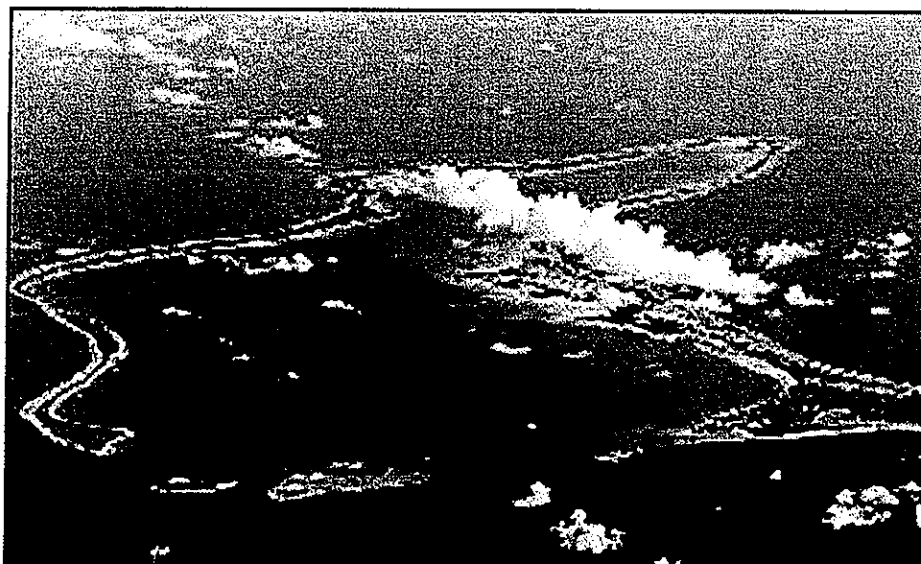




**Bar Human
Rights
Committee of
England and
Wales**

Diego Garcia: Footprint of Freedom?

Briefing paper on reports of unlawful detentions





Summary of findings

There have been reports of detainees being ill-treated in the US military facility on the island of Diego Garcia, which is UK territory.

Recent reports suggest that a major Al-Qaeda suspect known as Hambali is currently being interrogated there.

The UK government has claimed that there are no detainees either on the island or on any ships moored within the three-mile territorial limit of the island, and they would have to give their permission for any such detentions.

There is a strong suggestion that the US must be either holding individuals illegally and without the knowledge of the UK government, or they are holding them on naval vessels outside the three mile territorial waters of Diego Garcia. If this is the case, then they must have initially arrived on the island by plane, and the UK should have been informed.

If there are illegal or secret detentions combined with reports of ill-treatment, then the UK government is clearly on notice to conduct a full investigation in order to satisfy the positive obligations on the government under international law.

Recommendations

The Bar Human Rights Committee would recommend the following action:

1. The Foreign and Commonwealth Office should publicly state what enquiries they have made to ascertain the status of any detainees on or near to Diego Garcia.
2. The BIOT Commissioner should be asked whether he has amended BIOT law to enable

the detention to take place. It has previously been stated that such detentions are unlawful.

3. The European Committee for the Prevention of Torture should be encouraged to visit the facilities on the island.
4. The United Nations Working Group on Arbitrary detentions should be encouraged to make enquiries of the British Government as to what is occurring on the island.
5. If the UK government refuses to co-operate, then proceedings under the Human Rights Act 1998 could be commenced against the BIOT Commissioner, Alan Huckle, Foreign and Commonwealth Office. Alternatively, proceedings could be commenced in the Supreme Court of the British Indian Ocean Territory, which can sit in London.

Peter Carter QC

Rupert Skilbeck

Bar Human Rights Committee

17th November 2003



The island of Diego Garcia

Location

Diego Garcia is located in the Indian Ocean. The island is a coral atoll with an area of 6.720 acres (10.5 square miles). The average elevation is four feet, the highest point is 22 feet above sea level. The horseshoe shaped island is 15 miles north to south but 35 miles from tip to tip. The enclosed lagoon is 6.5 miles wide and 13 miles long, dredged so as to allow for the anchorage of larger ships to a depth of 100 feet. Reefs surround the island.

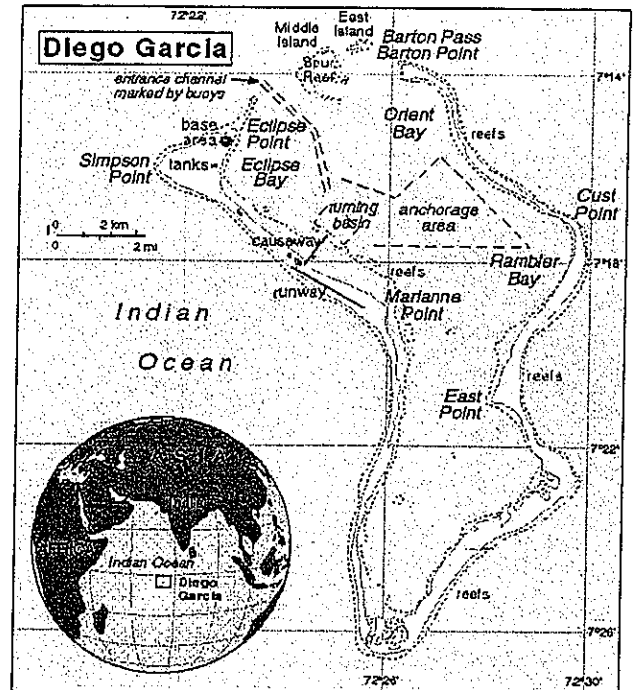
From the air, the island has the appearance of a footprint, which has lead to Diego Garcia being referred to by the US military as 'The Footprint of Freedom'.

