

The Department of State acknowledges receipt of the Pour Memoire from the Embassy of Denmark delivered on August 5, 2008, and herewith transmits responses to the questions posed in that document.

The first question requested that the United States confirm that no detainees were on board a list of flights alleged to have been CIA flights through Danish, Greenlandic, or Faroe Island airspace or territory. The United States government declines to confirm or describe the character or purpose of any specific flight, including whether any of them were U.S. intelligence flights. The United States government notes, however, that intelligence flights may have a variety of purposes, including the movement of supplies, equipment, and intelligence personnel. The United States confirms that in conducting any intelligence flights with detainees on board, the United States has respected the sovereignty of Denmark, and will continue to do so. Furthermore, the United States has not transported detainees through Danish airspace for the purpose of interrogation using torture or where the United States believes they will be tortured.

The second question asked for clarification of the U.S. understanding of the terms “civil aircraft” and “state aircraft” under the Chicago Convention. There are no agreed international law definitions of these terms. The Chicago Convention does not include definitions of the terms “state aircraft” or “civil aircraft” but does provide that “[a]ircraft used in military, customs and police services shall be deemed to be state aircraft.” The U.S. view is that determinations concerning the nature of an aircraft in any particular case should be made taking into account the relevant provisions of the Chicago Convention and any other relevant agreements and the circumstances of the specific mission and aircraft. There is also no U.S. law or regulation of general applicability defining the term “state aircraft.” DoD generally does not designate contract commercial aircraft used to transport military personnel and cargo as state aircraft.

The third question requested U.S. confirmation about its interpretation of certain blanket overflight clearances provided to the United States by NATO members on October 4, 2001. The United States can confirm that it is its understanding that these overflight clearances apply to military aircraft and that it does not rely on them as legal justification for intelligence activities in or on Danish, Greenlandic, or Faroese territory or airspace.

Department of State,

Washington, September 16, 2008.

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