



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE 703rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 May 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of the United States of America (CAT/C/48/Add.3 and Rev.1;
CAT/C/USA/Q/2; HRI/CORE/1/Add.49)

1. At the invitation of the Chairperson, the members of the delegation of the United States of America took places at the Committee table.
2. Mr. LOWENKRON (United States), introducing the second periodic report (CAT/C/48/Add.3 and Rev.1), said that his Government was committed to upholding national and international obligations to eradicate torture and prevent cruel, inhuman or degrading treatment or punishment, and to ensuring the transparency of its policies and actions. Those were not simply legal obligations but moral obligations that the United States had consistently embraced as one of the framers of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. The United States had been founded on the principle of respect for human dignity. Its Bill of Rights contained safeguards, including the Eighth Amendment, which prohibited cruel and unusual punishment. It had long played a leading role in the international arena in combating torture. When allegations of torture arose, including against government officials, they were investigated and, if substantiated, prosecuted. His Government was also committed to investigating allegations of other forms of unlawful treatment against detainees and prosecuting when necessary.
4. The abuses that had occurred at Abu Ghraib had appalled people in the United States and throughout the world; they were inexcusable and indefensible. His Government sincerely regretted those incidents and had conducted more than 600 criminal investigations resulting in more than 250 individuals being held accountable for abuse of detainees. Their punishment had included court martials, prison sentences of up to 10 years, formal reprimands and separation from military service.
5. Thus when mistakes were made, corrective measures were taken. Investigations and law enforcement mechanisms were not the only means to address allegations of torture or ill-treatment. There was a vigorous public debate under way in the United States concerning allegations of abuse and how to prevent their recurrence. His Government had listened to the views of the media and civil society and made changes. For example, more than 1,000 international journalists and the parliamentary group from the Organization for Security and Cooperation in Europe (OSCE) had visited Guantánamo Bay to learn of detainee operations there. The President of the International Committee of the Red Cross (ICRC) had said recently that conditions at the facility had “improved considerably”.
6. The United States system of government also provided for other means of improving policies and practices. The constitutional system of checks and balances relied on the separation and independence of the three branches of government. The push-and-pull between the branches had led to specific reforms, such as the Detainee Treatment Act passed by Congress in 2005.

7. A vital part of United States efforts to combat torture worldwide were the annual reports on the human rights situation in other countries prepared by the Department of State. The reports were found useful in bilateral efforts to persuade countries to improve their own policies and by NGOs.

8. His Government also engaged in multilateral activities to reduce and eliminate torture globally. In the United Nations Commission on Human Rights it had played a central role in the adoption of resolutions relating to torture. It had also supported the work of the Special Rapporteur on the question of torture, and had even invited him to visit the detention facilities in Guantánamo, an invitation he had declined.

9. The United States commitment to end torture worldwide stemmed from its most cherished values. All branches of government had advanced towards that goal through sustained and intensive efforts, and devoted to it substantial policy attention and financial resources. His Government welcomed the contributions of the international community, including NGOs, civil society, the media and individuals. Even when their criticism was directed against it, it understood that the reason was the shared objective of ending torture forever.

10. Mr. BELLINGER (United States) welcomed the opportunity to meet the Committee and explain measures adopted by his Government to give effect to its obligations under the Convention. It took those international obligations seriously, as was borne out by its extensive reports (CAT/C/48/Add.3 and Rev.1), the detailed written replies submitted (document available in English only, without a symbol), and the high-level delegation attending the meeting to ensure a productive dialogue.

11. United States criminal law prohibited torture, and allowed no exceptions. Its 50 states and the federal Government prohibited conduct that would constitute torture under their civil and criminal laws. Congress had also passed laws providing for severe federal criminal and civil sanctions against those who engaged in torture outside the territory of the United States. Its legislation went even further by enabling citizens and non-citizens who were victims of torture to bring claims for damages against foreign government officials in United States federal courts.

12. The United States had contributed far more than any other country to the United Nations Voluntary Fund for Victims of Torture: almost 70 per cent of the total contributions between 2000 and 2005.

13. In 2005, Congress had enacted the Detainee Treatment Act, which included a provision against the use of cruel, inhuman or degrading treatment, as defined in the Convention against Torture. According to the Act, no person in the custody or under the physical control of the United States Government, regardless of nationality or physical location, should be subjected to cruel, unusual or inhumane treatment or punishment prohibited by certain provisions of the Constitution.

14. The Committee would no doubt have many questions about actions taken by his Government in response to the terrorist attacks of 11 September 2001, which would be addressed as fully as possible. However, it should be borne in mind that some of the questions related to ongoing litigation or alleged intelligence activities, and could not be commented on fully. Furthermore, the report and the written replies contained extensive information about detainee

operations in Guantánamo, Afghanistan and Iraq. Such operations were governed by the law of armed conflict - the *lex specialis* applicable. He recalled that the countries which had negotiated the Convention against Torture had focused on rights afforded under domestic legislation and not on provisions governing armed conflict. At the conclusion of the negotiations, the United States had emphasized that if the Convention applied to armed conflicts, it would result in an overlap of the different treaties, which would undermine the objective of eradicating torture. No country had objected to that understanding. However, in a spirit of cooperation, his delegation would be pleased to provide further information on the detainee operations if necessary.

