U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 5, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of Acting Assistant Attorney General Steven G. Bradbury before the Committee on August 2, 2006, at the hearing entitled "The Authority to Prosecute Terrorists Under the War Crime Provisions of Title 18 of the United States Code." We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget advises us that from the standpoint of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Committee on the Judiciary
United States Senate

Hearing on
Authority to Prosecute Terrorists Under
The War Crime Provisions of Title 18

Written Questions from
Senator Patrick J. Leahy
For
Steven Bradbury
Acting Assistant Attorney General

August 2, 2006

1. **You said in your opening remarks that "the meaning of Common Article 3 ... is subject to the evolving interpretations of tribunals and governments outside the United States." How have other signatories to the Geneva Conventions interpreted Common Article 3? What offenses have they considered serious enough to be punishable as violations of Common Article 3? How have they punished such violations?**

As you know, since my testimony, Congress has enacted the Military Commissions Act of 2006 (the "MCA"), which provides clear definitions for the most serious violations of Common Article 3 under United States law. To answer your question, the principal international tribunals that have interpreted Common Article 3 are the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR"), which have prosecuted a number of Common Article 3 violations, and the International Criminal Court ("ICC"), which has codified specific criminal offenses keyed to the provision. Appropriately, most of the conduct that ICTY and ICTR have found to violate Common Article 3 has been quite serious: rape; beating an individual so severely that he was unable to stand; using an electric shock device; forcing prisoners to engage in sex acts; forcing a father and son to slap each other repeatedly; forced labor that resulted in serious physical injuries due to dangerous military conditions; and using detainees as human shields in an active combat zone. By contrast, ICTY has held that forced labor outside a dangerous, active combat zone was not a violation of Common Article 3.

Although the United States is not a party to the ICC, the definitions enacted in the MCA are similar to how the ICC has defined violations of Common Article 3 in several respects. First, the ICC definition of the crime of "cruel treatment" proscribes only "severe" physical or mental harm (akin to torture), while the MCA definition reaches "serious," as well as "severe," harm. *See* 18 U.S.C. § 2441(d)(1)(B). Second, the ICC's definition of "outrages upon personal dignity" is circular and vague. The ICC definition requires the prosecution to demonstrate that the "perpetrator humiliated, degraded or

otherwise violated the dignity of one or more persons" and that the "severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity." The ICC's reliance on such a tautological definition led Congress to avoid codifying a general offense of "outrage upon personal dignity," but rather to codify several specific outrages, such as biological experimentation, rape, and sexual assault. Finally, the ICC criminalizes the passing of sentences and the carrying out of executions absent a regularly constituted court. Again, however, the ICC definition of the crime fails to provide any standards in which to govern that determination. Because of the vagueness of that provision, and because the carrying out of an execution absent a regularly constituted court would in fact constitute the war crime of murder, Congress did not include such a definition under the War Crimes Act.

The European Court of Human Rights ("ECHR"), in its interpretations of Article 3 of the European Convention on Human Rights, which—similarly to Common Article 3—proscribes "inhuman or degrading treatment," has condemned a rather wider scope of conduct than have other international tribunals. Conduct that the ECHR has deemed sufficiently severe to violate Article 3 includes: 24-hour-a-day confinement in cells without the opportunity for exercise; lack of access to outside light in prison facilities; nudity without a security justification; cells less than 2.8 square meters in size; poor prison sanitary conditions; confining two prisoners to a common cell with an open toilet; and the so-called "death row effect" (*i.e.*, a substantial delay between the imposition of a capital sentence and the execution of the sentence). These decisions of the ECHR reflect the vagueness of some provisions of Common Article 3 and demonstrate why it was necessary for the MCA to provide clear definitions of prohibited conduct under United States law.

