of perceived lawlessness on efforts to quell an insurgency: “Those who conduct counterinsurgency operations while intentionally or negligently breaking the law defeat their own purpose and lose the confidence and respect of the community in which they operate.”279 Indeed, few would argue that obtaining intelligence is essential to a successful counterinsurgency operation, and cultivating strong ties in a local population helps secure that intelligence.

Yet the effect of the secrecy and uncertainty surrounding U.S. detention operations has been to deeply undermine these efforts. As Brigadier General Mark Kimmitt, spokesman for the U.S. military in Iraq, acknowledged last May: “The evidence of abuse inside Abu Ghraib has shaken public opinion in Iraq to the point where it may be more difficult than ever to secure cooperation against the insurgency, that winning over Iraqis before the planned handover of some sovereign powers next month had been made considerably harder by the photos.”280

For the thousands who have been held in U.S. custody and then released, for their families and communities, the conduct of detention operations is inconsistent with this security interest.

For the detainees themselves, many of whom are eventually released back into the general population, it has been long understood by U.S. courts and psychiatric experts that indefinite detention and prolonged isolation can produce devastating mental and physical health effects. Experience in both criminal punishment and wartime internment over the past two centuries has shown that prolonged solitary confinement can produce confusion, paranoia, and hallucinations, as well as severe agitation and impulsive violence (including suicide) — effects that can be long term.281 Uncertainty while awaiting punishment, and the mental anxiety that accompanies an indeterminate fate, can be similarly destructive.282 It was for precisely this reason — the effectiveness of indefinite detention in provoking anxiety and psychiatric instability — that the CIA included them among its principal techniques of coercion in now repudiated manuals on interrogation from the 1960s.283

Many released detainees claim to continue to suffer from severe psychological symptoms due to their imprisonment.284 Detainees released from Guantanamo Bay also report debilitating physical conditions, including chronic pain in the knees and back due to treatment while in detention.285 Released British detainee, Ruhel Ahmed, suffers from “permanent deterioration of his eyesight.”286
The effects of such detention on the families of those held have been similarly severe. For example, the New York Times reported of some of the families of Iraqi detainees:

Sabrea Kudi cannot find her son. He was taken by American soldiers nearly nine months ago, and there has been no trace of him since. “I’m afraid he’s dead,” Ms. Kudi said. Lara Waad cannot find her husband. He was arrested in a raid, too. “I had God – and I had him,” she said. “Now I am alone.” … Ms. Kudi, whose son, Muhammad, was detained nearly nine months ago, has been to Abu Ghraib more than 20 times. The huge prison is the center of her continuing odyssey through military bases, jails, assistance centers, hospitals and morgues. She said she had been shoved by soldiers and chased by dogs. “If they want to kill me, kill me,” Ms. Kudi said. “Just give me my son.”

Indeed, the Army Inspector General concluded late last year that the lack of a central system for detainee information had exacerbated families’ difficulty in trying to locate their relatives and hindered U.S. efforts to obtain information from the detainees.

For a conflict in which winning the trust of the local population is a critical security imperative, the phenomena of prolonged detention and disappeared family members are catastrophic for U.S. security interests.

Current Practice Weakens American “Soft Power” in the World

We are a nation of laws. And to the extent that people say, “Well, America is no longer a nation of laws,” that does hurt our reputation. But I think it’s an unfair criticism.

President George W. Bush, quoted in The Washington Post
December 21, 2004

The final report of the National Commission on Terrorist Attacks Upon the United States emphasized that military power is only one of a set of critical tools in the nation’s toolbox to reduce the chances of more terrorist attacks on U.S. soil. Other means – what some have called “soft power” – include diplomatic and economic measures, cultural and educational exchange, and the ability to credibly leverage moral and popular authority. Former Secretaries of State James Baker and Warren Christopher wrote together to highlight the security relevance of these tools in the Washington Post: “[A]ctivities such as economic development and democratization abroad are not simply good things to do as members of the international community; they are strategic imperatives that address the link between a failed state and our own country’s vulnerability to foreign threats.”