15. The Committee should be circumspect about the innumerable, and occasionally absurd, allegations in the press and elsewhere about various United States military and intelligence activities. His Government had attempted to address those allegations as swiftly and comprehensively as possible. However, because many of them related to alleged intelligence activities, they could only be commented upon in a general way.

16. The Committee should also keep a sense of proportion and perspective. It would do a disservice to the dialogue and to the cause of combating torture worldwide to focus exclusively on the allegations and relatively few cases of abuse and wrongdoing that had occurred in the context of the armed conflict with Al-Qaida. His intent was not to shift attention from those cases, but to bear in mind the fact that they were not systemic. The Committee should devote adequate time to examining treatment or conditions that applied domestically to a country with a population of more than 290 million.

17. Turning to the list of issues (CAT/C/USA/Q/2), he said that owing to time constraints, it would be impossible to answer in detail every aspect of the questions raised; as a result, in many cases his delegation would refer the Committee to the more detailed written replies his delegation had submitted.

18. Nothing in the memorandums of August 2002 and December 2004 drafted by the Department of Justice's Office of Legal Counsel had changed the definition of torture governing United States obligations under the Convention from what had been accepted upon ratification (questions 1 and 2). The first memorandum contained an opinion on the meaning of the term "torture" under the Extraterritorial Criminal Torture Statute and addressed issues concerning the separation of powers under the Constitution. The opinion had been requested in order to provide detailed guidance on the implementation of the criminal statute for government officials. It had subsequently been withdrawn and a second one had been issued in the memorandum of December 2004, which was confined to interpretation of the Extraterritorial Criminal Torture Statute. That opinion superseded the first one and provided the executive branch with an authoritative interpretation on the matter. The first opinion had been withdrawn not because it purported to change the definition of torture, but because it addressed questions that need not have been addressed, namely the President's Commander-in-Chief power and the potential defences to liability, as clarified in the December 2004 memorandum. Neither opinion had been intended to change the definition of torture set out in article 1 of the Convention as understood by the United States; they had been intended merely to address the meaning of that definition as reflected in the United States Code.

19. The fact that the Convention defined “torture” in article 1 and referred to “other acts of cruel, inhuman or degrading treatment or punishment” in article 16 reflected the recognition by the parties which had negotiated the Convention of the basic distinction between the severity of conduct constituting torture, on the one hand, and cruel, inhuman and degrading treatment or punishment, on the other (question 3). On account of the aggravated nature of torture, States parties had agreed to comprehensive measures to prohibit it under the criminal law, to prosecute perpetrators found in territory under their jurisdiction, and not to return individuals where there were substantial grounds for believing that such persons would be in danger of being subjected to torture. In contrast, the obligations regarding cruel, inhuman or degrading treatment or punishment were far more limited.

20. The December 2004 memorandum, recognizing the clear distinction made in the text and structure of the Convention, explained that torture was a more severe or extreme form of mistreatment than that described by article 16 (question 4). The use of the word “extreme” clarified the meaning of the word “severe” contained in the definition of torture set forth in article 1. The fact that the term “torture” was reserved for acts involving more severe pain and suffering was also confirmed by the Convention’s negotiating history and was consistent with other international law sources cited in the written replies.

21. He did not agree that the interpretation of both memorandums was more restrictive than previous United Nations standards, including the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (question 4). The interpretation of the term “severe” in the December 2004 memorandum reflected the understanding that torture constituted a more aggravated form of abuse than that covered by cruel, inhuman or degrading treatment or punishment. The distinction was not only expressed in the text of the Convention, and apparent from the negotiating history, the United States ratification record and other international law sources; it was also consistent with, and not more restrictive than, the 1975 Declaration on Torture, which distinguished torture from other lesser forms of abuse in part on the basis of the severity of the underlying acts.

22. Before ratifying the Convention, the United States had carefully reviewed its federal and state laws for compliance with the Convention’s terms and had concluded that, with the sole exception of prohibiting certain acts of torture committed outside the territory of the United States, all the offences referred to in the Convention were covered (question 5). That lacuna had been filled by enacting the Extraterritorial Criminal Torture Statute. The United States ensured compliance with the Convention obligations through the enforcement of existing laws. There was no specific federal offence referred to as “torture” for acts occurring within United States territory, since any act of torture falling within the Convention definition was already criminalized under federal and state laws. They were binding on government officials through a variety of administrative procedures and criminal prosecutions. Civil suits also provided remedies in many cases.

23. The Civil Rights of Institutional Persons Act of 1980 was one means by which the United States ensured its Convention obligations with respect to monitoring the activities of law enforcement officials in prisons and detention facilities. It enabled the Department of Justice to eliminate a pattern or practice of abuse in any facility and was the most direct source of the federal Government’s authority in guaranteeing the constitutional rights of detainees.

24. On question 6, he referred members to his delegation's written replies.

25. His Government did not permit, tolerate or condone unlawful practices by its personnel or employees, including contractors, under any circumstances (question 7). According to the Extraterritorial Criminal Torture Statute, it was a crime for a person acting under the colour of law to commit, attempt to commit or conspire to commit torture outside the United States. In addition, pursuant to the Detainee Treatment Act, the United States had voluntarily undertaken a prohibition on cruel, inhuman and degrading treatment or punishment that applied as a matter of statute to protect any persons in the custody or under the physical control of the United States Government, regardless of nationality or physical location.

