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Eighty-seventh session

SUMMARY RECORD OF THE 2380th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 July 2006, at 10 a.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Second and third periodic reports of the United States of America (continued) (CCPR/C/USA/3; CCPR/C/USA/Q/3; HRI/CORE/USA/2005; written replies by the United States of America, document without a symbol distributed in English only)

1. At the invitation of the Chairperson, the members of the delegation of the United States of America resumed their places at the Committee table.

2. Mr. WAXMAN (United States of America) said that his Government did not consider questions concerning the war on terrorism, and detention and interrogation outside United States territory to fall within the scope of the Covenant. However, his delegation would use the opportunity to exchange views and share information with the Committee and NGOs. He agreed that measures taken to combat terrorism should not compromise human rights principles. The Al-Qaida attacks on the United States constituted a global threat that did not correspond to existing legal categories. The Government's guiding principle was to take action consistent with the United States Constitution, its laws and its international obligations. Balancing security and liberty within a democracy was, however, a complex task.

3. The Government drew a clear distinction between the global threat posed by transnational terrorism and the legal status of his country's armed conflict with Al-Qaida, and its affiliates and supporters. While the Covenant continued to apply to the treatment of prisoners in domestic United States prisons, the law of armed conflict governed United States detention operations in Guantánamo Bay, Afghanistan and Iraq. The United States did not cite application of the law of armed conflict in order to engage in acts of torture and ill-treatment, which were a violation of United States criminal law and the law of armed conflict wherever they occurred. Perpetrators of such acts were held fully accountable.

4. In accordance with the traditional rule of warfare, enemy fighters could be held until the end of the conflict in order to prevent them from returning to the battlefield. Given the unique nature of the current war, however, his Government had made significant efforts to develop individualized administrative procedures to review each case in Guantánamo and elsewhere. Once the Government was convinced that detainees would have adequate security and humane treatment on returning to their home countries, they were released or returned to those countries.

5. Mr. HARRIS (United States of America) said that his Government regretted the delay in submitting its second and third periodic reports and was taking steps to prevent such problems in future. One task of the Interagency Working Group on Human Rights Treaties, established in December 1998, had been to facilitate the preparation of reports to treaty bodies. A similar body remained in operation and had overseen delivery of four major reports. The Covenant was well known in his country and had been cited in many legal cases. All reports were published on the State Department and other websites. The legislative branch of government was familiar with the Covenant thanks to the ratification process, which had included extensive public discussion. Several training programmes on international treaty obligations for federal judges covered the Covenant.

6. The Government had taken measures to engage individual states in the preparation of the report. Given that United States civil rights protections were enforced through federal and state legal processes, and that the Constitution was applicable to both, the absence of detailed reporting did not, however, indicate a failure to implement the Covenant at state level. Should the Committee have concerns regarding a particular state, it would be helpful if it could inform the Government prior to preparation of the fourth periodic report.

7. His Government had not entered a derogation under article 4 of the Covenant because no actions in his country had derogated from the obligations under the Covenant. The reservation to article 6 (5) had not been withdrawn since only a small section of that reservation involved the juvenile death penalty. It could not therefore be withdrawn in its entirety. Moreover, it was difficult and highly unusual to withdraw reservations in United States practice.

8. While he appreciated the analysis of the scope of article 2 (1) of the Covenant that Mr. Kälin had made at the previous meeting, his delegation found it difficult to accept that the conjunction in the phrase “within its territory and subject to its jurisdiction” could be interpreted as meaning “and/or”. That was particularly implausible given that the Covenant negotiators had rejected the proposal to substitute the word “or” for “and”. In general, only the parties to a treaty were empowered to give a binding interpretation of its provisions unless the treaty provided otherwise. That was not the case in the Covenant, nor did it authorize the International Court of Justice to issue legally binding interpretations of its provisions.

9. On the question of the content of a single General Assembly resolution, he pointed out that almost all other resolutions took an opposing view; practice suggested that States parties had not implemented the Covenant in international armed conflict outside their territories.

10. His Government respectfully disagreed with the Committee’s conclusion that article 7 of the Covenant contained a non-refoulement obligation with respect to torture and cruel, inhuman or degrading treatment or punishment. That conclusion went well beyond the language of article 7 and the scope of the non-refoulement provision contained in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. His Government did not accept that the obligations of a State party under a treaty were affected by non-binding general comments or individual complaints procedures that the State had not accepted. Immigration judges applied the standard “more likely than not” provision in implementing article 3 of the Convention against Torture, and thus determined whether it was probable that a foreign national would be tortured if he was returned or extradited to a particular country. It was a standard that was common in United States law and had been applied by immigration tribunals since the introduction of the 1980 Refugee Act.

11. Ms. HODGKINSON (United States of America) said that detainees were being held in Guantánamo in order to remove them to a location safe from the continuing battle, while keeping dangerous terrorists from the proximity of the American public. Guantánamo had been the best option as a military base with existing facilities.

12. All officers serving on Combatant Status Review Tribunals and Administrative Review Boards had taken an oath to defend the Constitution. In each case, their neutral status was guaranteed by the fact that they had not been involved in capturing the detainee, they had no prior knowledge of the facts of the case and they did not know the detainee. Their status was

similar to that of members of a court martial for United States servicemen under the Uniform Code of Military Justice. Combatant Status Review Tribunals were single hearings to establish a detainee's status as an enemy combatant. They were more extensive than hearings under article 5 of the Geneva Convention relative to the Treatment of Prisoners of War.

13. Detainees' protections at those hearings included the ability to request witnesses and to present information on their own behalf. Many detainees had requested witnesses at their Combatant Status Review Tribunals, and if the witnesses were already at Guantánamo, they were deemed to be reasonably available. Requests were passed to host nations of detainees not held at Guantánamo, and when located, the witnesses had the opportunity to provide relevant information. To date, 38 detainees had been designated no longer enemy combatants and had been or were being released as a result of information witnesses had provided to the Tribunals.

14. Administrative Review Boards undertook annual reviews to determine whether there was a continued need to hold a particular detainee on the basis of the level of threat he posed, or the value of the intelligence he could supply. The procedure followed was similar to that of the Combatant Status Review Tribunals, including the detainee's right to present information and request witnesses. The Boards had deemed some 100 detainees eligible for transfer or release. Judge Advocate General's Corps reviews ensured that procedures were followed prior to sending recommendations to a Designated Civilian Official.

