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Recent reports in *Time* magazine (13<sup>th</sup> October 2003) and the Australian Sunday Times (12<sup>th</sup> October 2003), subsequently reported world-wide, have suggested that the United States is detaining and interrogating the terrorist suspect Riduan Isamuddin, known as 'Hambali', on the island of Diego Garcia. Journalists were provided with full transcripts of his interrogations, as were the Australian Secret Intelligence Organisation (ASIO). The reports suggested that the Indonesian Security Minister had also asked for permission to interrogate him. The FCO does not appear to have made any comment on these reports, or to deny them.

You will be aware that in December 2002 the *Washington Post* published a lengthy article quoting senior intelligence sources who stated that the United States was using methods of inhuman treatment in their interrogation of individuals detained in Guantanamo Bay. The report suggested that the US was making use of intelligence obtained by third countries who were using torture in the course of interrogations. The article alleged that such detentions were also occurring on the US base at Diego Garcia.

In answer to these allegations the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Baroness Amos, stated in the House of Lords on 8<sup>th</sup> January 2003 the following:

“My Lords, I am aware of the stories in the press. Those stories are entirely without foundation. The United States Government would need to ask for our permission to bring any suspects to Diego Garcia. It has not done so and no suspected terrorists are being held on Diego Garcia..under current British Indian Ocean Territory law, there would be no authority for the detention of Al'Qaeda suspects in the territory”.

In answer to further parliamentary questions in March and July of 2003, government ministers repeated that information. On 11<sup>th</sup> September 2003 in the House of Commons you repeated that statement in answer to a written question by Menzies Campbell MP, stating:

“The United States Government have explicitly assured us that there have never been any prisoners in detention on any US vessels moored in Diego Garcia waters. The British Government are satisfied that this is correct.”

Clearly, if there are any allegations of torture or of ill-treatment within the territory of Diego Garcia – whether that be on the island itself or onboard ships moored within the 3 mile territorial limit of the island – then the UK government would have positive obligations under international law to satisfy itself that the allegations were false, and to ensure prosecutions if the allegations were true. However, if such treatment is occurring on vessels moored just outside the 3 mile territorial limit but supported from the island, then it is clear that the UK would still be obliged to investigate the allegations.

The UK Government has accepted this proposition with regard to the issue of landmines stored by the US on ships outside the territorial waters of Diego Garcia, in order to comply with the United Kingdom’s obligations under the Ottawa Convention. In a letter of 25<sup>th</sup> February 2003 from the Minister of State for the Armed Forces, The Rt. Hon. Adam Ingram MP to the Diana Princess of Wales Memorial Fund and the ICBL he stated the following:

“[I]t is clear that the stockpiling of US antipersonnel mines on UK territory, including Diego Garcia, or the transit of antipersonnel mines across UK territory would constitute a breach of our obligations under the Ottawa Convention... The United States... has assured us that it will respect our international treaty obligations. Any landmines that may be on US naval ships or military aircraft are not under the jurisdiction or control of the UK. However, if antipersonnel mines were off-loaded on to land, e.g. to be transferred from ship to aircraft, this would not be consistent with our Ottawa Convention obligations”.

Similarly, the transit of any detainees across UK territory, for example, by landing by air on the island of Diego Garcia before being transported to a vessel outwith the territorial waters, would be a similar situation. To allow a technical defense under which the UK has to rely on the position of a ship just outside an imaginary red line drawn in the Indian Ocean would clearly not be consistent with the obligations of the UK under international law and the publicly stated attitude of the UK Government against all forms of torture. As an accepted norm of customary international law, the prohibition against torture will apply in the British Indian Ocean Territory, no matter what is explicitly stated in BIOT law.

In order to answer any suggestions that the UK is unintentionally or otherwise allowing for such treatment to be tolerated in territory that is under its control, the Bar Human Rights Committee would invite answers to the following questions:

1. Are there currently any suspected terrorists being detained either (a) on the island of Diego Garcia; (b) on vessels moored within the 3 mile territorial limit of BIOT jurisdiction; or (c) on vessels outside the 3 mile limit but supported in any way from the island.
2. Has the US Government asked for the permission of the UK Government to bring any suspects to Diego Garcia, or for them to be transited through the island.
3. Whether it is still the position that BIOT law gives no authority for the detention of Al’Qaeda suspects in the territory.
4. When the UK Government last sought explicit assurances from the US Government that there have never been any prisoners in detention on the island, on US vessels

moored within the territorial waters, or on US vessels outside the territorial waters but supported from the island.

5. If there are any detentions, what steps the UK Government has taken to ensure that there are no breaches of International Law.

I would be grateful for your assistance in clarifying the situation on this important issue.

Peter Carter QC

Chair, Bar Human Rights Committee

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