And indeed, the United States has devoted substantial resources to so-called public diplomacy in Muslim-majority countries thought to be strategically important in the “war on terrorism.” Since September 11, 2001, both the State Department and the U.S. Broadcasting Board of Governors (BBG) – the agency responsible for non-military U.S. international broadcasting – have expanded their efforts in the Middle East. BBG’s budget for fiscal year 2004, for example, includes more than $42 million for radio and television broadcasting to the Middle East. Since 1999, the BBG has reduced the scope of operations of more than 25 language services and reallocated about $19.7 million toward Central Asia and the Middle East, including $8 million for Radio Farda service to Iran.

The United States’ ability to deploy these tools effectively depends critically on visible demonstration that the United States’ deeds match its words in supporting democracy and human rights. Responding to the State Department’s recently released human rights country reports, China, Russia, Venezuela, and Mexico all questioned the United States’ standing to criticize other countries in light of the torture and abuse in U.S. detention facilities. In Indonesia, a spokesman for the Foreign Affairs Ministry stated: “The U.S. government does not have the moral authority to assess or act as a judge of other countries, including Indonesia, on human rights, especially after the abuse scandal at Iraq’s Abu Ghraib prison.” The extent to which the United States’ detention practices represent a failure in this regard is also painfully evident when one compares the Administration’s statements to revelations about acts of torture by U.S. personnel:

- On March 23, 2003, after American soldiers were captured and abused in Iraq, the United States condemned Iraqi treatment of American prisoners as violating the Geneva Conventions and contrasted it to the United States’ own treatment of prisoners it had taken. President Bush
demanded that American prisoners “be treated humanely... just like we’re treating the prisoners that we have captured humanely.”

- On June 26, 2003, President Bush affirmed the United States’ commitment not to torture security suspects or interrogate them in a manner that would constitute “cruel and unusual punishment.” In June 2004, the Red Cross reported that U.S. treatment of some detainees at Guantanamo Bay was “tantamount to torture.”

- On April 28, 2004, Supreme Court Justice Ruth Bader Ginsburg asked U.S. Deputy Solicitor General Paul Clement how the Court could be sure that government interrogators were not torturing detainees in U.S. custody. Clement insisted that the Court would just have to “trust the executive to make the kind of quintessential military judgments that are involved in things like that.” That evening, CBS News aired the first photographs of torture from Abu Ghraib.

- On June 22, 2004, then White House Counsel, Alberto Gonzales reiterated at a press conference that “in the war against al Qaeda and its supporters, the United States will follow its treaty obligations and U.S. law, both of which prohibit the use of torture. And this has been firm U.S. policy since the outset of this administration and it remains our policy today.” At Mr. Gonzales’ confirmation hearings for his nomination to be Attorney General, he refused to acknowledge that the President was invariably bound by federal laws banning torture and other cruel treatment.

Unsurprisingly, U.S. detention operations appear to be inflaming those whose aid we most need. As a CATO Institute military analyst explained, “[a]fter Abu Ghraib, [the U.S.] do[es not] have a level of trust and credibility with many people inside the Arabic and Islamic world. This certainly doesn’t help us make our case with them.” Polling in Iraq last summer confirms this, finding that U.S. detention practices have helped galvanize public opinion in Iraq against U.S. efforts there. Muslim clerics have railed against the United States for the abuse of Iraqi captives at Abu Ghraib prison. As one Muslim preacher was quoted saying: “No one can ask them what they are doing, because they are protected by their freedom... No one can punish them, whether in our country or their country. The worst thing is what was discovered in the course of time: abusing women, children, men, and the old men and women whom they arrested randomly and without any guilt. They expressed the freedom of rape, the freedom of nudity and the freedom of humiliation.”

Instead of being able to deploy U.S. power to promote democracy abroad, U.S. policies that promote secrecy and lack of accountability have encouraged authoritarian regimes around the globe to commit abuses in the name of counter-terrorism – abuses that undermine efforts to promote democracy and human rights. These regimes self-consciously invoke the very language the United States uses to justify such security policies in order to suppress lawful dissent and quell political opposition in their own countries. To cite a few examples:

- In Georgia (where Former President of Georgia, Eduard Shevardnadze stated in December 2002, after coming under criticism for colluding with Russia in the violation of the human rights of Chechens, that “international human rights commitments might become pale in comparison with the importance of the anti-terrorist campaign”);