26. Mr. STIMSON (United States) said that there was a misconception underlying question 8 concerning the need to identify and remedy problems in the command and operation of detention facilities under his country's jurisdiction. He refuted the assertion that torture and ill-treatment were widespread or systemic; the allegations made related to a minute percentage of the overall number of detainees. Moreover, not all the allegations were true. All Al-Qaida members were instructed to allege torture whenever they were captured, even if they were not subjected to abuse. The Department of Defense (DoD) investigated all allegations of abuse and, if they were found credible, took appropriate action to hold violators accountable, where appropriate. He referred the Committee to the written replies for information on specific measures adopted.

27. ICRC had access to DoD theatre detention facilities and met privately with detainees. The DoD fully accounted for detainees under its control and notified ICRC of their detention, normally within 14 days of capture. ICRC transmitted its confidential communications to senior government officials, including in the DoD, and to military commanders in Afghanistan, Iraq and Guantánamo, who acted upon them promptly. His Government took the matters raised by ICRC very seriously, and greatly valued its historic relationship with the organization.

28. Mr. BELLINGER (United States) said that under United States law there was no derogation from the express prohibition on torture (question 9). The legal and administrative measures undertaken to implement the prohibition were described in detail in the initial report (CAT/C/28/Add.5) and the second periodic report (CAT/C/48/Add.3 and Rev.1).

29. The DoD had conducted 12 major investigations into all aspects of detention operations following the events of Abu Ghraib, as described in detail in document CAT/C/48/Add.3/Rev.1. His Government was committed to investigating and prosecuting, as appropriate, those who engaged in acts of torture or other unlawful treatment of detainees (question 10).

30. The United States stood by its obligations under article 2, which were repeatedly reaffirmed at the highest levels of government (question 11).

31. In accordance with the Detention Treatment Act no person in the custody or under the effective control of the DoD or in detention in a DoD facility should be subjected to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Investigation (question 12). Those statutory standards applied to military personnel, DoD civilians and contract interrogators. His Government did not comment publicly on alleged intelligence activities; however, any activities of the Central Intelligence

Agency (CIA), like those of any other government agency, were subject to the Extraterritorial Criminal Torture Statute and the prohibition of cruel, inhuman or degrading treatment or punishment contained in the Detainee Treatment Act.

32. Regulations relating to immigration, removal and extradition allowed aliens to claim their rights not to be removed or extradited under article 3 of the Convention (question 13). Pursuant to its obligations thereunder, the United States did not transfer persons to countries where it considered they were more likely than not to be tortured. Its implementing laws and regulations did not exclude categories of persons from protection from refoulement under article 3. The United States could not revoke or terminate a person's protection under article 3 from involuntary removal to a particular country so long as it continued to be sure that the protected individual was more likely than not to be tortured in that country.

33. United States policy was thus clear and applied to all members of the Government and to individuals under United States custody or control, regardless of their place of detention. However, despite that firm policy, the United States considered that article 3 did not impose legal obligations on it with respect to an individual who was outside its territory, a view that was supported by the text of the Convention, its negotiating history and the United States record of ratification. He referred the Committee to the written replies for a more detailed analysis of those matters.

34. The United States had consistently held the view that the phrase "substantial grounds for believing" was merely a clarification of the scope of the definition of article 3, rather than a statement that would exclude or modify its legal effect (question 14). The question of who was the competent authority to determine whether a person was more likely than not to be tortured, depended on the context: the decision maker differed in immigration, removal and extradition proceedings.

35. Generally speaking, in immigration removal proceedings, an individual seeking protection from removal from the United States under article 3 could appeal against an adverse decision by the immigration judge to the Board of Immigration Appeals (question 15). If the Board dismissed the individual's appeal or denied his motion for a further appeal, the petition for a review of the Board's decision could be filed with the appropriate federal court of appeals.

36. The United States and other countries had long used renditions to transport terrorist suspects from the country where they had been captured to their home country or to another country where they could be questioned, detained or brought to justice (question 16). Rendition was a vital tool in combating international terrorism. The United States did not transport, and had not transported detainees from one country to another for the purpose of interrogation using torture. It had not and would not transport any such persons if it believed that they might be subjected to torture. Where appropriate, it sought credible assurances that persons transferred would not be tortured.

37. United States federal and state laws prohibited unlawful acts that would constitute an enforced or involuntary disappearance, for example by prohibiting assault, abduction, kidnapping and false imprisonment, and by regulating the release or detention of defendants (question 17).

38. He emphasized the infrequent use of diplomatic assurances that a person would not be tortured if removed or extradited to another State, indicating that article 3 protection had been granted in over 2,500 removal proceedings between 2000 and 2004 (question 18). Procedures were in place to seek such assurances, and if the United States believed it was “more likely than not” that individuals would be tortured, they were not returned. Decisions had been made not to return individuals because of doubt that article 3 obligations would be met. Under the “rule of non-inquiry” it was the responsibility of the Secretary of State, and not the domestic courts, to examine the penal system of nations when considering extradition requests.

39. He drew attention to the fact that article 3 did not prohibit the return or transfer of individuals to countries with a poor human rights record *per se*, and did not apply to returns that might involve “ill-treatment” not amounting to torture. In fact, the United States considered returns on a case-by-case basis, assessing whether a particular individual might face torture in a particular country. He reiterated his Government’s view that article 3, by its terms, did not apply to individuals outside the territory of the United States.