2. **According to a recent article in the *Washington Post* ("Detainee Abuse Charges Feared: Shield Sought From '96 War Crimes Act," July 28, 2006), Attorney General Gonzales has spoken privately with Republican lawmakers about the need to grant U.S. personnel new "protections" for past violations of the War Crimes Act for actions taken under President Bush's 2002 military order and under Justice Department legal opinions that have been withdrawn. What actions sanctioned by the Bush-Cheney administration are you afraid may be prosecutable as war crimes under an international interpretation of Common Article 3?**

In light of the Supreme Court's holding that Common Article 3 applies to United States conduct in the War on Terror, we believed that it was imperative to provide clear standards to United States personnel charged with protecting the Nation from further terrorist attacks. In enacting the MCA, Congress provided that clarity by defining nine grave breaches of Common Article 3 that constitute criminal offenses under the War Crimes Act. *See* 18 U.S.C. § 2441(d). Those offenses govern both past and future conduct, and we are confident that they will provide United States personnel with the security that they deserve.

3. Please specify examples of interrogation techniques that you believe U.S. personnel should be allowed to employ, but may be prohibited by the humane treatment requirements of Common Article 3.

As indicated in my testimony, Common Article 3 includes certain requirements that are quite vague and susceptible to a variety of different interpretations. For example, some might consider it "humiliating and degrading treatment" merely to be spoken to harshly in an interrogation, or to be questioned by an interrogator of the opposite sex. Accordingly, the Administration believed that the standards governing the treatment of detainees in the War on Terror should be certain and clearly defined in U.S. law, consistent with our international obligations. The MCA addresses these concerns by defining clearly the criminal conduct under the War Crimes Act; making clear that the Detainee Treatment Act of 2005's prohibition on cruel, inhuman or degrading treatment or punishment constitutes an additional prohibition under Common Article 3; and reinforcing the President's authority to articulate further our international obligations under United States law. *See* MCA § 6.

4. Let's say Congress adopts an interpretation of Common Article 3 that permits the United States to engage in conduct that other signatories to the Geneva Conventions would consider violations of that provision. Could this make U.S. personnel more vulnerable to similar "local" interpretations of what the Conventions require should they be captured during a foreign conflict?

Clarifying and implementing vague treaty provisions through a domestic statute is an accepted practice by a party to a treaty, and we are confident that the statutory provisions of the MCA implementing Common Article 3 fully comply with our treaty obligations under the Geneva Conventions. The MCA does not, as a matter of statute, set a ceiling on our Nation's obligations under Common Article 3. Rather, it defines certain obligations and reinforces the President's authority to interpret Common Article 3 and define additional prohibitions under United States law.

It is important to remember, moreover, that in our current armed conflict with al Qaeda, our enemies show no regard for the laws of war or the requirements of the Geneva Conventions. They wantonly attack innocent civilians, behead hostages, and commit other atrocities. Indeed, many of the heinous acts expressly prohibited by Common Article 3—murder, maiming, and torture—are precisely the practices that al Qaeda and its affiliates routinely rely upon in fighting this conflict. Whatever interpretation the United States adopts of the substantive scope of Common Article 3 will have no impact on the conduct of these terrorist murderers.

Nonetheless, we recognize that a U.S. interpretation or application of Common Article 3 may have reciprocity implications for U.S. personnel in certain circumstances in future conflicts. We believe that Common Article 3 can be given a reasonable interpretation by the United States, in conformity with our treaty obligations and in compliance with the MCA and the DTA, that will allow the CIA to operate a safe and

professional program of interrogation of high-value terrorist detainees in order to protect the United States and its allies and countless innocent civilians from further catastrophic terrorist attacks, and that we can do so consistent with legitimate reciprocity concerns.

5. During the past five years, has the Office of Legal Counsel conducted any analysis of the scope of the War Crimes Act and its criminal prohibitions? What documents, legal memoranda and opinions of the applicability of this law have been produced?

Before the Supreme Court's decision in *Hamdan*, the President had determined, based on the advice of the Department of Justice, that Common Article 3 did not apply to either al Qaeda or Taliban detainees because the relevant conflict was "international" in scope. Any legal advice that was given by the Department of Justice, including any advice that was given about the War Crimes Act, would have proceeded on the basis of that conclusion and on the conclusion that U.S.C. § 2441(c)(3) thus did not apply as a matter of law. Beyond that observation, it would not be appropriate to discuss or reveal confidential and privileged legal advice provided by the Department for the benefit of policymakers within the Executive Branch.