- In Colombia (where the government of President Alvaro Uribe has stated that its struggle against guerrilla forces is “working to the same ends” as the U.S.-led global war on terrorism. President Uribe has accused human rights defenders of “serving terrorism and hiding in a cowardly manner behind the human rights flag”);

- In Malaysia (where in September 2003, Justice Minister Dr. Rais Yatim, justified the detention of more than 100 alleged terrorists held without trial by citing the U.S. government’s detention of individuals at Guantanamo Bay);

- In Zimbabwe (where President Robert Mugabe, voicing agreement with the Bush Administration’s policies in the “war on terrorism,” declared foreign journalists and others critical of his regime “terrorists” and suppressed their work);
• In Eritrea (where the governing party arrested 11 political opponents, has held them incommunicado and without charge, and defended its actions as being consistent with United States' actions after September 11). 309

That we are now used as an example of unchecked government power by the most repressive regimes in the world does not make the United States responsible for those regimes' repression. But it is one of the surest signs that the United States is losing the critical moral high ground that is essential to achieving success against terrorism. And all the advertising dollars in the world will not be able to restore our moral authority once it is lost.
V. Recommendations

The past nine months have revealed a fair amount about U.S. policy and practice of detention and interrogation in the "war on terrorism." Despite a number of positive steps taken by the U.S. Government, there remain outstanding questions regarding the status of those held in U.S. detention facilities around the world. The U.S. Government needs to provide a baseline accounting to the Red Cross and the families of those detained of the number, nationality, legal status, and general location of all those the United States currently holds. And it must establish the legal basis for continuing to hold the thousands detained, and identify and protect those detainees’ rights under law.

Human Rights First thus calls on the Bush Administration to take the following steps:

1. Disclose to Congress as required under recently enacted legislation the location of all U.S.-controlled detention facilities worldwide, and provide a full and regular accounting of the number of detainees, their nationality, and the legal basis on which they are being held.

2. Order a thorough, comprehensive, and independent investigation of all U.S.-controlled detention facilities, and submit the findings of the investigation to Congress.

3. Take all necessary steps to inform the immediate families of those detained of their loved ones’ capture, location, legal status, and condition of health.

4. Immediately grant the Red Cross access to all detainees being held by the United States in the course of the “global war on terrorism.”

5. Publicly reject suggestions by Administration lawyers that domestic and international prohibitions on torture and cruelty do not apply to the President in the exercise of his commander-in-chief authority.

6. Investigate and prosecute all those who carried out acts of torture and other cruel, inhuman or degrading treatment in violation of U.S. and international law, as well as those officials who ordered, approved or tolerated these acts.

7. Publicly disclose the status of all pending investigations into allegations of mistreatment of detainees and detainee deaths in custody.
IV: Partial List of Letters

Since June 2004


Endnotes


8 FINAL REPORT OF THE INDEP. PANEL TO REVIEW DOD DETENTION OPERATIONS, August 2004 [hereinafter Schlesinger Report], at 11.

9 E-mail from LTC Pamela Keeton, Public Affairs Officer, Combined Forces Command to Priti Patel, Human Rights First (Oct. 25, 2004, 10:51 EST) (on file with Human Rights First) [hereinafter Email Interview with CFC-1].

10 Email Interview with CFC-1, supra note 9; E-mail from LTC Michele Dewerth, Combined Forces Command to Priti Patel, Human Rights First (June 9, 2004, 13:36 EST) (on file with Human Rights First). The facility at Kandahar was initially conceived of as a short-term holding facility, but in the immediate aftermath of the war in Afghanistan it became quickly overcrowded. It has since been re-envisioned as an intermediate site, and more recently as a main holding facility.


Reports indicate that at least one detainee was killed at the detention facility near Asadabad. See Priest and Stephens, supra note 11.


ENDURING FREEDOM REPORT, supra note 11, at 3.


See generally DAIG REPORT, supra note 20, at 28; Interview with detainee 1, supra note 23; Interview with detainee 2, supra note 23.

Telephone Interview with Afghanistan Human Rights Commission, Gardez (Dec. 16, 2004).

Id.


Id.


DAIG REPORT, supra note 20, at 30.