Features of the island

The US army base and other buildings occupy the western half of the island. The eastern half contains the East Points Plantation and is a conservation area where access is restricted. The main accommodation area is in the north western tip of the island and includes a number of tents known as 'Camp Justice' which were erected following substantial increases in military personnel on the island.

The international airport is run by the island administration. Policing and customs is provided by the UK armed forces. The American Red Cross has an office located in the Chapel Annex which is run by a full-time manager with volunteer assistants.

Recreational facilities for the troops include a Marina with full watersports equipment, a sports centre and outdoor athletic facilities including basketball courts, a football field, a 9 hole gold course and a swimming pool. There are various clubs, bars and a bowling alley.



Non US facilities include a library with two full-time staff, and an office of Cable and Wireless who maintain facilities for trans-Pacific communications on the island.

Historical background

The island was originally discovered in the sixteenth century. Under the Treaty of Paris of 1814, the French ceded the island of Mauritius and its dependent territories, which included the Seychelles and the Chagos archipelago, administered from Mauritius. In 1903 the Seychelles became a separate colony. In 1965, Mauritius became independent, but the Chagos archipelago were separated to form the British Indian Ocean Territory for consideration of £3 million, and under the administrative control of the Seychelles. Sovereignty is still claimed by Mauritius, who argue the detachment was illegal. When the Seychelles became independent in 1976, BIOT remained as a British Dependent Territory, now a British Overseas Territory.

Up until 1965 the island's income was from Copra oil. However, shortly after the creation of BIOT the



UK government secretly negotiated an agreement with the US for the island to be a joint UK/US communications and refuelling depot, with a lease that lasts until 2016. Although there is no 'rent' as such, the deal was reported to have involved a discount of £11 million for the purchase by the UK of the US made Polaris nuclear weapons system. From 1967, islanders who left Diego Garcia were not permitted to return to the island, but were taken to Mauritius. Between 1967-1973 all 2,000 islanders (stated to be 1,000 by the UK Government) were essentially deported from the Chagos archipelago.

From 1971 the US began to construct the US Naval Communication Facility, including clearing beaches for landings and building a runway. The Naval Communications Station was operative from March 1973. In 1973-74 a \$6.1 million project dredged a ship channel and turning basin in the lagoon. The runway was extended and new hangers were built. In 1975-76 a further \$28.6 million was assigned for further expansion.

The revolution in Iran in 1979 meant that the base was no longer to be used only to provide logistical support when required, but would instead be used to provide the pre-positioning of materials to enable rapid reaction to events, which is done by the provision of 'Pre-positioning ships', each of which has enough supplies on board to maintain large amounts of troops for lengthy periods. In 1980 a \$100 million contract further dredged the lagoon to expand berthing facilities.

The base at Diego Garcia represents the largest peacetime construction operation undertaken by the US military.

The Ilois

The original population of the island are known as the Ilois. The population of at least 1,000 was

forcibly moved from the entire archipelago between 1967-1973 before the arrival of US troops. The BIOT Commissioner made the Immigration Ordinance 1971 to give purported legality to this action. The Ilois were taken to Mauritius, although there was very little provision for their re-settlement; they were essentially left on the quay-side. Later on the UK government provided some financial assistance. Approximately 500 of the original islanders are still alive, now expanded to 4,000 descendants.

In July 2000 a legal action was started in London by Louis Bancoult, who had been born in Peros Banhas in the Chagos islands in 1964, when part of the colony of Mauritius. It became the British Indian Ocean Territory the following year. The FCO attempted to negotiate a settlement of the action by arranging for trips by the Ilois to some of the outlying islands in order to assess the possibility of resettling there.

The High Court ruled that the secret order to remove the inhabitants in 1967 was unlawful. However, they also decided that the status of the island as a military base and the consequent controls on civilians to return to the island were lawful.

In 2003 a further action was commenced to sue for damages and the right to be repatriated to the island. The High Court in October 2003 decided that although the Ilois had been treated 'shamefully' by the government, their claims were unfounded.

Political and Legal structures

Diego Garcia is part of the British Indian Ocean Territory (BIOT), and a British Overseas Territory. It was created by the BIOT Order 1965. This creates in s.4 a Commissioner who has the power to make laws under s.11. The current constitution is controlled by the British Indian Ocean Territory



Order In Council 1976 and related instruments. The Commissioner has made Ordinances regulating the civil and criminal law together with procedures.

Under the BIOT Ordinance No.3 for 1983 a legal appellate structure is established. This creates in section 6 a Supreme Court which:

“shall be a superior court of record with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with all the powers, privileges and authority which is vested in or capable of being exercised by the High Court of Justice in England”.

The Supreme Court may sit in Diego Garcia or in London. The BIOT Supreme Court has only sat on three occasions. Appeal lies to the BIOT Court of Appeal and from there to the Privy Council.

The island has its own independent administration. There are approximately 50 British personnel who work for the civil administration which is known as 'Naval Party 1002' ('NP 1002'), made up of members of the Royal Navy and Royal Marines. They carry out policing and customs duties. A Royal Marines detachment provides security for the whole Chagos Archipelago.

The administration is run by the East African Desk of the Foreign and Commonwealth Office in London. The Commissioner for Diego Garcia is Alan Huckle (since 2001) who resides in the UK. The Administrator is Charles Hamilton (since 2002) who also resides in the UK. The senior UK official on the island is the 'British Representative' ('BritRep') who is the commanding officer of NP 1002 and a Commander in the Royal Navy. He is there under the authority of the Foreign and Commonwealth Office. He is also the Magistrate, the Coroner and deals with the Register of Marriages.



