



**SECOND REPORT OF
FOREIGN AFFAIRS COMMITTEE**

SESSION 2006-2007

VISIT TO GUANTANAMO BAY

**RESPONSE OF THE SECRETARY OF STATE
FOR FOREIGN AND COMMONWEALTH AFFAIRS**

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2007*

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The Secretary of State for Foreign and Commonwealth Affairs welcomes the Second Report from the Foreign Affairs Committee of Session 2006-2007 on its Visit to Guantanamo Bay. This Command Paper sets out the Government's detailed observations on the Report, in particular the Committee's nine specific conclusions and recommendations.

The Government welcomes the fact that the Committee was able to visit the base, and was the first group of members of a national Parliament, other than the US Congress, to do so. The report is a comprehensive and helpful contribution to the debate over conditions at Guantanamo Bay and its future.

We conclude that the Government was right to ensure that persons detained by UK Armed Forces in Afghanistan and transferred to the Afghan authorities cannot be further transferred to the authority of another State, or detained in another country, without the prior written agreement of the United Kingdom. We recommend that the Government in its response to this Report state whether the requirement for such prior written agreement would apply to the transfer to Guantanamo Bay of any person originally detained by UK Armed Forces in Afghanistan including any who may be transferred directly or indirectly to US Forces or agencies. We further recommend that the FCO also set out in its response what steps it is taking to ensure that those detained by UK Armed Forces in other countries cannot be transferred to Guantanamo Bay without the prior written agreement of the United Kingdom.

Under the terms of the Memorandum of Understanding between the UK and Afghanistan on the transfer of detainees "the Afghan authorities will ensure that any detainee transferred to them by the UK Armed Forces in Afghanistan will not be transferred to the authority of another State, including detention in another country, without the prior written agreement of the UK" (para 3.2). The UK Government is content with the terms of this MoU as they stand, and does not see the need to include direct reference to the transfer of detainees to Guantanamo Bay. Latest figures show that 43 people have been detained since the UK Task Force (UKTF) moved into the South of Afghanistan last year. 19 of these detainees have been released. 24 have been handed over to the Afghan authorities within the terms of the MoU and we have had no request for transfer to third parties. To our knowledge, of the 43 detainees only 4 remain in detention. The others have been released.

The only other country where UK forces conduct detention operations is Iraq. If a requirement arose to transfer an individual detained in Iraq to the US, we would seek appropriate assurances from them that they would not remove that individual from the country. As regards transfers to the Iraqi authorities, the sole purpose of such transfers would be for the purpose of prosecution in Iraq in accordance with Iraqi law, so the question of the transfer out of Iraq is unlikely to arise. In any event, Article 21, First of the Constitution of Iraq states that "No Iraqi shall be surrendered to foreign entities or authorities".

We conclude that, having visited both Guantanamo and Belmarsh, the facilities at Guantanamo are broadly comparable with those at the United Kingdom's only maximum security detention facility, but the conditions are not. Guantanamo scores highly on diet and on health provision; but it fails to achieve minimum United Kingdom standards on access to

exercise and recreation, to lawyers, and to the outside world through educational facilities and the media.

The Government welcomes the Committee's report of high standards in food, sanitation, medical care and psychiatric care at Guantanamo Bay. However, we note that conditions, such as the standards on access to exercise, recreation and to the outside world, are not comparable with those present at Belmarsh prison (one of eight high security prisons in England and Wales).

We conclude that publication of the US Army Field Manual for Human Intelligence Collector Operations is a very positive development. We recommend that the Government work both bilaterally and through international fora to press the US Administration to ensure that its interrogation practices do not contravene international law.

The Government agrees with the Committee's conclusion that publication of the US Army Field Manual is a positive development. We welcome US Government statements which have made clear their views on torture, cruel, inhuman and degrading treatment of terrorist suspects. We welcome the enactment of the US Detainee Treatment Act in December 2005, which requires that no individual in the custody or under the physical control of the US Government, shall be subject to cruel, inhuman or degrading treatment, and statements by the President, including that of 6 September 2006, that the US does not practice torture.

The UK abides by our commitments under international law and we expect all other countries, including the United States, to comply with their international obligations. We will continue to discuss the full range of human rights issues with the US.

We conclude that abuse of detainees at Guantanamo Bay has almost certainly taken place in the past, but we believe it is unlikely to be taking place now. Although violence and low-level abuse are endemic in any high-security prison situation, it is the duty of the detaining authority to strive to its utmost to minimise them. We recommend that the Government continue to raise with the United States authorities human rights concerns about the treatment of detainees.

We welcome the Committee's observation that conditions may have improved at Guantanamo Bay over time and its assessment that abuse is unlikely to be taking place in the facility now. As noted above, we welcome US Government statements which have made clear their views on torture, cruel, inhuman and degrading treatment of terrorist suspects. We welcome the enactment of the US Detainee Treatment Act in December 2005, which requires that no individual in the custody or under the physical control of the US Government, shall be subject to cruel, inhuman or degrading treatment, and statements by the President, including that of 6 September 2006, that the US does not practice torture.