40. Concerning “extraordinary renditions” (question 19), he acknowledged that the United States, like other countries, had long used procedures outside normal extradition mechanisms to transport terrorist suspects to their home country or to another country where they could be questioned, held or brought to justice. He stressed, however, that individuals, whether inside or outside United States territory, were not rendered to a place where they would be tortured.

41. While the specific federal crime of “torture” did not exist, any act of torture falling within the Convention’s definition, as ratified by the United States, was criminally prosecutable, such as acts of aggravated assault, homicide, kidnapping and rape (question 20). No lacuna existed, therefore, in United States law. Indeed, a wide range of mechanisms existed through which the United States implemented its obligations under the Convention. For example, many acts that would qualify as “torture” could be prosecuted under section 242 of title 18 of the United States Code as criminal deprivations of constitutional rights.

42. Turning to the military justice system (question 21), he said that it was a violation of the Uniform Code of Military Justice (UCMJ), applicable worldwide, to engage in cruelty or maltreatment. Offences such as assault, rape, murder and unlawful detention could also be prosecuted under the UCMJ, as could violations of federal criminal statutes, including the Extraterritorial Criminal Torture Statute.

43. There was no “penal immunity” for any person for the crime of torture under United States law (question 22). While no criminal prosecutions had been initiated under the Extraterritorial Criminal Torture Statute to date, there had been prosecutions for offences occurring outside the United States under other statutory provisions, including the UCMJ. More detailed information could be found in the written replies.

44. Mr. STIMSON (United States), referring to questions 23 and 24, said that the DoD conducted comprehensive training programmes on the treatment and interrogation of detainees. “Law of war” training was provided at least annually to all DoD personnel, including contractors, who were involved in the custody, interrogation or treatment of individuals in detention, and included instruction on the prohibition of acts of torture and the requirement of

humane treatment. However, even the most extensive training programme could not prevent every case of abuse. He gave examples of existing mechanisms for the systematic review of military personnel, DoD civilians and contractor employees involved in detention operations, which included Inspector-General visits, command visits and inspections, and Congressional and intelligence oversight committees. They also included case-specific investigations and overall reviews.

45. The DoD required all contractors to comply fully with its regulations and standards concerning the humane treatment of detainees (question 25). A 2005 policy required all federal employees and civilian contractors engaged in detainee custody and interrogation operations to complete annual “law of war” training, including on United States obligations under domestic and international law. In addition, all personnel deployed to Iraq and Afghanistan received Geneva Conventions training prior to deployment, and further periodic training subsequently.

46. As to whether the December 2004 memorandum had created unnecessary confusion for trainers and personnel (question 26), the answer was “no”. A well-documented investigation had found that acts of abuse at Abu Ghraib had been perpetrated by a small group of individuals, acting in contravention of United States law and DoD policy - a finding that had been supported in 12 other major reviews. It was not the result of any doctrine, training or policy failures. The Detainee Treatment Act prohibited cruel, inhuman or degrading treatment or punishment and provided for uniform interrogation rules for persons in DoD custody or under its effective control or detention. Any other interrogation policies by other United States government agencies would be subject to the aforementioned prohibition and to the federal anti-torture statute (question 27). More detailed information could be found in the written replies.

47. Mr. MONHEIM (United States) outlined the role of the Civil Rights Division within the Department of Justice in enforcing federal civil rights statutes, including the 1980 Civil Rights of Institutional Persons Act (CRIPA) (question 28). The Division also prosecuted actions under several federal criminal civil rights statutes, including those prohibiting conspiracy to interfere with constitutional rights and deprivation of rights under colour of law - both key mechanisms to ensure United States compliance with its Convention obligations. And it was responsible for coordinating civil rights enforcement efforts of other federal agencies. Approximately half the civil rights cases filed since October 1999 had involved law enforcement officials charged with official misconduct, with 359 convictions subsequently being obtained; not all of them, however, fell within the scope of the Convention.

48. He provided statistics to demonstrate the continued vigorous enforcement of CRIPA by the Department of Justice (question 29). For example, the Department had initiated 25 per cent more new investigations than in the preceding five-year period, and as of April 2006 there were 41 active investigations covering 44 facilities. Complaints about abuse, including physical injury by individual law enforcement officials, continued to be investigated and, if warranted, prosecuted. The Department was committed to investigating all cases of alleged excessive force by law enforcement officials, which accounted for most of the 432 convictions since 1999 for violating federal civil rights statutes. The Civil Rights Division also investigated conditions in state prisons and local jails pursuant to CRIPA, and conditions in state and local juvenile

detention facilities pursuant to either CRIPA or the “pattern or practice” provision of the 1994 Violent Crime Control and Law Enforcement Act. When the investigations uncovered unconstitutional conditions the Division took measures to remedy them. A monitoring mechanism existed to ensure compliance with the reforms agreed with the detention facility. More detailed information could be found in the written replies.

49. Mr. BELLINGER (United States) referred the Committee to the written reply to question 30 of the list of issues, particularly the annexes, which provided detailed statistical data regarding deaths in custody. He stressed that any death of an individual in government custody was reported and, if facts suggested criminal implications, investigated. If the facts so warranted, the individuals responsible would be held accountable.