Facilities on the north west of the island

Entry to the island is severely restricted. Clearance must be obtained by the Naval Facility at Diego Garcia for all military and civilian personnel.

There are a number of separate agreements between the US and the UK dealing with the use of Diego Garcia for military purposes, including the issue of jurisdiction over US military and other personnel. The current lease to the US authorities expires in 2016.

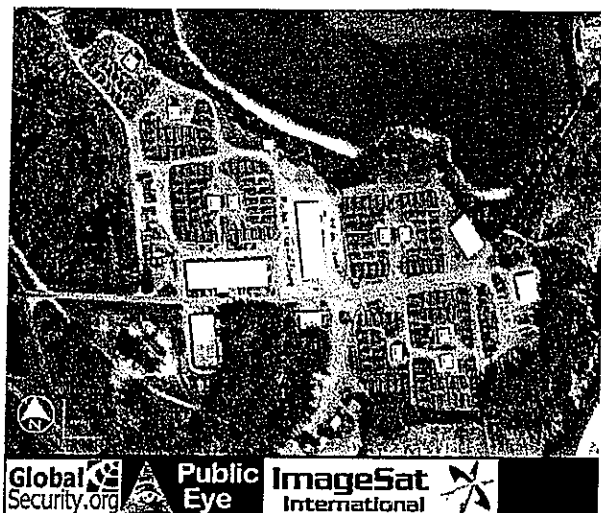
US Army presence

Military deployment

The US military facilities on the island are substantial, construction being started in 1971 with the US Naval Communications Station being opened in 1973.

In 1977 the Navy Support Facility (NSF) opened and the Commanding Officer (CO NSF) assumed all duties and responsibilities for maintaining and operating facilities and providing services and materials in support of operating units and 'tenant shore activities'.

In 1979 and the revolution in Iran there was a substantial build up of forces. In 1986 there was a \$500 million construction program, substantially increasing the capabilities of the facility.



Satellite image of 'Camp Justice'

In 1990 the population of the base doubled to support the operation in Kuwait and Iraq, with the deployment of a Strategic Air Command Bombardment Wing and other aviation detachments. Diego Garcia was the only US Navy base launching offensive air operations during Operation Desert Storm. In 1991 the command was restructured and the Naval Computer and Telecommunication Station (NCTS) opened.

In June 2000 an engineering squad were sent to the island to enhance the facilities for the Air Force as part of the Bomber Forward Operating Location initiative in order to facilitate the bombing campaign against Afghanistan, some 4,000 miles away. In September 2002 the UK government gave permission to the US government to place up to six B-2 stealth bombers on Diego Garcia and to build shelters for them on the base. Two shelters were built by November 2002 and two more were due to be built by June 2003. The US has a total of 21 stealth bombers. The others are all based in the United States.

Currently there are approximately 1,700 military personnel and about 1,500 civilian contractors,

together with about 50 UK military personnel. None of the civilian contractors are original islanders.

Accommodation for troops is either in the tents of 'Camp Justice' or on freight ships anchored in the lagoon of the island.

Significantly, there is also a military prison on the island, which is defined as a 'detention facility' (DETFAC) operated by the Naval Support Facility.

Prevention of torture

The basic law of Diego Garcia is the BIOT law which provides for basic criminal law and procedure. It is not known whether torture is a specific criminal offence under BIOT law, but assault would be. As a norm of customary international law, the prohibition on torture and other obligations would extend to the BIOT administration.

Human Rights standards

The European Convention on Human Rights does not extend to Diego Garcia. The UK did not make a declaration that the ECHR would extend to the British Indian Ocean Territory on its creation. A note from the Secretariat of the Strasbourg Court suggests that the following dependent territories are included in the jurisdiction of the Court under Article 63 together with the right of individual petition: Anguilla, Bermuda, Falkland Islands, Gibraltar, Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man, Montserrat, St Helena, Dependencies of St Helena, South Georgia and South Sandwich Islands. The Convention applies in the Cayman Islands, but there is no right of individual petition to the Court.

However, the Commissioner of Diego Garcia is an employee of the Foreign and Commonwealth Office on the East Africa Desk and as such he must be considered a public authority under the Human



Rights Act 1998. The High Court in *Abbasi* made it clear that the traditional reluctance to interfere with matters of foreign policy would not always apply, and here there are clear actions of a public authority. Consequently, he will be subject to positive obligations to ensure the Convention is upheld.

The United Kingdom acknowledges that United Nations Treaty standards apply to British Overseas Territories by participating in the monitoring process for the ICCPR before the Human Rights Committee with specific reports on dependent territories. However, they specifically exclude BIOT from that procedure, as they did not extend the ICCPR to cover BIOT when the Covenant was ratified in 1976.

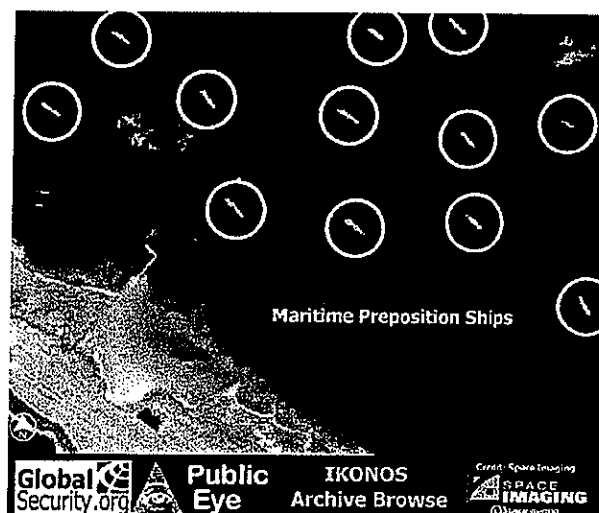
In certain circumstances UK law will apply, particularly when challenging decisions of the Commissioner if they are made on the clear instructions of UK ministers, such as occurred in the *Ilois* litigation before the High Court in London.