15. During major hostilities in Iraq, United States officials had conducted tribunals in accordance with article 5 of the Geneva Convention relative to the Treatment of Prisoners of War. Similar procedures had been established for reviews of detention and the potential release of detainees in Iraq and Afghanistan. Many detainees in both countries had been released.

16. In its ruling on the Hamdan v. Rumsfeld case, the Supreme Court had determined that the Detainee Treatment Act did not affect the United States habeas corpus jurisdiction over certain cases pending on the day the Act had taken effect. The Act provided judicial review by United States domestic courts over the detention of enemy combatants, which gave those detainees a level of protection unprecedented in the history of war.

17. All credible allegations of abuse by United States government officials or military personnel at detention facilities were thoroughly investigated in accordance with the rule of law, and strict accountability was applied for all abuses. A Department of Defense commanding General and a Lieutenant Colonel had been relieved of their posts at Abu Ghraib prison, and over 250 military personnel had been held accountable for abuses at various levels in detention operations worldwide. Over 100 courts martial had been conducted with a conviction rate of 86 per cent. Some 600 investigations had been carried out, and accountability for abuses was ongoing. As a result of 12 major reviews of those abuses, the Department of Defense had implemented several reforms aimed at improving detention operations and reducing the incidence of abuse in future, particularly focusing on improved training and changes in leadership oversight.

18. Under the Detainee Treatment Act, the military was restricted by law to interrogation techniques listed in the Army Field Manual on Intelligence Interrogations or its successor. All the techniques listed in the current Manual were consistent with common article 3 of the

Geneva Conventions, the law of war and applicable United States legislation, including the Act's statutory prohibition on cruel, inhuman or degrading treatment. The McCain amendment in the Act applied to any person held by the United States. Current domestic legislation provided that no one could engage in cruel, inhuman or degrading treatment or punishment, as defined under United States obligations under the Convention against Torture, against anyone, anywhere. Moreover, Title 18, Section 2340, of the United States Code prohibited torture of any person anywhere.

19. His country did not transfer detainees to States where it was "more likely than not" that they would be tortured, and did not transport any individual to a third country to be tortured. In accordance with domestic legislation and policy, his delegation would not discuss specific intelligence activities. Nevertheless, many countries, including the United States, had used renditions for decades to transport individuals between countries for law enforcement purposes. Where appropriate, the United States negotiated diplomatic assurances to ensure that individuals transferred from Guantánamo would not be tortured on return to their countries, and that they did not pose a significant threat to the United States or its allies. Diplomatic assurances were not, however, deemed a substitute for a thorough review of whether it was "more likely than not" that a person would be tortured. Rather, they were one of many components considered when analysing each situation.

20. The executive and legislative branches of government were working together to determine how best to implement the Supreme Court's decision in the Hamdan v. Rumsfeld case. However, the Covenant would not be applicable to any new military commissions that might be established since the law of armed conflict would pertain.

21. Mr. KIM (United States of America) said that several laws safeguarded the constitutional rights of all prisoners, including women. The Civil Rights Division of the Department of Justice investigated and prosecuted prison officials found guilty of violating inmates' and detainees' constitutional rights. Between 2001 and 2005, 334 police and prison officials had been charged with misconduct. The Department of Justice also monitored conditions in state local prisons and juvenile detention facilities. Since 2001, it had concluded formal investigations of 42 jails, prisons and juvenile facilities to ensure that constitutional rights were protected. It was currently monitoring agreements involving 97 such institutions and would remain vigilant in protecting the rights of women in custody.

22. Bureau of Prisons regulations provided that pregnant inmates were responsible for deciding whether to have an abortion. Medical, religious and social counselling was provided to facilitate that decision. Inmates who opted for an abortion signed a statement to that effect and had the abortion. For contraception, prenatal and neonatal care, Bureau of Prisons medical staff provided inmates with consultation, medical care, case management and counselling services.

23. Given that a wide range of legislation prohibited discrimination based on gender, almost all federal government agencies were responsible for protecting the equal rights and opportunities of women to some degree. The agency primarily responsible for enforcing legislation specifically concerning gender discrimination was the Equal Employment Opportunity Commission. Under Title VII of the Civil Rights Act of 1964, it was illegal for

employers to pay different wages based on an employee's gender. The Commission also enforced the Equal Pay Act, which required that men and women receive equal pay for equal work.

24. To eliminate the wage gap between men and women, the Commission monitored cases of discrimination in the workplace based on gender, and prosecuted employers found guilty of wage discrimination. In addition, the Department of Labor's Women's Bureau promoted the well-being of wage-earning women and took steps to improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment. It studied the impact of federal employment laws on women and provided grants to promote women's participation in non-traditional occupations.

25. On the question of racial discrimination after the terrorist attacks of 11 September 2001, just weeks later the then Attorney-General had publicly condemned the increase in hate crimes against people perceived to be of Middle Eastern descent. The task force he had commissioned had investigated more than 700 allegations of racially-motivated crimes, resulting in over 100 prosecutions. The Department of Justice's Civil Rights Division had also established the Initiative to Combat Post-9/11 Discriminatory Backlash in order to combat violations of civil rights laws against Arab, Muslim, Sikh, and South Asian Americans, and persons perceived to be members of those groups. Moreover, under the Constitution, anyone selected for prosecution due to some impermissible factor such as race, religion or national origin was entitled to have criminal charges dismissed, irrespective of their guilt or innocence. United States law also provided for other court remedies such as damages for persons whose constitutional or statutory rights had been violated.

26. The statutory criteria for the arrest and detention of material witnesses were that there was probable cause that: the witness had testimony material to a criminal proceeding, and it was impracticable to secure the witness's presence by subpoena. Anyone arrested on a material-witness warrant had the right to counsel and to challenge the reason for detention before an independent judicial officer. Implementation of that procedure did not violate any other constitutional right. An individual arrested on such a warrant could invoke any applicable constitutional right, including the right to be free from self-incrimination, as protected by the Fifth Amendment.

27. On the question of surveillance, in some instances it was necessary to gather evidence of an ongoing crime, and alerting the criminal to the fact that the evidence being gathered was not practicable. Nevertheless, numerous safeguards ensured that delayed-notice search warrants were used appropriately. As with all criminal search warrants, federal judges issued those warrants only when there was probable cause to believe that the property sought or seized constituted evidence of a criminal offence. Federal judges must determine that a delay in notice was justified, and decided the length of that delay. Section 114 of the USA PATRIOT Improvement and Reauthorization Act provided that notice should presumptively be given within 30 days after the warrant was executed, with extensions presumptively limited to periods of 90 days or less.