50. Mr. STIMSON (United States) said that there had been 120 deaths of detainees under DoD control in Afghanistan and Iraq, and none in Guantánamo Bay (questions 31 and 32). In only 29 of those cases had abuse or other violations of law or policy been suspected. The alleged violations had been properly investigated and appropriate action taken. Extensive information had been provided on the hundreds of investigations, and the related prosecutions and punishment, in the written replies. The process was ongoing, however: in the previous few days the former head of the Abu Ghraib interrogation centre had been charged for alleged involvement in detainee abuse and interference with the related investigation.

51. Turning to the suggested lack of independence of investigations into allegations of torture and ill-treatment in Afghanistan and Iraq (question 33), he said that in the 12 major reviews of its detention operations carried out by the DoD, investigating panels had been granted access to materials and individuals as requested, and given any resources they asked for. The investigations had been honest, open and impartial, and DoD officials had in no way influenced the conclusions drawn. The recommendations made had been taken seriously and no further investigations were currently foreseen.

52. If any allegations of torture or cruel, inhuman or degrading treatment or punishment were raised during the judicial review applicable to the Combatant Status Review Tribunals and Administrative Review Boards under the Detainee Treatment Act, or in any other context, they would be investigated and acted upon (question 34). On the subject of remedies and compensation he reported that 33 detainees, including some detainees from Abu Ghraib, had filed claims for compensation, and that the claims process was ongoing (question 36). Approximately 195 habeas corpus cases on behalf of more than 350 detainees were pending; proceedings had been stayed awaiting decisions from higher courts (question 39). More detailed information to supplement his answers could be found in written replies.

53. Mr. MONHEIM (United States) said that the provisions contained in the Justice for All Act improved the ability of victims of abuse to monitor and assist in efforts to prosecute the perpetrators (question 35). Victims were granted various rights under the Act and could file a complaint with the Victims’ Rights Ombudsman (Department of Justice) if they believed those rights were denied. To his knowledge, no alleged victims of torture by United States government personnel had asserted any of those rights or filed complaints with the Ombudsman.

54. The provisions of the 1995 Prison Litigation Reform Act designed to curtail frivolous lawsuits by prisoners were consistent with article 13 of the Convention (question 37). They did not increase the possibility of impunity for perpetrators, since violators of prisoners' rights were subject to both civil and criminal liability. Nor did the provisions limit a prisoner's ability to complain and have his case promptly and impartially examined, in accordance with article 13. A prisoner could bring a federal civil action to redress allegations of torture, and had access to a wide range of other administrative remedies at federal and state level.

55. The United States was not aware of any allegations of torture by government personnel reported to the Center for Victims of Torture (question 38). More detailed information on all those questions could be found in the written replies.

56. Mr. BELLINGER (United States) said that the United States had not made any "decision not to apply" the Geneva Convention where it would, by its terms, apply (question 40), although compliance with the Geneva Convention was a matter unrelated to his country's obligations under the Convention against Torture. After strongly upholding the concept of "unlawful combatants", he said that the Geneva Convention did apply, for example, to the war in Iraq. In the case of Taliban detainees, however, the President had determined that while the Third Geneva Convention did apply, the Taliban failed to meet the requirements of article 4 of that Convention and so were not entitled to prisoner of war status. Similarly, he had determined that the Geneva Convention did not apply to the Al-Qaida detainees because Al-Qaida was not a party to the Convention. Nevertheless, President Bush had ordered the armed forces to continue to treat detainees humanely and in a manner consistent with the principles of Geneva.

57. For information on cases where courts had declared statements inadmissible on the ground of having been obtained coercively, he referred the Committee to the reports submitted and the written replies (question 41).

58. In relation to article 15 of the Convention against Torture he reported that in March 2006 military commissions had been officially instructed not to admit statements established to have been made as a result of torture (question 42).

59. He explained that the United States reservation to article 16 had been intended to clarify the uncertain meaning of the phrase "cruel, inhuman or degrading treatment or punishment" and to ensure that existing United States constitutional standards would satisfy the country's obligations under article 16 (question 43). The uncertain meaning of that phrase made it difficult to state with precision what treatment or punishment (if any) would be prohibited by article 16 but admissible under article 16 as reserved by the United States.

60. He confirmed his country's legal obligation under article 16 to prevent the described acts "in any territory under its jurisdiction" (question 44). That obligation did not apply to activities undertaken outside that territory, and his Government rejected the concept that "de facto control" equated to territory under its jurisdiction. Nevertheless, cruel, inhuman and degrading treatment or punishment was prohibited under the Detainee Treatment Act and the Uniform Code of Military Justice. For detailed information on the special maritime and territorial jurisdiction he referred the Committee to the written replies.

61. Mr. MONHEIM (United States) said that the American Bar Association had applauded the National Detention Standards as a “good first step towards providing uniform treatment and access to counsel for immigrants and asylum-seekers” (question 45). An example of the standards at work was the recently opened South Texas detention facility, allowing for separation of detainees by gender and degree of risk posed.

62. Concerning tasers (question 46), the Department of Justice was developing policies for their use in conjunction with local police agencies. Courts had found such devices consistent with the Eighth Amendment’s “prohibition of cruel and unusual punishment”. They could obviate the need to use other more severe, even deadly, forms of force. The Department remained committed to investigating and prosecuting instances of the wilfully excessive use of force involving tasers. With the DoD, it was also researching and developing less lethal electro-muscular devices, offering improved safety and effectiveness, for law enforcement and military purposes.