Under international law, different rules apply for military vessels on the high oceans, which will always be US territory. Article 8(1) of the International Convention on the High Seas of 1958 states that 'warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State'.

Significantly, the jurisdiction of Diego Garcia extends only three miles into the waters surrounding the island. It appears that the US has vessels that are anchored beyond that three mile limit, and so on a strict interpretation of the law are without UK jurisdiction.

Landmines

The 3 mile jurisdiction has previously attracted attention. In the build up to the Iraq war, the United



Satellite image showing ships in the lagoon

States stock-piled thousands of landmines in vessels near Diego Garcia. The UK is a signatory to the Landmines Convention, and so it would be a breach of that Convention for the landmines to be on Diego Garcia. The UK has argued before the Standing Committee of the Ottawa Convention that the UK has no obligation to have the landmines destroyed or controlled as they do not fall under UK national jurisdiction. The Minister of State for the Armed Forces, The Rt. Hon. Adam Ingram MP, has accepted in a letter of 25th February 2003 that "it 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." (Reported at <http://www.icbl.org/lm/2003/uk.html>) It would



appear that the UK government acknowledges that they may have to accept responsibility for breaches of human rights standards that are committed by the US forces in the region of Diego Garcia, even if they are three miles out.

Complaints

The Washington Post in an article in December 2002 reported that US officials had been using techniques described as 'stress and duress' in order to elicit information out of individuals, amounting to the definition of inhuman treatment in the *Ireland v United Kingdom* Judgment of the European Court of Human Rights. Sources specifically alleged that people were being detained and interrogated in Diego Garcia.

The same report suggests that over 3,000 members of Al-Qaeda have been arrested since 2001, although only approximately 700 have been taken to Guantanamo Bay. Consequently, there must be over 2,000 detainees that are being kept at other locations, unless they have all been released.

US naval vessels as detention facilities

In late 2001 a number of individuals who were taken captive by US forces in Afghanistan and Pakistan were initially detained on board naval vessels. Widespread reports in December 2001 pointed to the fact that whilst the US was preparing Guantanamo Bay to receive the detainees, they were being held on board the amphibious naval vessel the USS Peliliu. In a Pentagon press conference given by Deputy Secretary of Defense Paul Wolfowitz on 19th December 2001 he stated that John Walker Lindh and David Hicks were being held on the USS Peliliu in the Arabian Sea, together with three other prisoners described as 'Taliban/Al Qaeda'. News reports of the press conference suggest that another detainee on board was Saudi national Abdul Aziz.

Riduan Isamuddin

Known as 'Hambali'. The CIA claims that he is 'the Osama Bin Laden of South-East Asia.'



He is accused of being the operations chief for Jemaah Islamiyah and is wanted in Indonesia, Malaysia, Singapore and the Philippines with regard to bomb attacks. He is also accused of arranging a meeting between members of al-Qaeda and two of the September 11th bombers.

He was born in West Java in 1966 and was involved in radical Islam in the 1970's and 1980's. He sought exile in 1985 in Malaysia, and then went to Afghanistan. He is believed to have returned to Malaysia in 2000.

He was arrested in Bangkok on 15th August 2003. It is claimed that he had shaved his beard and undergone plastic surgery. He is currently being detained on Diego Garcia.

He has been interrogated by the USA and transcripts of the questioning have been provided to the Australian Secret Intelligence Organisation (ASIO). The Indonesian government is reported to have asked for permission to question him.

The Associated Press reported on 28th December 2001 that 8 individuals were being held on board the Peliliu. Seemingly the Australian Secret Intelligence Organisation were authorised to interrogate Hicks whilst he was on board, according to news reports from 18th December 2001.

The USA has a number of naval vessels that are used as detention facilities. These are on board the larger aircraft carriers such as the USS Enterprise and the USS Nimitz, and also the smaller vessels



such as the USS Peleliu. 23 vessels are identified as being 'Afloat Brigs'.

Detentions

The USA is currently holding the important terrorist suspect known as Hambali in custody at Diego Garcia. A report in Time magazine on 13th October 2003, and subsequently reported worldwide, claimed that copies of his purported admissions had been leaked to them. Transcripts were also provided to the Sunday Times in Australia, reported on 12th October 2003. The report suggests that Indonesia's Security Minister Susilo Bambang Yudhoyono had been given the go ahead to interview Hambali. The Australian Justice Minister Chris Ellison had asked the US for access to him. The reports suggest that the Australian Secret Intelligence Organisation had been given full transcripts of his interrogation. The report suggests that in interrogation he has admitted providing the funds for the bombing of the Marriott Hotel in Jakarta.

Responses

UK Government

The UK government stated in January 2003 that there were no detainees in Diego Garcia. Furthermore, they stated that under BIOT law the US would need the explicit permission of the UK government in order to detain any individual within the territory.

Specific parliamentary questions have revealed the following responses from ministers:

- The Minister stated that the Washington Post story of December 2001 about prisoners on Diego Garcia is without foundation. "The US government would need to ask our permission to bring suspects to Diego Garcia and it has not done so. No suspected terrorists are being held

on Diego Garcia and, under current British Indian Ocean Territory law, there would be no authority for the detention of Al'Qaeda suspects in the territory." *Baroness Amos*, House of Lords, 8th January 2003.