E-mail from LTC Pamela Keeton, Combined Forces Command Press Center to Priti Patel, Human Rights First (Oct. 25, 2004, 11:13 EST) (on file with Human Rights First) [hereinafter Email Interview with CFC-2].

E-mail from Dan Philbin, Office of the Atty Sec’y of Defense, Public Affairs, to Priti Patel, Human Rights First (March 27, 2004, 2:30 EST) (on file with Human Rights First).

Telephone Interview with Dep’t of Defense, Press Office (June 7, 2004); see also Priest and Stephens, supra note 11.


Email Interview with CFC-1, supra note 9.


12 MACKY AND MILLER, supra note 11, at 149.


14 Id.


17 Email Interview with CFC-1, supra note 9.


20 Reports indicate that at least one detainee was killed at the detention facility near Asadabad. See Priest and Stephens, supra note 11.


ENDURING FREEDOM REPORT, supra note 11, at 3.


See generally DAIG REPORT, supra note 20, at 28; Interview with detainee 1, supra note 23; Interview with detainee 2, supra note 23.

Interview with detainee 1, supra note 23; Interview with detainee 2, supra note 23.

Interview with detainee 1, supra note 23; Interview with detainee 3, supra note 23.

Telephone Interview with Afghanistan Human Rights Commission, Gardez (Dec. 16, 2004).

Id.


Id.


DAIG REPORT, supra note 20, at 30.

E-mail from LTC Pamela Keeton, Combined Forces Command Press Center to Priti Patel, Human Rights First (Oct. 25, 2004, 11:13 EST) (on file with Human Rights First) [hereinafter Email Interview with CFC-2].

E-mail from Dan Philbin, Office of the Atty Sec’y of Defense, Public Affairs, to Priti Patel, Human Rights First (March 27, 2004, 2:30 EST) (on file with Human Rights First).

Telephone Interview with Dep’t of Defense, Press Office (June 7, 2004); see also Priest and Stephens, supra note 11.


Email Interview with CFC-1, supra note 9.

Jan. 3, 2005); see also E-mail from LTC Pamela Keeton, Public Affairs Officer, Combined Forces Command to Priti Patel, Human Rights First (Jan. 6, 2005 1:00 EST) (on file with Human Rights First).

40 Email from Col. Tom MacKenzie, CFC-A Public Affairs Office, to Priti Patel, Human Rights First (March 7, 2005, 9:40 EST) (on file with Human Rights First) [hereinafter Email from MacKenzie]

41 Id.

42 DAIG REPORT, supra note 20, at 52.

43 Id.

44 Red Cross statement, supra note 5; Email Interview with CFC-2, supra note 34.

45 Salahuddin, supra note 37.


47 Salahuddin, supra note 37.

48 Email Interview with CFC-1, supra note 9; Email Interview with CFC-2, supra note 34.

49 DAIG REPORT, supra note 20, at 28; Interviews by Human Rights First found mistreatment (including beatings, stress and duress techniques, and sensory deprivation) in ‘transient facilities’ during first weeks of detention. Interview with detainee-1, supra note 23; Interview with detainee-3, supra note 23.


51 DAIG REPORT, supra note 20, at 30; Red Cross statement, supra note 5.

52 Red Cross statement, supra note 5.

53 SCHLESINGER REPORT, supra note 8, at 80.

54 Id. at 6.


56 SCHLESINGER REPORT, supra note 8, at 81.

57 DAIG REPORT, supra note 20, at 14; A number of reports indicate that early in the war in Afghanistan, from November 2001 until mid-2002, there were two categories of detainees: Persons under U.S. Control (PUC) and the amorphous “detainee.” See MACKEY and MILLER, supra note 11, at 250-1; Center for Law and Military Operations, Legal Lessons Learned From Afghanistan and Iraq, at 54-5, available at http://www.globalsecurity.org/military/library/report/2004/oef_oif_volume_1.pdf (accessed Jan. 21, 2005).

58 DAIG REPORT, supra note 20, at 30.

59 SCHLESINGER REPORT, supra note 8, at 80.

60 Email from MacKenzie, supra note 40.

61 Id.

62 Telephone Interview with Family of Saifullah Paracha (June 9, 2004) [hereinafter “Paracha Interview”]; See generally, ENDURING FREEDOM REPORT, supra, note 11.