6. During the past five years, has the President or the Department of Justice taken any action to immunize conduct in violation of the War Crimes Act or Common Article 3 of the Geneva Conventions?

As described in my previous answer, the President determined before *Hamdan* that Common Article 3 did not apply to either al Qaeda or Taliban detainees. Neither the President's action, nor the Department's advice, was intended to "immunize" any unlawful conduct. Rather, the purpose of the guidance was to inform United States personnel as to the law governing their conduct. Because of the President's decision, all actions taken by the Executive Branch with respect to al Qaeda and Taliban detainees before *Hamdan* were taken under the express understanding that Common Article 3—and thus the relevant provision of the War Crimes Act—did not apply. Congress recognized as much in the Detainee Treatment Act, which expressly provides United States personnel with a defense against liability for engaging in practices related to the detention or interrogation of detainees that "were officially authorized and determined to be lawful at the time that they were conducted."

7. You said in your opening remarks that the McCain amendment offered a "useful clarification" of the United States' obligations relative to the treatment of detainees under Common Article 3. The McCain amendment, which was enacted as part of the Detainee Treatment Act of 2005, prohibits "cruel, inhuman, or degrading" treatment of detainees, as defined by reference to the Eighth Amendment's ban on "cruel and unusual" punishments. Common Article 3 prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment." Are there any kinds of treatment or

punishment that would be permitted under the former standard but prohibited by the latter? If yes, please describe them. If no, then what need is there of further "clarification"?

Congress did not provide in the MCA that the McCain Amendment would necessarily define the ceiling of United States obligations under Common Article 3. Rather, the MCA recognizes the relevance of the McCain Amendment in defining the substantive requirements of Common Article 3 and then delegates to the President the authority to articulate any additional obligations for purposes of United States law.

As indicated in my testimony and prior answers, the Administration sought a clarification of Common Article 3 under United States law because some of that article's provisions are vague, and because their interpretation would be influenced by the decisions of international tribunals and foreign nations. Our concern was not that Common Article 3 was a higher standard than the McCain Amendment. Our concern was that we must provide clear legal standards to those called upon to handle detainees in the War on Terror based upon well-defined standards of United States law. Congress now has accomplished this by enacting the MCA.

8. Suppose Congress enacts legislation to "clarify" Common Article 3's prohibition of "outrages upon personal dignity." What effect if any would that have on possible war crimes prosecutions for actions taken prior to enactment?

In the MCA, Congress amended the War Crimes Act to prohibit only clear offenses that are serious enough to be labeled "war crimes"—conduct such as murder, torture, rape, and mutilation. *See* MCA § 6(b)(1) (amending 18 U.S.C. § 2441). The MCA makes clear that these definitions are to be applied to govern past, as well as future, conduct. By clarifying the reach of Common Article 3, the MCA provides United States personnel with clear standards as to the law governing both past and future conduct.

9. May Congress specify substantive offenses triable by law-of-war military commissions simply by amending the War Crimes Act at 18 U.S.C. § 2441?

The War Crimes Act is a federal criminal statute that authorizes the prosecution of certain violations of the law of war in federal court. Although it is possible that military commissions with jurisdiction over violations of the law of war could rely on the definitions established under the War Crimes Act as at least a partial codification of offenses, we think that Congress appropriately provided in the MCA for a specific list of offenses that would be triable by military commissions under the new chapter 47A of title 10. That approach will reduce confusion and thereby reduce the likelihood of collateral litigation regarding the commissions' subject-matter jurisdiction.

10. Does labeling conduct a "war crime" for purposes of domestic criminal law affect the definition of the international law of war or the jurisdiction of law-of-war military commissions? Would amending the War Crimes Act to

include the crime of conspiracy make this offense triable by law-of-war military commissions, even if conspiracy is not a recognized violation of the law of war according to international sources?

