



ICRC

THE PRESIDENT

Geneva, 8 June 2004

Dear Mr Ambassador,

Thank you for your letter of May 27 informing me of the request from several committees of the U.S. Congress to receive copies of confidential ICRC reports that concern visits to detention facilities in Iraq, Guantanamo Bay, Cuba and Afghanistan. I appreciate your sensitivity to the relation between the manner in which such ICRC documents are distributed and used and the ICRC's ability to maintain the cooperation of parties to armed conflict that is necessary to the fulfilment of its humanitarian mandate.

It is often difficult to convey how much the ICRC's ability to fulfil its mandate to visit detainees depends upon respect by all parties for its confidential working method. Our experience all too often confirms that, where doubts are cast over expectations of ICRC's confidentiality, the concerned authorities refuse the cooperation necessary to the implementation of our mandate.

The Honorable
Ambassador Kevin Edward Moley
Permanent Representative of the
United States of America
Route de Pregny 11
1292 Chambésy

GRAFELD DECLARATION
Civil Action No. 04 Civ. 4151
Exhibit 9

While ICRC's access, coupled with confidential communication to detaining authorities about conditions of detention and treatment of detainees, is no guarantee of full adherence to the rules and norms of applicable law, it is certainly a better indication of respect for the law than is ICRC's exclusion. In short, and as you so correctly noted, the public release of ICRC detention reports could jeopardize the ICRC's reputation for confidentiality, which, in turn, could adversely affect its ability to gain access to the populations we are mandated to assist and protect.

I would also wish to convey to the Congress that ICRC detention reports are official documents submitted to detaining authorities in order to inform them of how detention conditions and treatment of detainees either do or do not comply with the requirements of applicable international law. The reports are meant to provide a sufficient basis upon which the detaining authority can investigate alleged failures of compliance and, where indicated, correct them. All such reports are provided subject to conditions that they not be published or used for purposes other than those just mentioned, absent ICRC's consent. I understand the work of the relevant Congressional committees to be consistent with these purposes and limitations.

This being said, I do have concerns that the release of ICRC reports to Congressional committees could pave the way for their further unauthorized distribution and unintended use. For these reasons, I request that any transmittal to the relevant committees be carried out under conditions that allow to respect the strictly confidential nature of the documents and that all appropriate measures be taken to afford maximum protection against further disclosure and uncontrolled use of the reports.

Should the U.S. Government decide to transmit ICRC reports to the Congress, I would kindly request that all the reports relating to the visits carried out in the various detention facilities in Iraq, Afghanistan and Guantanamo be made available to the relevant Congressional committees, in order to provide a comprehensive picture of the conditions of detention and treatment of detainees observed by ICRC delegates.

I would also further appreciate that the ICRC be provided with an Inventory of all ICRC reports transmitted to the Congressional committees and that all documents be transmitted in their entirety.

Thank you again for having expressed your commitment to see that ICRC's confidentiality concerns are respected and for having given me this opportunity to indicate my views, concerns and suggestions.

Yours sincerely,


Dr Jakob Kellenberger