63 Paracha Interview, supra note 62.


65 Email Interview with CFC-2, supra note 34.

66 DAIG REPORT, supra note 20, at 56; Army Reg. 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, § 1-7(b) (1997) [hereinafter Army Reg.].

67 Army Reg, supra note 66, at § 1-7(b)(17).


69 DAIG REPORT, supra note 20, at 46, 56-8.

70 Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Oct. 20, 2004) [hereinafter Phone Interview with Johnson].

71 Id.

72 Id.


74 Id. Eight days after Maj. Gen. Miller’s statement, the number of detainees at Camp Bucca and Abu Ghraib rose to 4,900 and 2,200 respectively. Detainees held in the custody of field commanders was 950. Telephone Interview with Lt. Col. Barry Johnson, Detainee Operations, Multi-National Forces (Dec. 10, 2004).


DAIG REPORT, *supra* note 20, at 45.


DAIG REPORT, *supra* note 20, at 45-46.


Telephone Interview with Coalition Press Information Center (June 9, 2004).

Jehl, *supra* note 87.


Priest, *supra* note 91 (“Some specialists in international law say the opinion amounts to a reinterpretation of one of the most basic rights of Article 49 of the Fourth Geneva Convention, which protects civilians during wartime and occupation, including insurgents who were not part of Iraq’s military. The treaty prohibits the [ ]individual or mass forcible transfers, as well as deportations of protected persons from occupied territory…regardless of their motive.”)

Jehl, *supra* note 87.


Id.


Id.

E-mail from Lt. Col. Barry Johnson to Ayumi Kusafuka, Human Rights First (July 15, 2004, 19:05 EST).

Id.

Behind the Wire —


105 Rumsfeld Ordered Prisoner Hidden, supra note 94.


108 Id.


110 Phone Interview with Johnson, supra note 70.


112 Id. at ¶ 1.1; DAIG REPORT, supra note 20, at 56-58; SCHLESINGER REPORT, supra note 8, at 60-61.


114 SCHLESINGER REPORT, supra note 8, at 60-61.

115 SCHLESINGER REPORT, supra note 8, at 60-61, 73; DAIG REPORT, supra note 20, at 56-58.

116 Phone Interview with Johnson, supra note 70.

117 Id.


122 Id. Those transferred to the control of other governments include twenty-nine to Pakistan, four to Saudi Arabia, seven to Russia, five to Morocco, nine to Great Britain, seven to France, and one each to Spain, Sweden, Australia, and Kuwait.


125 Priest and Higham, supra note 11.


See Id.


153 Third Geneva Convention, supra note 151, at art. 5.


156 Id.

157 Id.


159 Human Rights First was unable to ascertain whether an official family notification policy exists for detainees at Guantanamo despite repeated attempts. Telephone interview with Department of Defense Public Affairs Office (Dec. 9, 2004); Telephone Interview with SOUTHCOM Public Affairs office (Dec. 9, 2004).


161 Letter from Farhat Paracha, supra note 132.

162 Interview with attorneys for Guantanamo detainee (December 14, 2004).


167 Telephone Interview with CENTCOM Public Affairs Office, Florida, USA (Nov. 15, 2004).

168 Melman, supra note 3.


171 Id.

172 Id.


176 Padilla, 142 S.Ct. at 2730.
36 — Endnotes


179 Padilla, 124 S.Ct. at 2714.


184 Id. at ¶ 10.

185 Stevenson Swanson, Padilla Gets to Talk with His Lawyers, CHICAGO TRIB., Mar. 4, 2004, at 1; Jerry Markon, Terror Suspect, Attorneys Meet for 1st Time, WASH. POST, Feb. 4, 2004, at B3.


187 E-mail from Andrew Patel, Lawyer for Jose Padilla, to Human Rights First (June 11, 2004, 10:50 EST) [hereinafter Email from Patel]; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al-Marri, Gibbons Del Deo to Priti Patel, Human Rights First (Nov. 1, 2004, 16:04 EST) [hereinafter Email from Berman].