The Constitution grants Congress the authority to "define and punish . . . Offenses against the Law of Nations." U.S. Const. art. I, § 8, cl. 10. Congress therefore may define the war crimes triable under both domestic criminal law and by military commissions. In enacting the MCA, Congress appropriately exercised this authority by authorizing military commissions to try alien unlawful enemy combatants for conspiring to violate the laws of war. In so doing, Congress specifically recognized that conspiracy is an offense "that ha[s] been traditionally triable by military commission." 10 U.S.C. § 950p(a). As for the War Crimes Act, we would note that conspiracies to commit the offenses defined as "war crimes" in 18 U.S.C. § 2441(c) were already prosecutable in federal court by virtue of 18 U.S.C. § 371. The MCA further amended the War Crimes Act to make clear that conspiring to commit any of the grave breaches under 18 U.S.C. § 2441(d) in fact would constitute a violation of the War Crimes Act itself.

11. **Does Congress have the power, without specifically repudiating the Geneva Conventions, to define the laws of war triable by U.S. tribunals more narrowly than international law defines them?**

The Geneva Conventions require the High Contracting Parties to criminalize only the grave breaches of the Conventions. They do not specifically require the Parties to criminalize each and every violation of Common Article 3. For instance, Article 129 of the Third Geneva Convention requires High Contracting Parties to "enact any legislation necessary to provide effective penal sanctions for persons committing, or ordered to be committing, any of the grave breaches of the present Convention." Article 130, in turn, provides a list of exceptionally serious conduct—including willful killing, and torture or inhuman treatment—that constitute such "grave breaches." The MCA makes clear that the amended definition of "grave breaches" in 18 U.S.C. § 2441(d) "fully satisfy[ies] the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character." MCA § 6(a)(2). And, indeed, the definitions provided under the War Crimes Act are fully consistent with international law.

12. **When you testified before this Committee on July 11, 2006, you suggested that Congress should simply ratify the military commission procedures that the Supreme Court struck down in the *Hamdan* case. But at the hearing on August 2, when asked whether it would be "wise and prudent" for Congress to reauthorize the military commissions as originally written without change, you stated, "Actually, no, I do not." What is your current position on this point? What if anything about the pre-*Hamdan* procedures do you now believe should be modified, and why?**

Although we have contended that the MCA could usefully borrow from some of the previous military commission procedures, the Administration did not propose that Congress simply ratify those procedures in their entirety. The new military commission procedures established under the MCA use the Uniform Code of Military Justice (the "UCMJ") as a starting point, but then depart from those procedures where they would be inappropriate or infeasible. The MCA's provisions differ from the pre-*Hamdan* military commissions in a number of important ways. For instance, the presiding officer of the military commission will be a military judge, drawn from those judges who preside over courts-martial. The rule governing the admission of classified evidence—and providing that the accused will see all evidence presented to the trier of fact—is also quite different from the prior military commission procedures. The Administration supports the new procedures established under the MCA.

13. Article 36 of the Uniform Code of Military Justice provides that the procedural rules for courts-martial and military commissions must be "uniform insofar as practicable." What specific procedural rules for courts-martial are not practicable for military commissions, and why?

Although the UCMJ offered an appropriate and helpful starting point for the MCA, Congress recognized that many court-martial procedures will be impracticable in the military commission context. For example, because many terrorists are captured on the battlefield, hearsay rules that would require foreign nationals and United States military personnel to appear personally at military commissions would present unwarranted obstacles to the trial of such enemy combatants. Therefore, the MCA recognizes that the hearsay rule applicable in courts-martial shall not apply to military commissions. *See* 10 U.S.C. § 949a(b)(2)(E). The MCA also specifically provides that several other provisions of the UCMJ are inapplicable. *See id.* § 948b(d). The Manual for Military Commissions issued by the Secretary of Defense, in consultation with the Attorney General, applies the principles of law and the rules of evidence used in trials by general courts-martial insofar as they are "practicable," "consistent with military or intelligence activities," and not "contrary to or inconsistent with" the MCA. *Id.* § 949a(a).

14. At the hearing, you suggested that coerced confessions should be admissible if a military judge deems them reliable, probative, and not unduly prejudicial. Suppose an American is being tried by a foreign government for war crimes. He is convicted and sentenced to death based primarily on a confession obtained through cruel, inhumane, and degrading treatment that falls short of torture. Would the Bush Administration have any objection to that?