28. Protection against racial profiling was provided by the Fourteenth Amendment, which prohibited law enforcement actions motivated solely by race or national origin. The current Government had further prohibited the use of racial profiling in federal law enforcement. In

addition, under two other provisions of federal law, the Department of Justice could investigate allegations that law enforcement agencies followed a pattern or practice of constitutional violations, including allegations of racial profiling. If such a violation was deemed to exist, the Department of Justice worked with the law enforcement agency to revise policies, procedures and training to ensure constitutional policing.

29. While poor and minority students had often suffered under the education system in the past, increasing accountability for minority student groups at all levels was central to current education reforms. The No Child Left Behind Act had introduced annual testing for all children, with scores published and schools, districts, and states held accountable for their academic performance.

30. Turning to Native American issues and the extinguishment of property rights, he said that when the United States had been founded, Indian tribes had held their land in "aboriginal title", which was a right of use and occupancy. Since then, Congress and the Executive Branch had recognized tribal property rights through treaties, statutes, executive orders or as fee simple ownership, which was how federally recognized tribes currently held virtually all their land. Once Congress had acted to recognize those property rights, compensation could be sought for any impairment of such rights under the Fifth Amendment. While the occupancy right provided for under aboriginal title was not compensable, compensation had in fact been paid by the United States for many Indian land cessions at the time they had been made.

31. In the Tee Hit Ton case, the tribe had occupancy rights only to certain lands and did not have ownership interests in the lands. The United States had not therefore been required to provide compensation after removing timber from the land. With regard to Western Shoshone land claims, in 1946 Congress had provided for a quasi-judicial body, the Indian Claims Commission (ICC), to adjudicate unresolved Indian claims against the United States. The ICC had provided a forum for suits against the Government that would otherwise have been barred by time and doctrines of sovereign immunity, and in some respects had provided Indians with special access that would not ordinarily have been available under regular court rules and procedures. Recovery of compensation did not depend on proof of recognized title; compensation was available even if a tribe's property interest was aboriginal only. Moreover, financial compensation was available if a tribe's interest in land was found to have been taken for inadequate compensation by the Government or through encroachment by others. ICC judgements were restricted to financial compensation and did not include land restoration. They were enforceable as law and appealable to higher courts. In the case of the Western Shoshone, the tribe had taken their 1977 ICC judgement to a court of appeal and then to the Supreme Court. The ICC was similar to processes under United States law that allowed parties to go to court to claim deprivation of land by the Government, where judgements or awards on such claims of "takings" were compensable only by money, not land.

32. In the Yankton Sioux case, the Government and the Yankton Sioux tribe had jointly defended the boundaries of the tribe's reservation against the state government of South Dakota. The court had held that, while the reservation might have been diminished to the degree that certain lands had passed out of tribal control under the allotment processes of the mid-1800s, the reservation had not been extinguished.

33. The Individual Indian Money accounts contained money held in trust by the Department of the Interior for individual Indians, not tribal governments. The money was derived from the use or extraction of natural resources on individual Indian land. Those accounts were the subject of litigation in which the plaintiffs alleged a breach of trust and demanded an accounting of the monies. The accounting had begun, and would encompass billions of dollars: preliminary results had shown no evidence of widespread fraud or systematic error. The Government was seeking a fair and non-discriminatory resolution for the account-holders.

34. The Senate had defeated the proposed Native Hawaiian Government Reorganization Act of 2006. The bill had met with opposition because it would have divided the American people by race. In addition, the Supreme Court and lower federal courts had invalidated state legislation containing similar race-based qualifications for participation in government entities and programmes. The bill would have granted federal tribal recognition to native Hawaiians even though the Supreme Court had stated that whether native Hawaiians were eligible for tribal status was a "matter of dispute".

35. For an indigenous group to be federally recognized as a tribe, it must demonstrate its continuous existence as a political community, having retained its inherent sovereignty. Such federal recognition of an Indian group's legal status confirmed the tribe's existence as a distinct political unit, and also institutionalized the government-to-government relationship between the tribe and the federal Government. Tribes could gain recognition from the Government through the Department of the Interior's Office of Federal Acknowledgement. While Native Hawaiians were indigenous to Hawaii, there were substantial historical, structural, and cultural differences between the Native Hawaiian community and federally recognized Indian tribes. The most significant was that Congress had not yet indicated that it sought to establish a government-to-government relationship with a Native Hawaiian group or groups.

36. All crimes of violence were considered seriously, regardless of the victim's sexual orientation or physical status. Violent assaults were a crime in every jurisdiction, and legislation afforded protection to all victims of violent crime. Offenders were held accountable under state and federal laws, as illustrated in the prosecution in Wyoming of those who had killed Matthew Shepherd because of his sexual orientation. Furthermore, 46 states and the District of Columbia had criminal laws that specifically prohibited hate crimes. More than a dozen states and 100 cities offered employment protections to individuals based on sexual orientation.

37. Mr. TIMOFEYEV (United States of America) said that his country strongly supported the United Nations Guiding Principles on Internal Displacement. His Government's response to the internal displacement caused by Hurricane Katrina had included providing relief assistance to all victims as quickly as possible without discrimination. The United States continued to examine its response to Katrina in order to benefit from the lessons learned. Despite the extensive displacement caused by the hurricane, the situation did not come within the challenges that the Guiding Principles were designed to address. A separate communication would be provided in response to an inquiry by Mr. Kälin, Representative of the Secretary-General on the human rights of internally displaced persons. His delegation disagreed with the suggestion that federal evacuation plans would have been found discriminatory if they had been investigated.

38. Under the United States constitutional framework, state and local governments had the authority to order the evacuation of their citizens and thus bore primary responsibility for evacuation planning and providing evacuation assistance. The President had recently signed legislation requiring the federal Government, in coordination with Gulf Coast states and contiguous states, to review federal and state evacuation plans. Efforts were being made to provide better shelter and transport for those who needed assistance. The Government had responded swiftly to the financial needs of Katrina victims, and less than three weeks after the hurricane it had approved emergency funding amounting to $61 billion to support disaster relief efforts. The victims had received over $6 billion in direct financial and housing aid.