189 Email from Berman, supra note 187.


191 Email from Patel, supra note 187; E-mail from Berman, supra note 187.

192 Email from Patel, supra note 187; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al Marri, Gibbons Del Deo to Priti Patel, Human Rights First (June 11, 2004, 11:21 EST).

193 Email from Patel, supra note 187; E-mail from Mark Berman, Lawyer for Ali Saleh Kahleh Al Marri, Gibbons Del Deo to Priti Patel, Human Rights First (June 11, 2004, 11:21 EST).


196 ENDING SECRET DETENTIONS, supra note 165, at 17.

197 Expediatory Strike Force One, U.S. Naval Special Operations Command Office of Public Affairs, supra note 5.

198 Priest and Higham, supra note 11.
Of course, the Geneva Conventions have been fully applicable. There's never been any dispute about that.

From the very beginning of the conflict, the Geneva Conventions have been fully applicable. There's never been any dispute about that.


Likewise, the HRC has found that because the state had failed to take disclosure measures that would have prevented the disappearance of the victim, the Comm. would assume a strong likelihood that torture or ill-treatment had occurred. The State party has not denied that Rafael Mojica (a) has in fact disappeared and remains unaccounted for. . . . and (b) that his disappearance was caused by individuals belonging to the Government's security forces. Mojica v. Dominican Republic, Comm. No. 449/1991, U.N. GAOR Hum. Rts. Comm., 51st Sess., U.N. Doc. CCPR/C/51/D/449/1991 (1994), at ¶ 5.6.

On April 7, 2003, W. Hays Parks, Special Assistant to the Army JAG, remarked: "We are providing and will continue to provide captured Iraqi combatants with the protections of the Geneva conventions and other pertinent international laws. In addition, arrangements are in place to allow for representatives from the International Committee of the Red Cross to meet [sic] with Iraqi prisoners of war." News Transcript, Dep't of Defense, Briefing on Geneva Convention, EPWs and War Crimes (Apr. 7, 2003), available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed Jan. 20, 2005). More recently, during a background briefing, a senior military official reiterated the applicability of the Conventions. "From the very beginning of the conflict, the Geneva Conventions have been fully applicable. There's never been any dispute about that, never any doubt." News Transcript, Dep't of Defense, Defense Department Background Briefing (May 14, 2004), available at http://www.defenselink.mil/transcripts/2004/tr20040514-1002.html (accessed Jan. 21, 2005).


Likewise, the HRC has found that because the state had failed to take disclosure measures that would have prevented the disappearance of the victim, the Comm. would assume a strong likelihood that torture or ill-treatment had occurred. The State party has not denied that Rafael Mojica (a) has in fact disappeared and remains unaccounted for . . . and (b) that his disappearance was caused by individuals belonging to the Government’s security forces. Mojica v. Dominican Republic, Comm. No. 449/1991, U.N. GAOR Hum. Rts. Comm., 51st Sess., U.N. Doc. CCPR/C/51/D/449/1991 (1994), at ¶ 5.6.

On April 7, 2003, W. Hays Parks, Special Assistant to the Army JAG, remarked: “We are providing and will continue to provide captured Iraqi combatants with the protections of the Geneva conventions and other pertinent international laws. In addition, arrangements are in place to allow for representatives from the International Committee of the Red Cross to meet [sic] with Iraqi prisoners of war.” News Transcript, Dep’t of Defense, Briefing on Geneva Convention, EPWs and War Crimes (Apr. 7, 2003), available at http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html (accessed Jan. 20, 2005). More recently, during a background briefing, a senior military official reiterated the applicability of the Conventions. “From the very beginning of the conflict, the Geneva Conventions have been fully applicable. There’s never been any dispute about that, never any doubt.” News Transcript, Dep’t of Defense, Defense Department Background Briefing (May 14, 2004), available at http://www.defenselink.mil/transcripts/2004/tr20040514-0752.html (accessed Jan. 20, 2005).

Letter from Colin Powell, supra note 99.