The MCA, like the Detainee Treatment Act, prohibits cruel, inhuman, or degrading treatment or punishment. *See* MCA § 6(c)(1). We, of course, would object to other nations employing such prohibited forms of treatment. That said, the Administration believes that military commissions established to try combatants who

disregard the laws of war should be able to consider a wide range of evidence that the presiding judge determines to be reliable and probative. With respect to statements obtained through torture, consistent with our treaty obligations under the Convention Against Torture, the MCA specifically prohibits the admission of statements against the accused that have been obtained through torture, "except against a person accused of torture as evidence that the statement was made." 10 U.S.C. § 948r(b). The MCA further excludes statements obtained in violation of the Detainee Treatment Act, which was enacted on December 30, 2005. *See id.* § 948r(d).

As for other evidence allegedly obtained through actions that did not violate United States law, the MCA leaves the question of admissibility to the sound discretion and expertise of the military judge. Allegations of "coercion" are easy to make and often difficult to rebut, particularly in the context of an ongoing armed conflict. Accordingly, rather than trying to define "coercion," Congress has appropriately entrusted military judges with the authority to make context-specific determinations about whether a particular statement is reliable under the circumstances and whether the interests of justice would be served by the admission of the statement. *See id.* § 948(c).

Committee on the Judiciary
United States Senate

Hearing on
Authority to Prosecute Terrorists Under
The War Crime Provisions of Title 18

Written Questions from
Senator Dick Durbin
For
Steven Bradbury
Acting Assistant Attorney General

August 2, 2006

1. **The War Crimes Act makes it a crime to violate Common Article 3 of the Geneva Conventions. At a July 13 hearing of the Senate Armed Services Committee, Major General Jack Rives testified, "Some of the techniques that have been authorized and used in the past have violated Common Article 3."**

    a. **Is the Justice Department aware of any alleged violations of the War Crimes Act since 2001?**

    b. **Has the Justice Department opened any investigations of possible violations of the War Crimes Act since 2001?**

The United States has always sought to comply with its international obligations, including the Geneva Conventions. Before the Supreme Court's June 29, 2006 decision in *Hamdan v. Rumsfeld,* 126 S. Ct. 2749 (2006), the President had concluded, on the advice of the Attorney General, that Common Article 3 of the Geneva Conventions did not apply to either al Qaeda or Taliban detainees. Therefore, before *Hamdan*, the Department of Justice did not measure United States interrogation practices against the standards of Common Article 3. Authorized interrogation practices were reviewed and determined to be lawful. The *Hamdan* decision, however, created the need for the United States to define the conduct prohibited under the War Crimes Act. Accordingly, the Administration proposed that Congress define with clarity the serious violations of Common Article 3 that would warrant criminal prosecution. Congress took that step by enacting section 6(b) of the Military Commissions Act of 2006 ("MCA" or "the Act"), which amends the War Crimes Act to define nine offenses that constitute "grave breaches of common Article 3" for purposes of our criminal law. *See* 28 U.S.C. § 2441(d). Our interrogation practices will be closely reviewed to ensure that they comply with the War Crimes Act, as amended by the MCA. With respect to particular criminal prosecutions, the Department of Justice has not filed criminal charges under the War Crimes Act since 2001. Beyond that, it would not be appropriate to discuss any ongoing criminal investigations that may be underway.

2. Has the Justice Department issued any memoranda or other guidance indicating that the Justice Department will not investigate or prosecute U.S. officials for violations of the War Crimes Act?

I am not aware of any policy guidance of the kind that you describe. To the extent your question seeks internal legal memoranda, it would not be appropriate for me to discuss confidential and privileged legal advice provided by the Department of Justice for the benefit of the Executive Branch. I would note, however, as I stated in answer to the previous question, the President determined before *Hamdan* that Common Article 3 did not apply to either al Qaeda or Taliban detainees. In enacting the Detainee Treatment Act of 2005 ("DTA"), Congress provided that United States employees should not be subject to criminal liability if they relied in good faith upon the reasonable legal judgments of the United States. Congress reiterated that judgment in section 8(b) of the MCA, specifically with respect to the War Crimes Act. These statutory defenses, as well as other defenses, would be available to United States personnel in any criminal prosecution, and the Department of Justice clearly would have to take the availability of these defenses into account in weighing any criminal investigation.