63. Federal law prohibited the housing of juvenile offenders in correctional institutions or detention facilities where they could have regular contact with adult offenders (question 47). The temporary detention of a juvenile in an adult facility, e.g. immediately following arrest, was always for a minimum period, and “sight and sound” separation from adult offenders was ensured. With respect to juveniles in Department of Homeland Security (DHS) custody, they were not held with adults in DHS detention facilities.

64. Concerning the use of restraints on detainees (question 48), it was not the general policy or practice of the United States to shackle female prisoners during childbirth. Restraints would be used only in the unlikely event that the inmate posed a threat to herself, her baby or others. Alleged misuse of shackles in federal or state prisons was investigated by the Department of Justice. The use of chain gangs or hitching posts was not unconstitutional in itself, but the Department would seek immediate prohibition of the practice if conducted in violation of constitutional provisions (e.g. ensuring adequate water supplies, access to toilets, medical care). With regard to super-maximum prisons, the Department had fully investigated, and would continue to investigate, all allegations concerning such facilities, applying the same constitutional standards as in other penal facility investigations.

65. The Prison Rape Elimination Act of 2000 mandated that all correctional facilities had standards that identified and reported sexual assaults and rapes (question 49). Department of Justice and DHS policies and practices in that regard covered information on and reporting of allegations of sexual abuse involving staff or inmates, as well as compensation for victims. Allegations of serious abuse supported by credible evidence gave rise to administrative measures or criminal prosecution where warranted.

66. The Bureau of Prisons did not use solitary confinement in its facilities (question 50). Procedures and safeguards, including mental health monitoring, were applicable in the limited cases where it was necessary to separate inmates temporarily from the general population. Insofar as the question related to enemy combatants, a State was clearly authorized under the law of war to detain combatants - whether lawful or unlawful - for the duration of the conflict without charges.

67. The United States had included an understanding in its instrument of ratification of the Convention that the treaty did not “restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States” (question 51). The Supreme Court of the United States had found lethal injection to be consistent with the Constitution.

68. More detailed information on the issues addressed would be found in the written replies.

69. Mr. BELLINGER (United States) said that the answer given to question 27 covered question 52, concerning alleged interrogation techniques.

70. Under the federal structure of the United States, state and local governments retained significant responsibility in areas relevant to the implementation of the Convention (question 53). That division of authority had not in practice detracted from or limited his country’s substantive obligations under the Convention since the Constitution prohibited at state and local level the kind of conduct referred to.

71. The United States was not considering making a declaration under article 22 of the Convention, recognizing the competence of the Committee to receive and consider individual communications (question 54).

72. The United States had considered its existing reservations, understandings and declarations in the light of the Committee’s recommendation to withdraw them but had not found any grounds for revising them (question 55).

73. The United States was not considering ratification of the Optional Protocol to the Convention (question 56).

74. Concerning restrictions on equipment designed to inflict torture (question 57), his country recognized that trade and export of certain items should be controlled to prevent their misuse. Items specifically designed for the use of torture would never be granted a licence under United States Export Administration Regulations.

75. Questions 58 and 59, relating to terrorism and measures to prevent domestic violence, raised very broad issues, many outside the scope of the Convention. Response to those questions was to be found in his country’s second periodic report and in its most recent periodic report to the Human Rights Committee.

76. A more detailed response to all the issues addressed would be found in his country’s written replies.

77. Mr. MARIÑO MENÉNDEZ, Country Rapporteur, noted that the United States report was submitted against the background of the challenge posed by international terrorism, which constituted one of the greatest violations of human rights of all time and had been responsible for the devastating attack on the United States on 11 September 2001.

78. Was he correct in understanding that the United States believed that the Convention against Torture did not apply in conditions of armed conflict? And did the United States consider that the armed conflict against terrorism was still in progress? The Convention having

been established without prejudice to other international instruments of broader application, the Committee took the view - supported by rulings of the International Court of Justice - that the Convention was applicable in times of armed conflict in the same way as other international standards, such as the International Covenant on Civil and Political Rights.

79. While it was understandable that a State was disinclined to disclose information on activities by its intelligence services, such activities were assimilable under international law to actions committed by the State itself. Refusing or frustrating access to the complaints mechanism could also be regarded as a violation of potential complainants' rights.

80. He was concerned that the definition of torture contained in article 1 of the Convention had not been incorporated in United States federal law, despite the Committee's recommendations in that regard. Moreover, to construe article 1 in such a way as to define torture as "extreme or extremely severe" pain was to add something new to the Convention, which referred only to "severe pain". It was his understanding that the delegation had acknowledged as much in its replies to the Committee.

81. Concerning the notion of "mental suffering", which had been the subject of reservations in the United States instrument of ratification, he would like clarification as to whether the reference in the delegation's replies to four kinds of prolonged mental suffering did not embody a restriction on the meaning of article 1 of the Convention.

82. He was also concerned that the absence of an offence of torture under United States federal law made it possible to exploit the ambiguities in the distinction between torture and inhuman treatment. Did the delegation agree, for example, that ill-treatment of someone held in detention could in some circumstances amount to torture? Immersion in water, holding detainees incommunicado and various kinds of sexual violation were among the forms of coercive ill-treatment that bordered on torture.

83. On the issue of forced disappearances, the statement in the written replies that such practices did not constitute torture ran counter to a solid consensus of international opinion, including rulings by international tribunals.