- The press suggestions are incorrect. *Mike O'Brien*, House of Commons, 16th January 2003.
- "The US authorities have assured us that they are not detaining anyone they regard as an 'unlawful combatant' in Diego Garcia or on any vessel in the British Indian Ocean Territory. The US government would need to ask for our permission to bring any such person to Diego Garcia and it has not done so". *Baroness Amos*, written answers, House of Lords, 28th April 2003.
- A number of US merchant vessels chartered by the US government are at any time moored 'in Diego Garcia waters'. From time-to-time US and other visiting warships also moor there. *Mr Rammell*, House of Commons, written answers, 15th July 2003. (This is clearly inaccurate as there are tens of pre-positioning naval vessels moored there – see photograph).
- No detainees are held at Diego Garcia. *Mr Ingram*, House of Commons, 16th July 2003.
- "The US government has 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." *Jack Straw*, House of Commons, 11th September 2003.

NGO's

Human Rights Watch wrote to Tony Blair on 28th December 2002 following the report in the Washington Post. They reminded him of the UK's



obligations to ensure that torture does not take place on British soil, and the obligations under ICCPR and CAT to prevent, investigate and prosecute any case of torture.

Amnesty International has also campaigned following the Washington Post article in 2002.

Media

The original complaints came from an article in the Washington Post in December 2002. That original article was widely reported throughout the world-wide press.

Most of the attention has been focused on the detainees in Guantanamo Bay. Consequently, there has been little coverage of Diego Garcia. However, the arrest and detention of Hambali was widely reported in the region.



Appendix 1 – BIOT Order 1965

The Order was made on 8 November 1965 by “Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895, or otherwise in Her Majesty vested”.

“3. As from the date of this Order -

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty’s Sign Manual and Signet and shall hold office during Her Majesty’s pleasure.

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.”

S.8 empowers the Commissioner to authorise a delegate to discharge functions of his as may be specified. S.8(3) authorises the Queen acting through a Secretary of State to vary or revoke any such authorisation.

10. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise -

(a) make appointments, to be held during Her Majesty’s pleasure, to any office so constituted; and

(b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

15(1) “Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.”

Ss.16 and 17 deal with the establishment of courts and judicial proceedings. BIOT Ordinance No.3 of 1983 establishes in s.6 a Supreme Court that possesses “unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with all powers, privileges and authority which is vested in or capable of being exercised by the High Court of Justice in England”. It may sit in Diego Garcia or in England. An appeal from the Supreme Court lies to the BIOT Court of Appeal, from which a final appeal lies to the Privy Council.

19. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order).



Appendix 2 – the Washington Post article

U.S. Decries Abuse but Defends Interrogations

'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities

By Dana Priest and Barton Gellman

Washington Post Staff Writers

Thursday, December 26, 2002; Page A01

Deep inside the forbidden zone at the U.S.-occupied Bagram air base in Afghanistan, around the corner from the detention center and beyond the segregated clandestine military units, sits a cluster of metal shipping containers protected by a triple layer of concertina wire. The containers hold the most valuable prizes in the war on terrorism -- captured al Qaeda operatives and Taliban commanders.

Those who refuse to cooperate inside this secret CIA interrogation center are sometimes kept standing or kneeling for hours, in black hoods or spray-painted goggles, according to intelligence specialists familiar with CIA interrogation methods. At times they are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights -- subject to what are known as "stress and duress" techniques.

Those who cooperate are rewarded with creature comforts, interrogators whose methods include feigned friendship, respect, cultural sensitivity and, in some cases, money. Some who do not cooperate are turned over -- "rendered," in official parlance -- to foreign intelligence services whose practice of torture has been documented by the U.S. government and human rights organizations.

In the multifaceted global war on terrorism waged by the Bush administration, one of the most opaque -- yet vital -- fronts is the detention and interrogation of terrorism suspects. U.S. officials have said little publicly about the captives' names, numbers or whereabouts, and virtually nothing about interrogation methods. But interviews with several former intelligence officials and 10 current U.S. national security officials -- including several people who witnessed the handling of prisoners -- provide insight into how the U.S. government is prosecuting this part of the war.

The picture that emerges is of a brass-knuckled quest for information, often in concert with allies of dubious human rights reputation, in which the traditional lines between right and wrong, legal and inhumane, are evolving and blurred.

While the U.S. government publicly denounces the use of torture, each of the current national security officials interviewed for this article defended the use of violence against captives as just and necessary. They expressed confidence that the American public would back their view. The CIA, which has primary responsibility for interrogations, declined to comment.

"If you don't violate someone's human rights some of the time, you probably aren't doing your job," said one official who has supervised the capture and transfer of accused terrorists. "I don't think we want to be promoting a view of zero tolerance on this. That was the whole problem for a long time with the CIA."

The off-limits patch of ground at Bagram is one of a number of secret detention centers overseas where U.S. due process does not apply, according to several U.S. and European national security officials, where the CIA undertakes or manages the interrogation of suspected terrorists. Another is Diego Garcia, a somewhat horseshoe-shaped island in the Indian Ocean that the United States leases from Britain.

U.S. officials oversee most of the interrogations, especially those of the most senior captives. In some cases, highly trained CIA officers question captives through interpreters. In others, the intelligence agency undertakes a "false flag" operation using fake decor and disguises meant to deceive a captive into thinking he is imprisoned in a country with a reputation for brutality, when, in reality, he is still in CIA hands. Sometimes, female officers conduct interrogations, a psychologically jarring experience for men reared in a conservative Muslim culture where women are never in control.