39. On illegal migration, he said that the President had rejected the approach of expelling all illegal migrants and would work with Congress on establishing a plan to ensure that aliens without lawful immigration status, who had been residing on United States territory for some time, would be treated with respect and dignity. Discussions were under way on how best to reform the immigration system. Turning to the issue of the use of the National Guard on the border, he said that National Guard personnel would assist the border patrol by providing logistical and administrative support through operating surveillance systems, providing mobile communications, increasing border-related intelligence analysis and increasing border security. National Guard personnel would not have direct contact with detainees, nor would they engage in law enforcement duties. National Guard troops were given preparatory training in the use of force and cultural awareness, and how to perform their border security duties.

40. Mr. WAXMAN (United States of America) said that the Department of Defense Internet site contained detailed information on investigations into alleged abuses by Department personnel and the procedures of review tribunals and administrative review boards. Full details on how to access that information would be given to the Committee secretariat.

41. Mr. KIM (United States of America), referring to question 17 of the list of issues, said that since the United States had submitted a reservation to the Covenant permitting the imposition of capital punishment within United States constitutional limits, the scope of conduct subject to the death penalty was not relevant to United States obligations under the Covenant. The death penalty was limited to the most serious offences, and racial discrimination in the application of capital punishment had been eliminated. Crimes punishable by death involved serious crimes that had resulted in death, such as murder during a drug-related shooting, murder related to sexual exploitation of children, murder related to carjacking or kidnapping and murder related to rape. Certain very serious non-homicide crimes could also be subject to capital punishment. Each potential death-penalty case was carefully considered to ensure that it was dealt with in a fair, uniform and non-discriminatory manner. Federal law specifically prohibited deciding whether to impose the death penalty on the basis of a defendant's race or national origin.

42. None of the examples described in question 18 of the list of issues adversely affected the rights of women as set out in articles 3, 6, 24 and 26 of the Covenant. The United States did not arbitrarily deny the right to life by choosing to fund certain activities, and the Constitution did not contain any obligations to finance the exercise of every right that it contained. The intended beneficiaries of abstinence programmes were free to seek out other sexual education. A variety

of programmes at the state level were in place to teach the harmful consequences of sexual activity and pregnancy outside marriage, and the harmful effects of drugs and alcohol on sexual decision-making.

43. Electro-muscular disruption devices had been used by law enforcement agencies in the United States for many years, since they offered a welcome alternative to the justified use of lethal force (question 19). The use of such devices had resulted in a reduction in the number of injuries and deaths of suspects, police officers and bystanders. Their use was not illegal, and in the event that they were used improperly an investigation would be held and appropriate action taken. Extensive research had been carried out into the safety of the devices, and improvements were being made in the safety and effectiveness of weapons used by law-enforcement and military personnel.

44. His Government maintained extensive programmes to protect the rights of humans involved as subjects in research (question 20). All research must be carried out with the support of the federal Government and must comply with regulations that provided additional protection for children. Informed consent was an essential element of the regulations governing the protection of human subjects in biomedical and behavioural research. An ethical review of proposed research must be carried out in the event that some or all of the subjects were considered likely to be vulnerable to coercion or undue influence, and safeguards must be included in the study to protect the rights and welfare of those subjects.

45. Under the 1999 Defense Authorization Act, the President could grant a waiver of informed consent concerning the administration of investigational new drugs to members of the armed forces in connection with their participation in a specific military operation in the event that obtaining such consent was infeasible, contrary to the best interests of the serviceman concerned or not in the interests of national security. That presidential authority had never been exercised in practice. The armed forces did not conduct medical or scientific experimentation on servicemen without their consent.

46. Turning to the issue of prison conditions and practices, he said that the federal maximum security facility was located in Florence (Colorado) and was administered by the Federal Bureau of Prisons (question 21). The Bureau ensured that the facility was used only for offenders who were hardened and dangerous criminals. Inmates in the facility had access to a broad range of classes, programmes and services, regular access to the prison chaplain, and five hours of out-of-cell recreation per week. On prison rape, he said that the rape of an inmate was a serious crime, which was vigorously prosecuted. Prosecutions had resulted in lengthy sentences for law-enforcement and prison officials convicted of sexual assault. The Prison Rape Elimination Act of 2003 called for, inter alia, gathering national statistics on sexual assault in correctional facilities, the development of guidelines to address prisoner rape and the establishment of a national prison rape elimination commission. It was not general policy or practice to shackle women giving birth in detention. Inmates were only restrained during labour and delivery in the unlikely event that they posed a threat to themselves, their babies or others around them. Although the use of shackles was not prohibited, allegations of their misuse in federal or state prisons were investigated by the Department of Justice.

47. The Prison Litigation Reform Act contained provisions to curtail frivolous lawsuits by prison inmates (question 22). Civil action for damages could not be brought by a prisoner for mental or emotional injury suffered in custody, without a prior showing of physical injury. A civil action could, however, be brought by a prisoner to redress torture or cruel, inhuman or degrading treatment or punishment. A wide range of alternative avenues was open, through which prisoners could file complaints and express grievances.

48. United States law did not impose restrictions on the right of any individual to form or join trade unions (question 23). Freedom of association was protected by the Constitution. Immigrant employees, including undocumented workers, were protected by the National Labor Relations Act, which was enforced by the National Labor Relations Board. The Supreme Court's ruling in the 2002 Hoffman Plastic Compounds case had confirmed the principle that undocumented workers could form and join trade unions.

49. Persons under the age of 18 in the United States could be sentenced to life in prison without the possibility of parole (question 24). Lengthy sentences had been imposed on persons who, despite their youth, were hardened criminals who had been convicted of extremely serious crimes and constituted an extreme danger to society. Each state handled the prosecution, rehabilitation, treatment and imprisonment of young offenders pursuant to its own statutes. The prosecution of a juvenile offender as an adult depended on factors that were decided by the court, including age, background, alleged offence, role in committing the offence, prior record or past treatment records. As far as possible, juvenile detainees were held separately from adults, and account was taken of the security risk they posed to other prisoners, the risk of harm to themselves, their need for medical or mental health treatment, and the danger they posed to the community.

