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Title/Style of Cause: Detainees at Guantanamo Bay v. United States
Doc. Type: Decision on Precautionary Measures
Dated: 12 March 2002
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80. On March 12, 2002 the Commission authorized precautionary measures in favor of detainees being held by the United States at Guantanamo Bay, Cuba. According to the petition requesting the measures, approximately 254 detainees were being held by the United States at its Naval Station in Guantanamo Bay, Cuba, in a facility known as "Camp X-Ray." The request indicated that these detainees were transported by the United States to Guantanamo Bay beginning on or about January 11, 2002 following their capture in Afghanistan in connection with a military operation led by the United States against the former Taliban regime in that country and an organization known as Al Qaeda. The request also claimed that the detainees at Guantanamo Bay were at risk of irreparable harm because the United States refused to treat the detainees as prisoners of war until a competent tribunal determined otherwise in accordance with the Third Geneva Convention of 1949 Relative to the Treatment of Prisoners of War, because the detainees had been held arbitrarily, incommunicado and for a prolonged period of time and had been interrogated without access to legal counsel, and because certain detainees were at risk of trial and possible death sentences before military commissions that failed to comply with established principles of international law. After deliberating upon the request during its 114th regular period of sessions, the Commission decided to request that the United States take the urgent measures necessary to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal. As explained in its March 12, 2002 communication to the State, the Commission's decision was based upon, inter alia, its finding that doubts existed as to the legal status of the detainees, including the question of whether and to what extent the Third Geneva Convention or other provisions of international humanitarian law applied to some or all of the detainees and what implications this may have for their international human rights protections, and that absent clarification of the legal status of the detainees, the Commission considered that the rights and protections to which they may be entitled under international or domestic law could not be said to be the subject of effective legal protection by the State. Consequently, without prejudging the possible application of international humanitarian law to the detainees at Guantanamo Bay, the Commission considered that precautionary measures were both appropriate and necessary in the circumstances, in order to ensure that the legal status of each of the detainees was clarified and that they would be afforded the legal protections commensurate with that status. The Commission also asked for information from the State within

30 days on compliance with the Commission's measures and thereafter on a periodic basis. In communications dated April 11, 2002 and July 15, 2002 the State provided the Commission with information and arguments in which it disputed the Commission's jurisdiction to adopt the precautionary measures, and the Petitioners responded to the State's April 11, 2002 observations in a communication dated May 13, 2002. Upon considering these additional communications, in notes to the parties dated July 23, 2002, the Commission informed the State and the Petitioners that it had decided to maintain the precautionary measures requested in its March 12, 2002 communication to the United States and to reiterate its request for information concerning the measures taken to implement the Commission's request. The Commission also expressed concern with respect to additional information provided by the Petitioners indicating that the manner in which certain detainees at Guantanamo Bay were captured raised reasonable doubts concerning whether they belong to the enemy's armed forces or related groups. These detainees were alleged to include six Algerian citizens arrested by U.S. authorities in Bosnia and ten Kuwaiti nationals arrested in Pakistan. The Commission indicated that without more, this information raised further serious concerns regarding the legal status of each of the detainees at Guantanamo Bay and the international rights and protections to which they may have been entitled. Further, on October 16, 2002 during its 116th regular period of sessions, the Commission convened a hearing on the precautionary measures at the request of the Petitioners. Representatives of the Petitioners and the State appeared before the Commission, provided written and oral arguments concerning the measures, and answered questions posed by Commission members. The Commission did not subsequently receive any information indicating that its request for precautionary measures had been complied with by the State.