In other cases, usually involving lower-level captives, the CIA hands them to foreign intelligence services -- notably those of Jordan, Egypt and Morocco -- with a list of questions the agency wants answered. These "extraordinary renditions" are done without resort to legal process and usually involve countries with security services known for using brutal means.

According to U.S. officials, nearly 3,000 suspected al Qaeda members and their supporters have been detained worldwide since Sept. 11, 2001. About 625 are at the U.S. military's confinement facility at Guantanamo Bay, Cuba. Some officials estimated that fewer than 100 captives have been rendered to third countries. Thousands have been arrested and held with U.S. assistance in countries



known for brutal treatment of prisoners, the officials said.

At a Sept. 26 joint hearing of the House and Senate intelligence committees, Cofer Black, then head of the CIA Counterterrorist Center, spoke cryptically about the agency's new forms of "operational flexibility" in dealing with suspected terrorists. "This is a very highly classified area, but I have to say that all you need to know: There was a before 9/11, and there was an after 9/11," Black said. "After 9/11 the gloves come off."

According to one official who has been directly involved in rendering captives into foreign hands, the understanding is, "We don't kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them." Some countries are known to use mind-altering drugs such as sodium pentathol, said other officials involved in the process.

Abu Zubaida, who is believed to be the most important al Qaeda member in detention, was shot in the groin during his apprehension in Pakistan in March. National security officials suggested that Zubaida's painkillers were used selectively in the beginning of his captivity. He is now said to be cooperating, and his information has led to the apprehension of other al Qaeda members.

U.S. National Security Council spokesman Sean McCormack declined to comment earlier this week on CIA or intelligence-related matters. But, he said: "The United States is treating enemy combatants in U.S. government control, wherever held, humanely and in a manner consistent with the principles of the Third Geneva Convention of 1949."

The convention outlined the standards for treatment of prisoners of war. Suspected terrorists in CIA hands have not been accorded POW status.

Other U.S. government officials, speaking on condition of anonymity, acknowledged that interrogators deprive some captives of sleep, a practice with ambiguous status in international law.

The U.N. High Commissioner for Human Rights, the authoritative interpreter of the international Convention Against Torture, has ruled that lengthy interrogation may incidentally and legitimately cost a prisoner sleep. But when employed for the purpose of breaking a prisoner's will, sleep deprivation "may in some cases constitute torture."

The State Department's annual human rights report routinely denounces sleep deprivation as an

interrogation method. In its 2001 report on Turkey, Israel and Jordan, all U.S. allies, the department listed sleep deprivation among often-used alleged torture techniques.

U.S. officials who defend the renditions say the prisoners are sent to these third countries not because of their coercive questioning techniques, but because of their cultural affinity with the captives. Besides being illegal, they said, torture produces unreliable information from people who are desperate to stop the pain. They look to foreign allies more because their intelligence services can develop a culture of intimacy that Americans cannot. They may use interrogators who speak the captive's Arabic dialect and often use the prospects of shame and the reputation of the captive's family to goad the captive into talking.

'Very Clever Guys'

In a speech on Dec. 11, CIA director George J. Tenet said that interrogations overseas have yielded significant returns recently. He calculated that worldwide efforts to capture or kill terrorists had eliminated about one-third of the al Qaeda leadership. "Almost half of our successes against senior al Qaeda members has come in recent months," he said.

Many of these successes have come as a result of information gained during interrogations. The capture of al Qaeda leaders Ramzi Binalshibh in Pakistan, Omar al-Faruq in Indonesia, Abd al-Rahim al-Nashiri in Kuwait and Muhammad al Darbi in Yemen were all partly the result of information gained during interrogations, according to U.S. intelligence and national security officials. All four remain under CIA control.

Time, rather than technique, has produced the most helpful information, several national security and intelligence officials said. Using its global computer database, the CIA is able to quickly check leads from captives in one country with information divulged by captives in another.

"We know so much more about them now than we did a year ago -- the personalities, how the networks are established, what they think are important targets, how they think we will react," said retired Army general Wayne Downing, the Bush administration's deputy national security adviser for combating terrorism until he resigned in June.

"The interrogations of Abu Zubaida drove me nuts at times," Downing said. "He and some of the others are very clever guys. At times I felt we were



in a classic counter-interrogation class: They were telling us what they think we already knew. Then, what they thought we wanted to know. As they did that, they fabricated and weaved in threads that went nowhere. But, even with these ploys, we still get valuable information and they are off the street, unable to plot and coordinate future attacks."

In contrast to the detention center at Guantanamo Bay, where military lawyers, news reporters and the Red Cross received occasional access to monitor prisoner conditions and treatment, the CIA's overseas interrogation facilities are off-limits to outsiders, and often even to other government agencies. In addition to Bagram and Diego Garcia, the CIA has other secret detention centers overseas, and often uses the facilities of foreign intelligence services.

Free from the scrutiny of military lawyers steeped in the international laws of war, the CIA and its intelligence service allies have the leeway to exert physically and psychologically aggressive techniques, said national security officials and U.S. and European intelligence officers.

Although no direct evidence of mistreatment of prisoners in U.S. custody has come to light, the prisoners are denied access to lawyers or organizations, such as the Red Cross, that could independently assess their treatment. Even their names are secret.

This month, the U.S. military announced that it had begun a criminal investigation into the handling of two prisoners who died in U.S. custody at the Bagram base. A base spokesman said autopsies found one of the detainees died of a pulmonary embolism, the other of a heart attack.

Al Qaeda suspects are seldom taken without force, and some suspects have been wounded during their capture. After apprehending suspects, U.S. take-down teams -- a mix of military special forces, FBI agents, CIA case officers and local allies -- aim to disorient and intimidate them on the way to detention facilities.

