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INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	CTME-00	DODE-00
	SRPP-00	MEDE-00	EB-00	E-00	UTED-00	VC-00	H-01
	TEDE-00	INR-00	IO-00	JUSE-00	L-00	VCE-00	DCP-01
	NSAE-00	NSCE-00	OIC-02	OPIC-01	PRS-00	P-00	SP-00
	SS-00	STR-00	TEST-00	TRSE-00	USIE-00	PRM-00	DRL-02
	G-00	SAS-00	/007R				

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SOURCE: CBLEXCLS.003581

DRAFTED BY: L/HRR:GBRANCATO -- 12/11/2002 202-647-2773

APPROVED BY: IO/FO:JSANDERS

L/HRR: ASURENA - OK

L/PM: JDOLAN/W BROOKS - OK

IO/SHA: JC PERRY - OK

IO/SHA:TAJOHNSON - OK

S/WCI:RMILLER - OK

DRL: LYNN SICADE - OK

NSC/LEGAL:JSCHARFEN - OK

DOD/GC: EDAVIDSON/JKASLER - OK

DOJ: MINCONTRO - OK

L/PM: JDOROSIN - INFO

L/NP: ECUMMINGS - INFO

US MISSION GENEVA: SSOLOMON - INFO

L/NESA: TBOREK - INFO

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FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

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E.O. 12958: N/A

TAGS: PHUM, UN

SUBJECT: USG RESPONSE TO CHR WORKING GROUP ON DETENTION -
GUANTANAMO CASES

1. BEGIN TEXT:

THIS LETTER RESPONDS TO YOUR LETTERS OF JANUARY 22, 2002, AND

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OCTOBER 25, 2002 REGARDING INDIVIDUALS DETAINED UNDER THE CONTROL OF UNITED STATES MILITARY AUTHORITIES AT GUANTANAMO NAVAL BASE (GUANTANAMO). WHILE THE WORKING GROUP MANDATE DOES NOT INCLUDE COMPETENCE TO ADDRESS THE GENEVA CONVENTIONS OF 1949 OR MATTERS ARISING UNDER THE LAW OF ARMED CONFLICT, THE UNITED STATES MISSION, IN THE SPIRIT OF COOPERATION, OFFERS THE FOLLOWING INFORMATION IN RESPONSE TO YOUR LETTERS REGARDING THE DETAINEES.

AS YOU ARE WELL AWARE, ON SEPTEMBER 11, 2001, TERRORISTS USED UNLAWFUL AND PERFIDIOUS MEANS TO ATTACK INNOCENT CIVILIANS IN THE UNITED STATES. THESE ACTS, AS THE UNITED NATIONS SECURITY COUNCIL RECOGNIZED, CONSTITUTED A THREAT TO INTERNATIONAL PEACE AND SECURITY. SINCE SEPTEMBER 11, 2001, THE UNITED STATES HAS EXERCISED ITS INHERENT RIGHT OF SELF-DEFENSE AS RECOGNIZED IN ARTICLE 51 OF THE CHARTER OF THE UNITED NATIONS, AND HAS USED OTHER REASONABLE AND LAWFUL MEANS TO THWART FUTURE ATTACKS ON AMERICAN PERSONS AND PROPERTY.

INDIVIDUALS DETAINED AT GUANTANAMO ARE ENEMY COMBATANTS
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CAPTURED IN THE COURSE OF ONGOING HOSTILITIES OR DIRECTLY SUPPORTING HOSTILE FORCES. THESE ENEMY COMBATANTS POSE A SERIOUS THREAT TO THE UNITED STATES AND ITS COALITION PARTNERS. AS SUCH, THEY ARE BEING HELD IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR, WHICH PERMIT THE UNITED STATES TO CAPTURE AND DETAIN ENEMY COMBATANTS TO PREVENT THEIR RE-ENGAGING IN THE ON-GOING ARMED CONFLICT.