We abide by our commitments under international law and we expect all other countries to comply with their international obligations. As we have stated on previous occasions, the Government considers that Common Article 3 of the Geneva Conventions is the minimum legal standard that should be applied to those detained by the US.

The Government will continue to discuss detainee-related issues with the US Government and seek

to ensure that the handling of detainees at Guantanamo Bay is consistent with our counter-terrorism objectives. These include preventing further terrorist attacks, addressing circumstances which might generate terrorism and upholding respect for human rights and the rule of law. As we have said on previous occasions, we will continue to raise humanitarian and human rights concerns about detentions at Guantanamo Bay with the US authorities where necessary.

We conclude that, in choosing unilaterally to interpret terms and provisions of the Geneva Conventions, the United States risks undermining this important body of international law.

The Government notes the Committee's views. We believe that the Geneva Conventions remain the cornerstone for regulating the conduct of States in the event of conflict. We comply with them fully when we are engaged in international armed conflict; and expect other States similarly to comply.

We conclude that, by its own test, the Government should recognise that the Geneva Conventions are failing to provide necessary protection because they lack clarity and are out of date. We recommend that the Government work with other signatories to the Geneva Conventions and with the International Committee of the Red Cross to update the Conventions in a way that deals more satisfactorily with asymmetric warfare, with international terrorism, with the status of irregular combatants, and with the treatment of detainees.

The Government notes the Committee's views. As we have previously stated, this is an issue which the Government keeps under review. However, the Government continues to believe the best solution lies in better and more effective application of existing international humanitarian law.

The Government has also noted the views of the ICRC on the adequacy of existing humanitarian law for contemporary armed conflict. This was set out in their letter to the Committee of 9 February 2007, and posted on the Committee's website, stating their belief "that the Geneva Conventions, their two Additional Protocols and customary international humanitarian law continue to provide an essential framework for the protection of both victims of armed conflicts as well as those directly involved in them".

Whilst keeping this issue under review, the Government remains to be convinced that amendment to the Geneva Conventions and Additional Protocols, as opposed to promoting full compliance with them and monitoring compliance, would be the most effective way of dealing with individual issues that may arise.

We conclude that the Government is right to stick to its established policy of not accepting consular responsibility for non-British nationals. We recommend that the Government maintain its current position with respect to the return to the United Kingdom of the former British residents presently detained at Guantanamo Bay.

We welcome the Committee's endorsement of our established policy not to accept consular responsibility for non-British nationals. As the Committee is aware, legal proceedings are ongoing in the case of some of the detainees at Guantanamo Bay who were formerly resident in the UK. It would be inappropriate therefore to comment further on this point.

The Committee notes that discussions are continuing between the UK and US to secure the release and return to the UK of Mr Al-Rawi, an Iraqi national formerly resident in the UK, based on the particular circumstances in his case. The Government is committed to securing Mr Al-Rawi's release from Guantanamo Bay and return to the UK and will keep Parliament informed of developments.

We conclude that, although some aspects of the Military Commissions Act are welcome, others give cause for concern. We welcome the Government's undertaking to study the procedures proposed by the Act. We recommend that the Government carry out that study without delay and that it share the full findings of the study with this Committee. If the Government's study finds that the procedures proposed in the Military Commissions Act or in any subsequent elaboration are inconsistent with international law or human rights norms, it should make strong representations to the United States Administration.

The Government has studied the Military Commissions Act as well as the Manual for Military Commissions which provides further detail. We broadly share the Committee's conclusions that some aspects of the Act are welcome while others give cause for concern. We will make representations to the US Government accordingly.

We conclude, in line with our previous Reports, that those detained at Guantanamo must be dealt with transparently and in full conformity with all applicable national and international law. But we recognise too, as we have before, that many of those detained present a real threat to public safety and that all States are under an obligation to protect their citizens and those of other countries from that threat. At present, that obligation is being discharged by the United States alone, in ways that have attracted strong criticism, but we conclude that the international community as a whole needs to shoulder its responsibility in finding a longer-term solution. We recommend that the Government engage actively with the US Administration and with the international community to assist the process of closing Guantanamo as soon as may be consistent with the overriding need to protect the public from terrorist threats.

The Government agrees with the Committee that a longer-term solution to Guantanamo Bay needs to be found. The Government believes that the circumstances in which detainees are currently held indefinitely at Guantanamo Bay is unacceptable and that the detention facility should be closed. President Bush has said that he would like to close Guantanamo Bay as soon as practicable. We welcome this, and the fact that the US has made considerable efforts to reduce numbers at the camp.

However, we recognise that careful consideration needs to be given to how numbers at the camp can be reduced so that international security is maintained, whilst ensuring human rights of detainees are respected, including if they are transferred back to their country of nationality. We will continue to engage with the US Government on this crucial point as part of our regular exchanges.



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