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THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

I21

March 16, 2004

VIA FACSIMILE 41-22-733-2057

The Honorable
Jakob Kellenberger
President
International Committee of the Red Cross
19, Avenue de la Paix
1202 Geneva
Switzerland

Dear Mr. Kellenberger,

On March 1, The Financial Times published an op-ed by a member of your legal staff criticizing U.S. views regarding the law of armed conflict and terrorism. I must take exception to several assertions made in this piece, in particular the author's attribution of views to the United States that he knows very well it does not hold.

After referring to my article, the author claims that the United States is suggesting that a war paradigm applies to "everyone and everything considered terrorist." That is not the view of the U.S. Government. Your staff goes on to state that if the U.S. considers a person to be an enemy, it "would be within its right to shoot him" on the streets of the U.S. This is also not our view. It is highly objectionable for your staff to give the impression that it is.

Your staff states categorically that detainees are entitled to an individualized procedure to challenge the basis of their detention. No citation or support is provided for this assertion. There is, in fact, no such entitlement in the 1949 Geneva Conventions. However, the implication in the article is that the Geneva Conventions do provide such entitlement. This again has the unfortunate effect of misleading the public.

Your staff also refers to prisoners taken in places such as Zambia but "beyond any connection with armed conflict," implying that it is the view of the United

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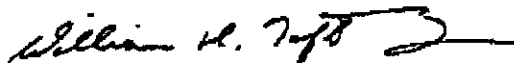
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States that the laws of armed conflict apply to prisoners taken outside an armed conflict. Again, this is not our view and it is misleading to suggest that it is. We are in armed conflict with al Qaida and the laws of armed conflict govern in that conflict.

There are several other erroneous and inappropriate statements in the article. The author asks how the U.S. can justify using military commissions to try detainees, since they are not POWs. Your legal staff certainly knows the answer perfectly well: military courts may exercise jurisdiction over civilians who are unprivileged belligerents or security detainees as well as military personnel; this is consistent with the express terms of both the Third and Fourth Geneva Conventions.

As you know, we value the serious dialogue we have always had with you and your representatives on the implementation of the Geneva Conventions and the detentions in Guantanamo generally. It is thus especially disappointing to see the publication of such a misleading and confrontational article. The credibility of the ICRC is vital for it to perform its humanitarian functions. Misleading or erroneous statements of the kind repeatedly made in the article can only seriously undermine its credibility, however, and diminish its ability to carry out its important work.

Sincerely,



William H. Taft, IV

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Cleared:

L/PM - JADolan - ok
S/WCI - RWMiller - ok
NSC/Legal - JBellinger - ok
DOJ/OLC - JGoldsmith - ok
DOJ/Crim - Prowan - ok
DOD/OGC - Khecker - ok

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