In September 2003, Brig. Gen. Karpinski said that the United States was holding thousands of prisoners in Iraq who did not “fit into any category,” and that “We got an order from the secretary of defence (Donald Rumsfeld) to categorise” them. As a result, the label of “security detainee” was created. U.S. Holding 4,000 Extra Detainees, AGENCE FRANCE-PRESSE, Sept. 16, 2003, available at http://dawn.com/2003/09/17/int6.htm (accessed Jan. 15, 2005). According to the AFP, “Asked if they had any rights or had access to their families or legal help while they were being ‘secured,’ she said: ‘It’s not that they don’t have rights . . . They have fewer rights than EPWs (enemy prisoners of war).’” Id.


216 Third Geneva Convention, supra note 151, at art. 70.
217 Fourth Geneva Convention, supra note 84, at art. 106.
219 Third Geneva Convention, supra note 151, at art. 70 (emphasis added).
220 ICRC Iraq Report, supra, note 111, at § 1.1.9, (discussing the U.S. government’s failure to adequately maintain the system of capture cards).
221 Third Geneva Convention, supra note 151, at art. 143.
224 Id. at § 4.2.1.
225 Id., at §§ 4.2.3, 4.2.4. The Secretary is also required to report to the Defense Secretary, the Chairman of the Joint Chiefs of Staff, other U.S. Government Agencies, and the ICRC on compliance with the Geneva Conventions. Id. at § 4.2.5.
226 Id. at § 4.1.1.
227 Third Geneva Convention, supra note 151, at art. 122.
228 Dep’t of Defense, Directive No. 2310.1, supra note 223, at § 4.2.4.
229 Army Reg., supra note 66, at § 1-7.
232 Taguba Report, supra note 104.
233 Schlesinger Report, supra note 8, at 29.
234 DAIG REPORT, supra note 20, at 30.
238 Id. at iv.
239 Id. at I-4 (emphasis added).
240 Id. at I-3.
241 Id.
243 Id. at § 1093(c), 118 Stat. 2070-71.
246 Id., at 6.2.2.
247 Army Reg., supra note 66, at § 3-5(d)(1)(b).
248 Id., at § 6.4(f).
A Human Rights First Report


250 Fourth Geneva Convention, supra note 84, at art. 143; ICCPR, supra note 203, at art. 9; ENDURING FREEDOM REPORT, supra, note 11, at 51; Red Cross Statement, supra note 5; Salahuddin, supra note 37; TAGUBA REPORT, supra, note 104 (stating the “320th MP Battalion held a handful of ‘ghost detainees’...that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team.”).

251 THE GENEVA CONVENTIONS OF AUG. 12, 1949: COMMENTARY IV GENEVA CONVENTION 51 (Jean Pictet ed. 1994); see also Third Geneva Convention, supra note 151, at art. 82; ICCPR, supra note 203, at arts. 9, 14.


254 UN Body of Principles, supra note 253, at principle 12; Standard Minimum Rules, supra note 253, at rules 4, 7, 95.


256 Id.

257 See ICRC Iraq Report, supra note 111; TAGUBA REPORT, supra note 104; DAIK REPORT, supra note 20; FAY REPORT, supra note 1; SCHLIESINGER REPORT, supra note 8; See also Third Geneva Convention, supra note 151, at arts. 13, 14, 17, 87, 121, 130; Fourth Geneva Convention, supra note 84, at arts. 5, 27, 31, 32, 33, 147; ICCPR, supra note 203, at arts. 4, 7, 10; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46; Annex. U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), at art. 1, 16.


261 Id.


266 GETTING TO GROUND TRUTH, supra note 262, at 10-12.
267 FAY REPORT, supra note 1, at 65-67; see also DAIG REPORT, supra note 20, at 19.

268 S. REP. NO. 84-9, at 32 (1955).


270 101 Cong. Rec. 9960 (July 6, 1955).

271 DWIGHT D. EISENHOWER, CRUSADE IN EUROPE 469 (DOUBLEDAY 1949) (1948).


281 Id. at ¶ 141.

282 Id. at ¶ 140.


284 DAIG REPORT, supra note 20, at 46-58.

285 See, e.g., THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 363-64 (July 22, 2004) (“[L]ong-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense. . . . [W]hen people lose hope, when societies break down, when countries fragment, the breeding grounds for terrorism are created. . . . Economic and political liberties tend to be linked.”).

286 See, e.g., JOSEPH S. NYE, SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS (2004).


303 Id.


306 Id.

307 Id. at 8.

308 Id.

309 Id.