In amending the War Crimes Act, Congress further made clear what violations of Common Article 3 would give rise to criminal liability. Many acts, such as torture and murder, were already prohibited separate and apart from the War Crimes Act by other federal statutes, including the anti-torture statute and the Uniform Code of Military Justice. The Department of Justice remains committed to investigating, and where appropriate, prosecuting any violations of law with respect to the treatment of those in United States custody.

3. According to recent media reports, you and other U.S. officials have drafted legislation that would narrow the application of the War Crimes Act.

a. Please provide a copy of this proposed legislation.

b. Would this legislation apply retroactively to provide immunity to U.S. officials for actions they have taken over the last several years?

c. Was Defense Department General Counsel William Haynes one of the U.S. officials who drafted this bill with you?

Since I testified before the Committee, Congress enacted and the President signed into law the MCA. This important piece of legislation amends the War Crimes Act to clarify the nine violations of Common Article 3—such as murder, torture, and cruel and inhuman treatment—that may give rise to criminal prosecution. The Act further provides that these definitions shall govern any future prosecutions under the Act. The Act does not provide immunity, but it does make clear that conduct falling outside the revised War Crimes Act would not be subject to criminal prosecution as a war crime.

The Administration's proposed MCA was the product of a lengthy interagency deliberative process, which included policy makers throughout the Executive Branch. As to those specific individuals at the Department of Defense who worked on the process, I would refer you to the Department of Defense, which is in a better position to respond.

4. **Following Attorney General Gonzales' testimony before the Judiciary Committee on February 6, 2006, I submitted a question for the record asking the Attorney General whether the Administration believes that the President has the authority to set aside the War Crimes Act and authorize the commission of war crimes.**

   The Attorney General responded, "We have not examined the interaction between the President's constitutional Commander in Chief power and the War Crimes Act of 1996. ... we do not believe it would be productive to engage in speculation about the precise contours of Congress's and the President's respective authority in the abstract."

   However, a January 9, 2002, Justice Department memo from the Office of Legal Counsel to Defense Department General Counsel William Haynes concluded that the War Crimes Act "potentially comes into conflict with the President's Commander in Chief power under Article II of the Constitution" and "represent[s] a possible infringement on presidential discretion to direct the military."

   a. **Is it the Justice Department's position that the War Crimes Act conflicts with the President's Commander-in-Chief power?**

   b. **Is it the Justice Department's position that the War Crimes Act is unconstitutional?**

As the Attorney General stated, we do not believe that it would be productive to speculate in the abstract about the precise contours of such separation of powers questions. It is common ground, I believe, that the War Crimes Act is not unconstitutional on its face, and that the Constitution confers upon the President the authority to take necessary measures in defense of the Nation as the Commander in Chief. Beyond that, I am aware of no specific case in which the application of the War Crimes Act would conflict with the President's constitutional authority. Rather, the President remains committed to upholding and enforcing the statute.

5. **You testified that it would be a "useful clarification" for Congress to "define our obligations" under Common Article 3 by referring to the standard in the McCain Torture Amendment. You testified, "Congress rightly assumed that the enactment of the Detainee Treatment Act settled questions about the baseline standard that would govern the treatment of detainees by the United States in the War on Terror." In light of the President's signing statement on the McCain**

Torture Amendment, it was somewhat surprising that you referred to it as "the baseline standard" for the treatment of detainees.

Can you assure me that, despite the President's signing statement, the Administration will comply with the McCain Torture Amendment in all circumstances?

The McCain Amendment to the DTA establishes the baseline standard that all United States personnel have relied upon since its enactment. Indeed, even before the enactment of the DTA, it was United States policy to treat detainees consistent with the prohibition on cruel, inhuman, and degrading treatment, as defined under the United States' reservations to the Convention Against Torture. As with the War Crimes Act, I am aware of no specific case in which compliance with the DTA would threaten the President's constitutional authority to defend the Nation. Beyond that, I do not think it would be productive to speculate about whether such a circumstance could ever arise.