84. In the specific case of Guantánamo, it was true that visits by ICRC and journalists had found no evidence of torture as distinct from ill-treatment. However, given that the Special Rapporteur on torture had not finally been able to interview detainees there, and since the United States had included a reservation in its instrument of ratification concerning the use of coercive techniques authorized by federal law or jurisprudence, he would like assurances that the interrogation techniques employed in facilities such as Guantánamo were not infringing or frustrating the purposes of the Convention.

85. In contexts where abuses had occurred, it was claimed that reviews carried out by the Government had established that there had been no systematic policy of ill-treatment involving DoD officials. However, evidence deriving from reliable sources such as Human Rights Watch revealed some inconsistencies in that regard. Why was it that, in documented cases of the killing or abuse of 450 detainees involving some 600 United States personnel, only 54 convictions had

resulted and that only 10 of the 40 prison sentences imposed were for over one year? Had there been an investigation of the chain of command in connection with those violations, for which the United States was accountable under the Convention?

86. In connection with the Detainee Treatment Act, he would be grateful for clarification as to the implications of the McCain amendment and of the position taken by President Bush on the issue of United States obligations under the Convention.

87. In accordance with article 3 of the Convention, a State party was obliged to exercise due diligence in ensuring that a person expelled, returned or expedited from its territory was not in danger of suffering torture as a consequence. The European Parliament was currently investigating reports of terrorist suspects being transferred on unannounced flights to clandestine prisons in other countries. Such a practice would be tantamount to forced disappearance and would be in clear breach of obligations under article 3 of the Convention, since it was impossible to control what would happen as a result of such so-called "extraordinary renditions". Was he right in understanding the position of the United States to be that diplomatic assurances alone were not sufficient grounds for expulsion, return or extradition to another State? Judgements by international organizations on the likelihood of someone suffering ill-treatment as a result of being handed over to a particular State should be sufficient, in his view, to prohibit such a rendition. In that connection, he also wished to know whether it was true that the decisions of the Secretary of State concerning the extradition of a foreigner to another country were not subject to any kind of judicial review or remedy in the United States.

88. Mr. CAMARA, Alternate Country Rapporteur, stressed the role of the Committee in ensuring State party compliance with the Convention against Torture as it was interpreted by the Committee, rather than by individual States. That principle also applied to the United States. Since the international community's goal was to minimize the incidence of torture, he was concerned that any reservations to article 16 of the Convention would place emphasis on suffering rather than on torture. History had shown that torture had been used as an illicit means of obtaining evidence - a notion which must be reflected in its definition. If it was not, the issue under consideration was restricted to cruel, inhuman or degrading treatment, rather than torture. It was thus essential to refer back to article 1 of the Convention, which established the criminal intent, as well as the practical purpose, of the act of torture.

89. He requested clarification of the legal basis for the United States reservations. Although his understanding was that the United States had not ratified the Vienna Convention on the Law of Treaties, the latter Convention stated that non-State parties were not exempt from fulfilling their obligations under international customary law. United States "positive law" presented the problem that it did not criminalize torture as an autonomous offence; hence the need to recognize the definition of torture enshrined in the Convention against Torture. Moreover, article 16, paragraph 2, of the latter Convention stipulated that its provisions were without prejudice to the provisions of any national law prohibiting cruel, inhuman or degrading treatment.

90. He drew attention to the case of Martin Mubanga, a British national of Zambian descent who had converted to Islam and been detained at Guantánamo. Following his release, he had alleged that he had been tortured - undoubtedly for the purpose of obtaining evidence - and had suffered racial abuse. All the elements constituting torture had thus been present, but no inquiry had apparently been conducted. What measures had been taken by the United States in that

case? And did it intend to provide the victim with appropriate compensation? The United States must endeavour to ensure that the rule of law applied equally to its own citizens and to foreigners in its territory.

91. Ms. SVEAASS thanked the delegation of the United States for clarifying some of the points raised by the Committee on conditions of detention; however, a number of issues remained. The problem of sexual violence against detainees, women in particular, had been highlighted by several United Nations rapporteurs who had visited state and federal prisons in the United States. Insufficient access to legal, medical and counselling resources had been reported.

92. Recommendations had already been issued by the Committee, *inter alia* in the light of alleged cases of assault by law enforcement officials and among inmates. Despite the adoption of instruments such as the Prison Rape Elimination Act, figures relating to sexual violence were still alarming. The fact that many of the allegations had been considered to be unsubstantiated was a subject of concern, since evidence was often difficult to establish in such cases. What measures had been taken to prevent sexual violence, and when would existing legislation on the issue be effectively enforced? Were officials involved in such acts prosecuted? In the training of law enforcement personnel, was emphasis placed on the need to respect physical integrity, with special focus on gender-related issues? Did staff in privately contracted facilities receive the same training, and how could the situation be monitored? What steps had been taken to protect especially vulnerable individuals? How could better monitoring of conditions be achieved, and how could sexual violence against detainees be prohibited under the Convention? What initiatives had been taken to provide compensation and rehabilitation to victims? She had noted that existing centres for victims of torture had not been used for rehabilitation work in cases involving allegations against government officials.