50. Juveniles who had committed offences away from home were usually returned to their respective states for their cases to be dealt with. No juvenile committed to the custody of the Attorney-General could be held in an adult jail or a correctional institution in which he had regular contact with adult detainees. For less serious crimes, juvenile offenders were usually held in community-based facilities near their home. All juveniles in detention were provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counselling, education and training. If a juvenile had been found to have committed an illegal act owing to a mental disease or defect, he would be held in a suitable facility until reaching the age of 18, after which his case would be reviewed every six months. Pursuant to federal legislation, the constitutional rights of juveniles detained in state prisons could be enforced by the Department of Justice, which had determined that the inappropriate isolation of juveniles as punishment for disruptive behaviour violated constitutional rights. Isolation would only be used to protect juveniles from causing harm to themselves or others. Young persons placed in disciplinary isolation were entitled to notice of their charges, a hearing before an independent decision-maker and an opportunity to present evidence in their defence. Although states were considering amending the laws that disenfranchised convicted felons, such disenfranchisement did not constitute a violation of the Covenant.

51. Mr. GLÈLÈ AHANHANZO requested further information on the specific application of the death penalty in the United States, and asked why it seemed to be more frequently applied to citizens of African and Hispanic origin. He had received information that in South Carolina, the

state authorities were preparing to introduce the death penalty for sexual crimes against children. He asked if that was indeed the case, and if so, what the federal Government's views were on the situation.

52. Mr. O'FLAHERTY reminded the delegation that some of the Committee's questions had remained unanswered. In some instances, the delegation had failed to acknowledge situations of fact and to analyse the effectiveness of government responses to those situations. A mere statement of how much money had been allocated to addressing a certain situation did not constitute an explanation or justification of government activities. The delegation's statement regarding the lack of an explicit reference to sexual orientation in the Covenant could be interpreted as the United States considering that persons of diverse sexual orientation and gender identity were not entitled to the rights protected under the Covenant, or as a lack of awareness of the long-standing and consistent jurisprudence of the Committee that sexual orientation was included in the "other" category in the non-discrimination provisions of the Covenant.

53. The delegation had refused to acknowledge the existence of the women's rights problems raised in question 18 of the list of issues. Any programme that increased the risk of infection or death raised issues under the Covenant. Research had shown that abstinence programmes increased the risk of contracting HIV, falling pregnant, undergoing unsafe abortions and death. He wished to know what measures were being taken to reduce those risks. The Committee had been informed that 49 per cent of pregnancies in the United States were unplanned. He wished to know if that figure was correct.

54. Turning to the issue of freedom of association, he said that the State party's assessment of the Hoffman case was at odds with the findings of the International Labour Organization, which had made references to instances of anti-union discrimination in the wake of that case. He wished to know the extent to which the Hoffman case had set a precedent for judicial findings that limited the access of illegal aliens to employment rights. In view of the entitlement of illegal aliens to benefit from the rights guaranteed under the Covenant, and the positive policy statement made by President Bush on ensuring the rights of aliens, he wondered how the Government planned to extend the enjoyment of Covenant rights to all illegal aliens across the United States.

55. Mr. LALLAH asked whether maximum security prisons existed at the state level as well as at the federal level, and if so, whether further information could be provided on the differences between states in the treatment of prisoners. Although legislative guarantees were in place to protect all prisoners from cruel, inhuman or degrading treatment or punishment, the Committee had been informed that the provisions of that legislation were not always implemented effectively. He wondered what the results had been of the adoption of the Prison Rape Elimination Act, and whether there was any monitoring of the implementation of that legislation. He wished to know whether there were any mechanisms in place to ensure that the aims of the legislation were being fulfilled. He asked what efforts were being made to improve conditions for women in prison, and in particular to review the procedure of shackling women detainees during childbirth.

56. Mr. KÄLIN said that although the delegation's responses had been clear and enlightening, he regretted its minimalist approach to some issues and its tendency merely to insist that the United States had not violated the Covenant. The examination of a State party's

report was not a quasi-judicial procedure. States were required under article 2 not only to respect the Covenant but also to ensure that all individuals enjoyed Covenant rights. The purpose of the Committee's review of periodic reports was to explore with each State how it could move beyond the current stage of implementation of the Covenant, on the understanding that there was always room for improvement when it came to protecting human rights.

57. With regard to continuing differences between the State party and the Committee on how to interpret important parts of the Covenant, he agreed that there was no binding procedure for determining the correct interpretation. However, that did not bar the International Court of Justice (ICJ) from ruling on any questions of law that arose. Although the Judgment in the case concerning Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda) was binding only on the parties, it set an important precedent and was not merely an expression of opinion. Moreover, the Committee was mandated by article 40 to make general comments on the Covenant, so that its findings, though not legally binding, had considerable authoritative status.

58. Several States parties had informed the Committee that they accepted the principle of extraterritorial applicability of the Covenant. Some were even training their armed forces in Covenant rights since they might be stationed abroad not only in combat situations but also as part of a peacekeeping mission to which international humanitarian law no longer applied. It would be very odd if no human rights protection was available under such circumstances and troops were free to behave as they wished.

59. He had taken note of the delegation's statement that there was no rendition to a place where it was "more likely than not" that a person would be tortured. It must therefore unfortunately be inferred that persons could be rendered to a place where the risk of torture was as great as 49 per cent. With regard to the application of the "more likely than not" standard by immigration tribunals, other common law jurisdictions, including the House of Lords in the United Kingdom, had concluded that it could not be considered an appropriate standard under international law or even under common law.

60. With regard to racial profiling and police abuse, according to figures published by the Bureau of Justice in April 2005, 11.4 per cent of Hispanics and 12.4 per cent of African-American respondents to a survey had reported a search during a traffic stop, compared with only 3.5 per cent of whites. While only 1.1 per cent of whites had reported the use or threat of use of force following contact with the police, the comparable figure for African-Americans was 3.5 per cent and for Hispanics 2.5 per cent. Fourteen per cent of persons who had experienced the use of force by the police reported that they had sustained injuries as a result, and less than 20 per cent of those who considered that the police had acted improperly had filed a complaint or lawsuit against the authorities. Those figures indicated the existence of a real problem. While he did not question the State party's willingness to address it, the Committee was not convinced by the answer it had received that enough was being done.

61. Many cases of police brutality, including the so-called Chicago police torture cases, had been brought to the attention of the Committee. Full protection of rights under the Covenant could be ensured only if the State party had reliable information regarding patterns of abuse, for instance through a federal database containing details of complaints of alleged ill-treatment by law enforcement officials.