According to Americans with direct knowledge and others who have witnessed the treatment, captives are often "softened up" by MPs and U.S. Army Special Forces troops who beat them up and confine them in tiny rooms. The alleged terrorists are commonly blindfolded and thrown into walls, bound in painful positions, subjected to loud noises and deprived of sleep. The tone of intimidation and fear is the beginning, they said, of a process of piercing a prisoner's resistance.

The take-down teams often "package" prisoners for transport, fitting them with hoods and gags, and binding them to stretchers with duct tape.

Bush administration appointees and career national security officials acknowledged that, as one of them put it, "our guys may kick them around a little bit in the adrenaline of the immediate aftermath." Another said U.S. personnel are scrupulous in providing medical care to captives, adding in a deadpan voice, that "pain control [in wounded patients] is a very subjective thing."

'We're Not Aware'

The CIA's participation in the interrogation of rendered terrorist suspects varies from country to country.

"In some cases [involving interrogations in Saudi Arabia], we're able to observe through one-way mirrors the live investigations," said a senior U.S. official involved in Middle East security issues. "In others, we usually get summaries. We will feed questions to their investigators. They're still very much in control."

The official added: "We're not aware of any torture or even physical abuse."

Tenet acknowledged the Saudis' role in his Dec. 11 speech. "The Saudis are proving increasingly important support to our counterterrorism efforts -- from making arrests to sharing debriefing results," he said.

But Saudi Arabia is also said to withhold information that might lead the U.S. government to conclusions or policies that the Saudi royal family fears. U.S. teams, for that reason, have sometimes sent Saudi nationals to Egypt instead.

Jordan is a favored country for renditions, several U.S. officials said. The Jordanians are considered "highly professional" interrogators, which some officials said meant that they do not use torture. But the State Department's 2001 human rights report criticized Jordan and its General Intelligence Directorate for arbitrary and unlawful detentions and abuse.

"The most frequently alleged methods of torture include sleep deprivation, beatings on the soles of the feet, prolonged suspension with ropes in contorted positions and extended solitary confinement," the 2001 report noted. Jordan also is known to use prisoners' family members to induce suspects to talk.

Another significant destination for rendered suspects is Morocco, whose general intelligence



service has sharply stepped up cooperation with the United States. Morocco has a documented history of torture, as well as longstanding ties to the CIA..

The State Department's human rights report says Moroccan law "prohibits torture, and the government claims that the use of torture has been discontinued; however, some members of the security forces still tortured or otherwise abused detainees."

In at least one case, U.S. operatives led the capture and transfer of an al Qaeda suspect to Syria, which for years has been near the top of U.S. lists of human rights violators and sponsors of terrorism. The German government strongly protested the move. The suspect, Mohammed Haydar Zammar, holds joint German and Syrian citizenship. It could not be learned how much of Zammar's interrogation record Syria has provided the CIA.

The Bush administration maintains a legal distance from any mistreatment that occurs overseas, officials said, by denying that torture is the intended result of its rendition policy. American teams, officials said, do no more than assist in the transfer of suspects who are wanted on criminal charges by friendly countries. But five officials acknowledged, as one of them put it, "that sometimes a friendly country can be invited to 'want' someone we grab." Then, other officials said, the foreign government will charge him with a crime of some sort.

One official who has had direct involvement in renditions said he knew they were likely to be tortured. "I... do it with my eyes open," he said.

According to present and former officials with firsthand knowledge, the CIA's authoritative Directorate of Operations instructions, drafted in cooperation with the general counsel, tells case officers in the field that they may not engage in, provide advice about or encourage the use of torture by cooperating intelligence services from other countries.

"Based largely on the Central American human rights experience," said Fred Hitz, former CIA inspector general, "we don't do torture, and we can't countenance torture in terms of we can't know of it." But if a country offers information gleaned from interrogations, "we can use the fruits of it."

Bush administration officials said the CIA, in practice, is using a narrow definition of what counts as "knowing" that a suspect has been

tortured. "If we're not there in the room, who is to say?" said one official conversant with recent reports of renditions.

The Clinton administration pioneered the use of extraordinary rendition after the bombings of U.S. embassies in Kenya and Tanzania in 1998. But it also pressed allied intelligence services to respect lawful boundaries in interrogations.

After years of fruitless talks in Egypt, President Bill Clinton cut off funding and cooperation with the directorate of Egypt's general intelligence service, whose torture of suspects has been a perennial theme in State Department human rights reports.

"You can be sure," one Bush administration official said, "that we are not spending a lot of time on that now."

Staff writers Bob Woodward, Susan Schmidt and Douglas Farah, and correspondent Peter Finn in Berlin, contributed to this report.

© 2002 The Washington Post Company



Appendix 3 – Parliamentary questions

House of Lords, 8th January 2003

Hansard: Columns 1019-1021

Diego Garcia

3.10 p.m.

Lord Wallace of Saltaire asked Her Majesty's Government:

Whether they retain responsibility for the observance of international law and conventions on Diego Garcia.

The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Baroness Amos): My Lords, yes.

Lord Wallace of Saltaire: My Lords, can the Minister assure us that the Government are fully briefed on the conditions under which the United States is keeping prisoners from the Taliban on Diego Garcia in view of the serious allegations made in the Washington Post and the Herald Tribune on 27th December? The United States is, at the very least, steering close to the wind as regards the Geneva Convention and other aspects of international law. This is sovereign British territory and therefore, as I understand it and as the Minister has confirmed, the British Government are responsible for ensuring that international law is fully observed.

Baroness Amos: 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.