THE UNITED STATES TREATS ALL ENEMY COMBATANTS HUMANELY AND IN A MATTER CONSISTENT WITH APPLICABLE NORMS UNDER THE LAW OF ARMED CONFLICT AND, TO THE EXTENT APPROPRIATE AND CONSISTENT WITH MILITARY NECESSITY, IN A MANNER CONSISTENT WITH THE PRINCIPLES OF THE THIRD GENEVA CONVENTION OF 1949. THE UNITED STATES IS PROVIDING THE DETAINEES WITH APPROPRIATE SHELTER, CLOTHING AND THREE CULTURALLY APPROPRIATE MEALS A DAY. THE UNITED STATES IS ALSO PROVIDING DETAINEES EXCELLENT MEDICAL AND DENTAL CARE. DETAINEES ARE GIVEN THE OPPORTUNITY TO WORSHIP FREELY, AND THOSE WHO SO DESIRE HAVE BEEN GIVEN COPIES OF THE KORAN.

THERE IS NO LAW REQUIRING A DETAINING POWER TO PROSECUTE ENEMY COMBATANTS OR RELEASE THEM PRIOR TO THE END OF HOSTILITIES. LIKEWISE, UNDER THE LAWS AND CUSTOMS OF WAR, DETAINED ENEMY COMBATANTS HAVE NO RIGHT OF ACCESS TO COUNSEL OR THE COURTS TO CHALLENGE THEIR DETENTION. SHOULD A

DETAINEE BE CHARGED WITH A CRIMINAL OFFENSE, HE WOULD HAVE THE RIGHT TO COUNSEL AND APPLICABLE FUNDAMENTAL PROCEDURAL SAFEGUARDS. THE UNITED STATES CONTINUOUSLY EVALUATES INDIVIDUAL CASES AND, IN APPROPRIATE CASES, WILL RETURN DETAINEES TO THEIR COUNTRY OF ORIGIN OR NATIONALITY. AS YOU MAY BE AWARE, WE RECENTLY RELEASED FOUR DETAINEES.

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IN VIEW OF THESE PRINCIPLES, AND AS A COURTESY, THE US GOVERNMENT PROVIDES THE FOLLOWING ANSWERS TO THE QUESTIONS CONTAINED IN YOUR OCTOBER 25TH LETTER.

(A) THERE ARE APPROXIMATELY 625 PERSONS DETAINED AT GUANTANAMO.

(B) THE DETAINEES BEGAN ARRIVING AT GUANTANAMO IN JANUARY 2002.

(C) (C), (D), (E), (F), AND (G) THE DETAINEES ARE ENEMY COMBATANTS DETAINED IN THE COURSE OF AN ARMED CONFLICT UNDER THE LAWS AND CUSTOMS OF WAR. NO DETAINEE HAS BEEN CHARGED WITH A CRIMINAL OFFENSE. SHOULD A DETAINEE BE CHARGED WITH A CRIMINAL OFFENSE, THAT DETAINEE WOULD BE PROVIDED FUNDAMENTAL PROCEDURAL SAFEGUARDS, INCLUDING COUNSEL. UNDER THE LAWS AND CUSTOMS OF WAR, THE DETAINING POWER IS NOT OBLIGED TO PROSECUTE DETAINED ENEMY COMBATANTS OR RELEASE THEM PRIOR TO THE END OF THE CONFLICT. CAPTURED ENEMY COMBATANTS HAVE NO RIGHT OF ACCESS TO COUNSEL TO CHALLENGE THEIR DETENTION.

YOUR LETTER OF JANUARY 22, 2002 REQUESTED "A VISIT TO YOUR COUNTRY IN ORDER TO EXAMINE IN SITU THE LEGAL ASPECTS OF THE PERSONS CONCERNED." REPRESENTATIVES OF THE INTERNATIONAL COMMITTEE FOR THE RED CROSS, WHICH IS THE ORGANIZATION VESTED WITH COMPETENCE TO CONDUCT SUCH VISITS, HAVE ACCESS TO THE DETAINEES ON A REGULAR BASIS.

IN LIGHT OF OUR VIEW THAT THE WORKING GROUP LACKS COMPETENCE TO ADDRESS LAW OF ARMED CONFLICT ISSUES, THE UNITED STATES RESPECTFULLY DECLINES YOUR REQUEST FOR A VISIT.

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THE UNITED STATES REITERATES ITS APPRECIATION FOR THE INDISPENSABLE WORK OF THE COMMISSION ON HUMAN RIGHTS AND ITS MANY IMPORTANT COMPONENTS.

THANK YOU FOR YOUR INQUIRY AND PLEASE ACCEPT THE ASSURANCES OF MY HIGHEST CONSIDERATION.

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