62. He agreed that the Covenant did not rule out the possibility of excluding criminals from the right to vote. However, it was a matter of concern that such exclusions had led in the United States to the disenfranchisement of millions of voters. In Florida alone an estimated 600,000 people of voting age had been prevented from casting their vote in the last two presidential elections. Such disenfranchisement could have a discriminatory impact on marginalized communities that were disproportionately affected by the exclusion rule, possibly influencing the outcome of elections. The right to vote had a collective dimension - the right to have at least some chance of securing a majority.

63. Paragraph 414 of the report mentioned that residents of the District of Columbia were not represented in the Senate and were represented in the House of Representatives by a non-voting delegate. While non-representation in the Senate might be justified because the District of Columbia (DC) was not a state, he wondered how it could be considered reasonable to exclude DC residents from the House of Representatives if, as stated by the delegation, reasonableness was the standard applied to voting rights.

64. Sir Nigel RODLEY said that some of the delegation's responses had been dogged reaffirmations of positions already stated in the report and the written responses to the list of issues. He hoped that any requests for a review of those positions in the Committee's concluding observations would not be met with the same dogged rejection.

65. With regard to article 2, the Committee's interpretation, which coincided with that of the ICJ, namely that States parties were required to ensure rights to all individuals within their territory and to all individuals subject to their jurisdiction, was not irrational. The primary rule of interpretation under the Vienna Convention on the Law of Treaties was contained in article 31, which stated that a treaty was to be interpreted in good faith "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The ordinary meaning of article 2 was the one given to it by the Committee, and the context included any subsequent practice in the application of the treaty which established the agreement of the States parties regarding its interpretation. It did not include the travaux préparatoires, which were a supplementary means of interpretation under article 32 of the Convention. The object and purpose were laid down clearly in the preamble to the Covenant and consisted in protecting humans from the overreaching power of States. If the travaux préparatoires were to be consulted at all, the main reasons for nervousness at the time of drafting of the Covenant about the principle of extraterritoriality were that it was difficult to apply the Covenant in another person's country, an issue that did not, however, arise since the person concerned must be under the State party's control, and to avoid certain situations involving occupation. Eleanor Roosevelt had been referring at the time to the case of occupied territories in Germany, Austria and Japan, since persons living in those territories had in certain respects been subject to the jurisdiction of the occupying Powers but had in fact been outside the legislative sphere of those Powers (E/CN.4/C/SR.193, issued in 1950). He did not expect the delegation to agree with his exposition of the case at once but he hoped that the United States authorities would be prepared to revisit the question of whether the extraterritorial application was so manifestly excluded.

66. One of the reasons the delegation had given for holding prisoners in Guantánamo was to keep dangerous detainees away from the United States public. That argument would be more acceptable if the United States was a small island; he found it hard to believe that no appropriate maximum-security detention centre could be found within the frontiers of a country the size of the United States.

67. He asked for confirmation that the habeas corpus principle was no longer applicable to cases brought after the passage of the Detainee Treatment Act and that appeals for Guantánamo detainees from the decisions of the Administrative Review Board lay with the United States District Appeals Court in the District of Colombia. It was interesting to note that the Hamdan v. Rumsfeld case had been an appeal from that very Court.

68. He had received no answer to his question regarding the interrogation techniques applied by agencies other than the Department of Defense, such as the CIA, other intelligence agencies and private contractors.

69. The Committee had been assured that persons in prolonged incommunicado detention were humanely treated in accordance with the prohibition of torture and cruel, inhuman or degrading treatment or punishment. He pointed out, however, that since the mid-1990s the United Nations Commission on Human Rights had each year adopted a resolution concerning the prohibition of torture and cruel, inhuman or degrading treatment or punishment which stated, inter alia, that prolonged incommunicado detention could violate that prohibition. As the United States had invariably joined in the consensus on that resolution, it was unclear how consistent its current interpretation of the scope of article 7 was with its earlier position.

70. In its written response to question 9 of the list of issues, the State party claimed that terrorist suspects within the United States were subject to the protections under the United States Constitution and other laws, and that those protections fully implemented United States obligations under the Covenant. He drew attention, inter alia, to the case of José Padilla, who had been held without charge in the United States for three years before his habeas corpus petition had been heard, and to that of Ali Saleh Kahlah al-Marri, a Qatari national who, according to Amnesty International, had been held in the United States for 32 months without any contact with his wife and five children, a situation that could continue indefinitely. It was unclear what constitutional guarantees such persons enjoyed.

71. Turning to question 19, he noted that remedies existed at the constitutional level for the abuse of tasers and other disabling equipment. The prosecutions brought, however, had concerned cases of such blatant abuse that it was hard to imagine what reasonable law enforcement purpose they might serve. The fact that the federal Government could intervene when such cases occurred at the state level was to be welcomed, but he wondered how they could have been allowed to occur in the first place and asked what measures the Government was taking to prevent their recurrence.

72. The written response to question 19 described “electro-muscular disruption devices” as “less lethal weapons” and the delegation had stated that they were often used as a non-lethal or less severe alternative to lethal weapons. He wondered what was meant by “often” in that context and how frequently severe and deadly forms of force were used instead. Moreover, according to Amnesty International, police had used tasers against unruly schoolchildren,

mentally disabled or intoxicated individuals whose behaviour was not life-threatening, elderly people, pregnant women, unarmed suspects fleeing minor crime scenes, and people who argued with officers or simply failed to comply with police commands. Yet in most cases, the officers concerned were found not to have violated their Police Department's policies, let alone the law.

73. He noted that "mere violations" of the Fourth Amendment to the Constitution did not fall within the State party's understanding of cruel, inhuman or degrading treatment or punishment within the meaning of article 7. A number of examples of cases in which action had successfully been taken against mistreatment of people in custody were listed in paragraph 131 of the State party's report. He would be interested to know which of those cases involving Fourth Amendment protection did not, in the State party's view, violate the Covenant prohibition.

74. The United States had entered a reservation to article 7 of the Covenant, citing the underlying vagueness of the wording of the article in support of its position. It considered itself to be bound only to the extent that the article 7 wording meant the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and Fourteenth amendments to the Constitution. He wished to be enlightened as to the degree of clarity of the notions contained in those amendments.