Lord Judd: My Lords, will my noble friend take this opportunity to reaffirm the Government's position that, in everything we are doing in pursuing Al'Qaeda, the way we do so manifests the kind of society that we are trying to protect against international terrorism? Will she also reaffirm that abuse of prisoners and torture have no place anywhere within such a strategy?

Baroness Amos: My Lords, I am pleased to agree with my noble friend. We as a Government have made it absolutely clear that we shall do everything we can to fight international terrorism. We have also made it absolutely clear that we shall apply all the relevant rules of international law.

Lord Campbell of Alloway: My Lords, having declared an interest in the International Criminal Court Act—and I thank the noble Baroness for the assurance that the reports in certain American

papers are not well-founded—what human rights are accorded to terrorists and to prisoners of war on Diego Garcia and how is such distinction drawn, as the United States has declined to ratify the statute?

Baroness Amos: My Lords, I repeat that the stories which have appeared in the press are completely without foundation. The United States Government would need to ask our permission to bring suspects to Diego Garcia and it has not done so. No suspected terrorists are being held on Diego Garcia and, under current British Indian Ocean Territory law, there would be no authority for the detention of Al'Qaeda suspects in the territory.

Lord Wallace of Saltaire: My Lords, will the Minister confirm whether the United States holds prisoners of any kind on Diego Garcia? Perhaps I may ask a related question. Do the Government continue to make representations to the United States about the number of British citizens held under similar conditions in Guantánamo Bay?

Baroness Amos: My Lords, I can confirm that we continue to make representations with respect to Guantánamo Bay. My right honourable friend the Foreign Secretary has spoken on a number of occasions to Secretary of State Powell about that issue. I am not aware of any requests having been made to the British Government about any prisoners being held on Diego Garcia, and I am not aware of any prisoners being held on Diego Garcia.

House of Commons, 16th January 2003.

Hansard: Column 768W

Diego Garcia

Mr. Rosindell: To ask the Secretary of State for Foreign and Commonwealth Affairs what recent discussions he has had with the United States Government regarding the prisoners held on the British military base in Diego Garcia. [90296]

Mr. Mike O'Brien: None. There is no truth in recent suggestions in the press that the US is holding prisoners on the island of Diego Garcia.

House of Commons Written Answers, 13th February 2003

Hansard: Column 935W.

British Indian Ocean Territory

Mr. Rosindell: To ask the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on the use of British Indian Ocean

Territory in relation to the international war against terrorism. [96669]

Mr. Mike O'Brien: Diego Garcia, part of the British Indian Ocean Territory, is the location of a US defence facility which was used as an important strategic staging post for coalition forces during the military campaign in Afghanistan; it contributed to the defeat of Taleban and al-Qaeda forces.

House of Commons, 17th March 2003

Hansard: Column 528W

Anti-personnel Mines

Norman Lamb: To ask the Secretary of State for Defence whether it is the intention of the US to bring anti-personnel mines ashore onto Diego Garcia in order for them to be used in any attack on Iraq. [102350]

Mr. Mike O'Brien: I have been asked to reply.

The US authorities have been informed that HMG would be unable to allow the US to bring anti-personnel land mines ashore onto Diego Garcia because that would place the United Kingdom in breach of its obligations under the Ottawa Convention.

House of Lords Written Answers, 28th April 2003.

Hansard: Column WA58.

Unlawful combatants

Baroness Williams of Crosby asked Her Majesty's Government:

Whether "unlawful combatants" are being held at the United States base on Diego Garcia or on United States vessels around the island; if so, whether they are being held under control of Her Majesty's Government or of the United States; what is the legal basis on which they are held; and whether they are being granted the legal rights appropriate to their status. [HL2314]

Baroness Amos: The United States authorities have assured us that they are not detaining anyone they regard as an "unlawful combatant" in Diego Garcia or on any vessel in the British Indian Ocean Territory. The United States Government would need to ask for our permission to bring any such person to Diego Garcia and it has not done so.

House of Commons Written Answers, 15th July 2003

Hansard: Column 193W

Diego Garcia

Mr. Keetch: To ask the Secretary of State for Defence which vessels are moored in British waters off Diego Garcia; and if he will make a statement. [125568]

Mr. Rammell: I have been asked to reply.

In accordance with our various agreements with the US, a number of US merchant vessels, chartered by the US Government, are at any time moored in Diego Garcia waters. From time-to-time US and other visiting warships also moor there, as do fishing vessels which have been brought in on suspicion of illegal fishing in British Indian Ocean Territory (BIOT) waters, vessels engaged in scientific research in the waters of the Territory and the BIOT Fisheries Protection Vessel.

House of Commons Written Answers, 16th July 2003

Hansard: Column 403W

Iraq

Mr. Menzies Campbell: To ask the Secretary of State for Defence how many of the detainees held at (a) Guantanamo, (b) Bagram Airbase and (c) Diego Garcia were originally captured by British forces; and if he will make a statement. [125798]

Mr. Ingram: No detainees are held at Diego Garcia. Of the detainees held at Bagram and at Guantanamo Bay, none were captured by British forces.

House of Commons, 11th September 2003

Hansard: Column 399W

Mr. Menzies Campbell: To ask the Secretary of State for Foreign and Commonwealth Affairs, pursuant to his answer of 15 July to the hon. Member for Hereford (Mr. Keetch), *Official Report*, column 193W, on Diego Garcia, whether prisoners have been held in (a) US vessels and (b) US merchant vessels chartered by the US Government moored in Diego Garcia waters; what jurisdiction such prisoners would fall under; and if he will make a statement. [129511]

Mr. Straw: 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.