93. She particularly deplored the use of violence against pregnant women, such as in the case of Shawanna Nelson, who had remained shackled during labour. She wished to know whether the revised version of the Uniform Code of Military Justice would explicitly prohibit all forms of torture and cruel, inhuman or degrading treatment, including gender-related violence? Moreover, would there be any provisions against specific types of physically and psychologically harmful practices? She hoped that the Committee would be able to receive a copy of the amended Code.

94. Referring to measures taken to prevent domestic violence and to classify such acts as specific offences under criminal law, she did not agree with the delegation's view that domestic violence was outside the scope of the Convention. Did that imply that a State could overlook its obligation to prevent violence of which it was aware? In that case, article 3 of the Convention would not be applicable to a woman fleeing acts of domestic violence amounting to torture.

95. Mr. KOVALEV endorsed Mr. Camara's view that the scourge of torture could not be eliminated until the definition of torture was universally agreed upon. Torture did not necessarily involve the use of force. Not only had the United States not ratified the Rome Statute of the International Criminal Court (ICC), it had in fact withdrawn its signature. He questioned that action, since the illegal status of human rights offences, including crimes against humanity and terrorism, would be strengthened under the jurisdiction of the ICC.

96. Ms. BELMIR welcomed the efforts by the United States to strengthen the concept of the rule of law. She stressed the link between the Convention against Torture and article 4 of the International Covenant on Civil and Political Rights, recalling that certain provisions were non-derogable: the right to life; non-discrimination; the prohibition of torture; and the non-retroactivity of criminal law. She had noted a number of inconsistencies in the body of United States law, and was unsure whether the confusion thus created was intentional or arose from the federal system. At any rate, the definition of torture in article 1 of the Convention had been framed cautiously on the basis of compromises and terms on which all States could agree. The notion of the rule of law also required a uniform interpretation of texts, in order to ensure that there were no exceptions.

97. With regard to allegations of human rights violations, she had in general observed similar patterns of conduct on the part of law enforcement personnel in prisons in the United States and those in secret locations. Methods used during interrogation included immobilization, isolation, sexual abuse, beatings and chaining to walls. According to disturbing reports from NGOs, children were sometimes also detained with adults, a practice which ran counter to international law. Insulting attitudes and behaviour towards women had also been reported by human rights groups.

98. It had been suggested that the existence of abuse might reflect ambiguity in the rules governing the conduct of military personnel. Did the problem stem from the training of personnel, or from the interpretation they were given of the rules to be applied? Or was there a desire to derogate from international human rights instruments?

99. Mr. WANG Xuexian wished to know whether interrogation methods such as “waterboarding” would be classified as torture or other forms of cruel, inhuman or degrading treatment. There had been repeated references to situations where certain individuals did not receive humane treatment. Were those based on confirmed facts; if so, might they have had an impact on the behaviour of military personnel? Finally, operations of the CIA and other intelligence agencies were of no concern to the Committee. However, were measures in place to monitor those operations so as to ensure that they did not violate the Convention? And if violations occurred, were they investigated and their perpetrators charged?

100. The CHAIRPERSON recognized the contribution of the United States to the promotion of human rights, but also stressed its obligation to fulfil a number of requirements. Remanding a person in custody for years without allowing access to legal advice, even in the context of the war against terrorism, raised a serious problem. The announcement of plans to close Guantánamo had thus been highly appreciated. He expressed the sincere hope that the rights of detainees - against whom there was not the slightest evidence, although they might be suspects - would thereafter be guaranteed in strict compliance with the Convention.

101. The photos and films emerging from Abu Ghraib prison had brought back sad memories of his visit there under the regime of Saddam Hussein, and he was shocked that the United States should be involved in such activities. The perpetrators of offences had been prosecuted, but what monitoring measures had been in place before the problem had arisen? And where had the system failed? Could further information be provided on the chain of command and on instructions received concerning the interrogation of detainees?

102. The Committee always adopted an objective approach to information provided by NGOs, and their contribution on the current issue had been particularly commendable. In view of the considerable role played by the United States in the building of civil societies and the advancement of NGOs, he suggested that it should cooperate more closely with NGOs. His own relations with the United States Government during his mission as United Nations Special Rapporteur on Iraq had been excellent, and he was confident that the situation there would improve following the election of a new Government.

103. On the definition of torture, he believed that if a country could satisfy the Committee that every aspect of torture was covered under national legislation as an offence with an appropriate sentence, there was no obligation to change the law. If necessary, appropriate amendments could be introduced, even though the experience of the Committee was that the classification of torture as a specific offence benefited the great majority of countries.

104. At the domestic level, he had been surprised to learn that from 1972 to 1991, a Chicago police commander had been responsible for the torture of 135 African-Americans. Despite a number of court proceedings, the matter was still unresolved. He requested clarification on that matter.

105. He questioned the need for the death penalty in the present day and age, taking into consideration its profound psychological side-effects. The Detainee Treatment Act was welcome, but the exclusion of the principle of habeas corpus was particularly regrettable. He stressed the need to conduct investigations into violations of the Convention during intelligence activities. He called for greater independence of investigations, in the United States' own interest. He was glad that diplomatic assurances had been used sparingly to ensure no risk of torture existed.

106. The discussions with the United States delegation on the question of *lex specialis* had been noteworthy. While he recognized that that principle might be used in determining the primacy of one convention over another, public opinion expected the application of rules which provided greater protection to defenceless individuals, who should enjoy the presumption of innocence.

The meeting rose at 1.10 p.m.