75. Turning to question 20, he submitted that the conduct of non-therapeutic research on prisoners, even with their consent, was questionable since prisoners belonged to a vulnerable category and might give their consent in the hope of some unspecified advantage in the future. Paragraph 145 of the report seemed to indicate that all kinds of medical or pharmaceutical experimentation involving prisoners were prohibited at the federal level. Yet the Department of Health and Human Services (HHS) apparently allowed tests on prisoners. He asked whether such tests were conducted on prisoners at the state level. Moreover, according to paragraph 146, HHS regulations protecting prisoners' rights and welfare were applicable to 90 per cent of federally conducted research. What about the remaining 10 per cent and non-federally-conducted research? He would also appreciate more information about the research on "conditions particularly affecting prisoners as a class" referred to in the same paragraph.

76. With regard to presidential waivers of informed consent for members of the armed forces, he was pleased to hear both that the range of waivers under the Strom Thurmond National Defense Authorization Act had been restricted by the Ronald W. Reagan National Defense Authorization Act and that no presidential waivers had been authorized in practice, presumably during the entire reporting period since 1995. Given that article 7 of the Covenant did not permit any restrictions on grounds of national security, he submitted that it was questionable whether such a waiver could ever be compatible with the State party's obligations under that article.

77. The United States had incarcerated some 2,270,000 people out of a population of approximately 280 million, which was equivalent to 757 per 100,000 members of the population, a ratio that was between 500 and 1,000 per cent higher than for any other developed country. He wondered why such high levels of incarceration were necessary.

78. Criminals could be deprived of the vote under the Covenant while they were incarcerated, but it was far from clear that a blanket prohibition on voting for convicted felons who were no longer deprived of their liberty was not a breach of article 25. His reading of the

term “unreasonable restrictions” in article 25 was also different from that of the State party. The fact that former felons were not included in the list of prohibited characteristics for discrimination in article 2 was not a cogent argument since the list omitted a very large number of categories that were nevertheless eligible for protection against discrimination. Everybody had the right to vote and the disenfranchisement of a sector of the population that the authorities should be trying to reintegrate into society did not easily pass the reasonability test of article 25.

79. Mr. WIERUSZEWSKI, referring to question 15 of the list of issues on racial profiling, said he had been struck by the tendency of the State party to focus on responsibility at the federal level although action by, for instance, the regional task forces in the “war on drugs” and the “war on terror” was undertaken at the state level. He was seriously concerned about the lack of an accountability structure that would monitor the conduct of such task forces.

80. Turning to question 24, he asked whether the State party had taken any steps to ratify the Convention on the Rights of the Child. The fact that the United States was one of only two States that had failed to ratify the Convention was an unfortunate example of exceptionalism and an impediment to universality.

81. With regard to juveniles sentenced to life imprisonment without parole, in its written reply to the list of issues the State party had invoked its reservations to articles 10 (2) (b) and (3), and 14 (4), of the Covenant to the effect that in exceptional circumstances juveniles could be treated as adults. He submitted, however, that no exceptional circumstances could account for the very large number of juveniles who had been sentenced to life imprisonment without parole. Although the State party said that prosecution as an adult depended on a number of factors that were weighed by a court, he drew attention to the existence of legislative waivers in a number of states, pursuant to which, for instance, a child of 13 could be automatically sentenced as an adult. Moreover, 59 per cent of juveniles sentenced to life without parole were first offenders with no criminal record and 11 times as many African-American juveniles were sentenced than white juveniles. According to the State party, the Civil Rights Division of the Department of Justice was seeking to tackle the problem at the federal level but again action at the state level seemed to be inadequate.

82. He enquired about the fate of the Unaccompanied Alien Child Protection Act, which was pending before the House of Representatives and the Senate. It was essential to ensure that those children and children involved in asylum proceedings had access to proper legal counsel, since the Committee had been informed that fewer than 11 per cent of children in removal proceedings had legal representation.

83. Mr. SHEARER noted with dismay the increasingly strident rejection of the relevance of international law and standard-setting by significant public figures in the United States such as judges and government officials.

84. Referring to article 25 of the Covenant, he drew attention to the report of the National Commission on the Voting Rights Act of February 2006, which had concluded that two major problems, restricted ballot access and minority vote dilution, still existed. What action was being taken to address those issues? And would the temporary provisions of the Act, which were due to expire on 6 August 2007, be renewed and more vigorously enforced?

85. He endorsed the question by Mr. Kälin regarding the historical anomaly of non-representation of the District of Colombia in the House of Representatives.

86. Ms. PALM, referring to the information to the effect that 334 officials, including police and prison officers, had been prosecuted between 2001 and 2005 for abuse of women inmates and detainees, enquired about the results of the prosecutions.

87. Turning to articles 6 and 7 of the Covenant, she recalled that two judgements of the United States Supreme Court had barred the imposition of the death penalty on offenders who had been under the age of 18 at the time of commission of the offence or who were mentally retarded. The Committee had been informed, however, that despite the judgement in the Ford v Wainwright case there continued to be numerous executions of prisoners suffering from schizophrenia, bipolar disorder and other incapacitating mental illnesses in the United States. The execution of severely mentally ill persons raised issues of diminished capability similar to those which had led the Supreme Court to abolish the death penalty for mentally retarded persons, and could raise issues under article 7 of the Covenant. She asked whether the United States intended to take measures to ensure that severely mentally-ill persons were not subject to death penalty.

88. Given the very poor conditions in which prisoners under sentence of death were reported to live and their invariably long stay on death row, it would be useful to know whether the reporting State planned to take measures to improve the conditions.

89. Mr. AMOR asked the delegation to describe the implications of the notion of “national security” for the enjoyment of rights and freedoms, and its limits with regard to implementation of the Covenant, especially in exceptional circumstances and emergencies.

90. The delegation should indicate what constituted the “most serious crimes” and whether the State party intended to limit that category of crimes.

91. Evidence suggested that certain sick persons in the State party suffered a deprivation of rights in their final days of life. The notion of dignity in death was an inherent element in human behaviour, and he wished to know whether the State party intended to give further thought to the issue with a view to identifying ways to ensure the enjoyment of the right to a dignified death.

92. Sensationalist media coverage of dramatic situations affecting persons living and dying in poverty and distress also compromised human dignity. The right to freedom of expression must be balanced against the right to dignity, especially in the light of the financial interests involved in the spectacle of human suffering. It would be useful to learn the delegation’s views on the matter.

93. Mr. BHAGWATI asked the delegation to comment on the report of the United Nations Special Rapporteur on violence against women concerning violence against women in state and federal prisons (E/CN.4/1999/68/Add.2) in the reporting State. He would welcome information on steps taken to remedy the shortcomings highlighted in the report.

94. He asked why the constitutional provision permitting capital punishment for juvenile offenders had been retained even though the Supreme Court had held that the execution of persons who had been 18 when they had committed capital crimes violated the Eighth and Fourteenth Amendments. The delegation should identify the reasons for the disproportionately high number of non-white and poor persons receiving death sentences. In that connection, he wished to know what steps had been taken to alleviate extreme poverty and address race-based disparities in education. The delegation should comment on the veracity of NGO reports alleging the execution of a large number of persons suffering from schizophrenia and other mental illnesses, and give the reasons for the use of lethal injections, which inflicted excruciating pain, to carry out death sentences. He also wished to know why some prisoners stayed on death row for over 20 years.

95. Mr. CASTILLERO HOYOS said that information before the Committee suggested that some 840,000 persons living in the State party were homeless; 6.5 per cent of the total population had reportedly been homeless at some point in their lives. Many homeless people appeared to suffer from serious health problems, as illustrated by the death of 21 homeless persons in Phoenix (Arizona) during a heatwave in July 2005. Homelessness affected African-American and indigenous persons disproportionately. The delegation should describe the measures taken or planned to address the lack of affordable housing and to ensure freedom from discrimination in access to housing.

96. Information before the Committee suggested that tens of thousands of citizens had been denied their right to vote in the 2006 mayoral election in New Orleans. The State party had reportedly failed to take the necessary action, including the release of sufficient funds, to ensure that persons displaced by Hurricane Katrina could vote. African-Americans had been affected disproportionately by that situation, and he asked what measures had been taken to prevent its recurrence in future elections.

97. Mr. KIM (United States of America) said that housing rights and voting rights were guaranteed by both federal and state legislation. His Government recognized the plight of homeless people in the United States, and the Department of Housing and Urban Development had been given the task of tackling the problem. The Department received substantial budget allocations and, while it was not feasible to provide housing for all, considerable progress had been made.

98. With regard to discrimination in housing, he informed the Committee of a recent initiative of the Attorney-General entitled: "Operation Home Sweet Home" aimed at ensuring equal access to housing. At the federal level, the Department of Justice and the Department of Housing and Urban Development were responsible for enforcing the relevant non-discrimination provisions contained in federal legislation.

99. Mayoral elections generally fell within the purview of local authorities. However, the Department of Justice had been involved in ensuring that the recent elections in New Orleans had been held in a manner consistent with federal laws and fundamental guarantees, despite the extremely difficult circumstances resulting from Hurricane Katrina. Furthermore, the State of Louisiana had made available substantial additional funds to reach out to displaced voters, ease absentee ballot eligibility requirements, mark polling stations clearly, and send out information packages.

100. The United States had filed a reservation to article 6 of the Covenant and any discussion with the Committee on issues pertaining to the death penalty, albeit important, had no legal validity. His Government had no current plans to withdraw that reservation.

101. With regard to delays in carrying out executions pursuant to death sentences, he said that the imposition of capital punishment was subject to a complex system of laws, involving many layers of review to ensure the correct and just application of that penalty. Given the complexity of the system, delays in implementation could not be avoided.

102. As to the pain caused by certain forms of execution, he said that the Government maintained a constant dialogue with the courts and other competent authorities to determine an appropriate, humane method of administering the death penalty.

103. On the question of the racial implications of the death penalty, he said that every criminal defendant was treated fairly, as an individual, and judged by a neutral jury, whose decision must be imposed by a judge and upheld by several layers of appellate courts before implementation. Rather than being imposed on the basis of racial considerations, capital punishment was simply a result of individual action taken in violation of criminal legislation.

104. Dignity in death was an important concept; there was ongoing debate among states and at the federal level to determine what constituted proper protection of the right to dignity in death. The exploitation by the media of a person's distress and lack of discretion on the part of media editors were indeed regrettable. However, the notion of press freedom was enshrined in the Constitution and must be upheld, despite its sometimes unfortunate consequences.

105. Mr. HARRIS (United States of America) said that his delegation's views on the scope of certain provisions of the Covenant differed from the views held by the Committee. Each Government had the sovereign right to decide which obligations to assume under international treaty law. When acceding to a treaty, his Government reviewed all of its provisions carefully to determine which of the resulting obligations could be implemented at both the State and federal levels. Reservations were entered in respect of those provisions whose implementation was considered unfeasible. As a result, the country became bound by a set of obligations set forth in the treaty. It was not for the Committee to change his country's obligations flowing from the Covenant or to issue authoritative guidance in that respect. His Government did not agree with all opinions adopted and jurisprudence developed by the Committee over time.

106. The way in which questions were raised during his delegation's dialogue with the Committee at times appeared to suggest that the United States acted in violation of its obligations, which, in turn, sparked a perhaps overly defensive reaction on the part of the delegation. He hoped that the clarification concerning his Government's approach to its treaty obligations might dispel certain misconceptions and tensions pervading his delegation's dialogue with the Committee and facilitate a more constructive dialogue in the future.

107. Ms. HODGKINSON (United States of America) said that her Government's decision to use the detention centre at Guantánamo had been motivated by both the desire to protect its citizens from dangerous terrorists and, most importantly, the intention to remove enemy combatants from the zone of combat. That possibility was contemplated in the law on armed conflict and the Geneva Conventions.

108. As to the availability of habeas corpus for detainees at Guantánamo, she said that over 300 habeas corpus petitions had been filed with federal courts thus far. Also, the Detainee Treatment Act of 2005 provided for continued review of Combatant Status Review Tribunal decisions before the United States Court of Appeals to guard against procedural irregularities and ensure that the review in question had been carried out in conformity with the Constitution and domestic legislation.

109. The term "cruel and unusual treatment or punishment" had been used to clarify for United States officials the meaning of the "cruel, inhuman or degrading treatment or punishment" standard articulated in the Covenant, since there was ample jurisprudence on the meaning of the former term in domestic law.

110. Turning to the questions concerning Mr. Padilla and Mr. al-Marri, she said that the Fourth Circuit Court had held that the United States had authority to detain as enemy combatants citizens captured on United States soil during time of war. That decision further supplemented the Supreme Court's decision in the Hamdi v. Rumsfeld case, where the Court had recognized the right to detain individuals, including United States citizens, determined to be enemy combatants who had been captured in an active combat zone. Mr. Padilla was being held pending criminal prosecution in a federal court; proceedings had already been instituted against Mr. al-Marri before a federal court.

The meeting rose at 1.15 p.m.