

Periodic Review Board

a matter of dignity



Mohamedou Ould Slahi's case



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Periodic Review Board

a matter of dignity: Mohamedou Ould Slahi's case

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Presentation Letter

Dear delegates, it is an honor to welcome you to this committee! We would like to start our dialogue by presenting your directors.

My name is Rafaela Ferrari, I am 20 years old, and I study International Relations at the University of Brasília. Currently I am in the fourth semester of college, and my favorite fields of study are the Brazilian foreign policy, and Africa (I am doing a research on the Brazilian exiles of the dictatorship who went to Mozambique to work for FRELIMO - Mozambique Liberation Front). In free time, I enjoy reading poetry, watching horror movies, and going to political events.

Another director of this incredible team is Gustavo Schneider. He is 19 years old and studies Law at the University of São Paulo. Gustavo is in the fourth semester of college, and his favorite areas of study are Law and Development, Criminal Law and Commercial law. In free time, he likes to travel, play and listen to music - he is also very professional, and amazing person to talk when you are not feeling well.

Last but not least, the director Arthur Balbani. He is 21 years old and studies Law at the University of São Paulo. Balbani is in the eighth semester of college, and enjoys studying Constitutional and Parliamentary Law (currently he is doing a research about the Legislative Process, unconstitutionality and defects of legislative technique in the regiment of the Chamber of Deputies). In his free time, he likes to travel, watch football, and go to fancy events.

We hope you enjoy the committee a lot and have a great experience at our side! See you soon!

Introduction Letter

Fighting terrorism is one of the key challenges the contemporary State has to face in the 21st century. There is no doubt that State's finality is related to the protection of the individual – which, only by itself, make fighting against terrorism something essential – but one shall not forget that, even though the State has this demand, it also needs to avoid Human Rights violation.

Within this context, it is fundamental to consider the Human Rights' situation when fighting against terrorism. Let's briefly explain this correlation, which, afterwards, will be made clear when analysing the problem concerning Guantanamo.

A simple question can introduce the dichotomy between Human Rights and Terrorism Control. If you were a governmental agent and you discover a plot to kill many people in a subway station, for example, but you do not know exactly how it will be done and when it will take place, would you torture someone that knows how to answer this but refuse to? It is clear that torture is definitely not legal, but in this case, it would be the easiest way to solve the problem. However, **the State should not use torture in any situation**, as it is incompatible with the Democratic Rule of Law.

This problem can be even worse if State decides to not only use torture punctually, but systematically, in order to reach a greater good - as it happens with Guantanamo, a prison used mainly to political interests associated with the protection of the State itself.

If in one hand we have the problem of torture being illegal, on the other hand we have such a big problem as well: State's main role is to protect its citizen at any cost, as preconized by traditional Theory of State. A State that fails in this fundamental role should have no role in the international scenario, as it lacks part of his core. So, how to protect citizens and guarantee the non-violation of Human Rights in terrorism affairs, simultaneously? This question surely will be answered in the debates.



US instruments of War on Terror

Guantánamo

Over the War on Terror scenario and facing a huge crisis, then US president George W. Bush established a military prison inside Guantanamo Bay Naval Base in order to detain people who could threaten the country - in general lines, alleged terrorists. In this prison, legal affairs were treated in a completely different way. People were detained in Guantanamo indefinitely without trial, which clearly revealed a violation of Human Rights, although the US government claimed that it was necessary to avoid new terrorist attacks.

There were two different moments in Guantanamo existence: the first one in the government of George W. Bush, which was the toughest one, and the second one in Obama's administration. In this first moment, due to the attacks of 9/11, a huge number of people became imprisoned in Guantanamo, after proper interrogation and "legal" procedures (with "legal", here, standing for the use of military law in the best case scenario).

Under Obama's administration, this situation changed completely. As he took office, he tried to shut down temporarily the facility, but failed due to intense pressure from Congress. It was stated by the conservative members of the Legislative that Guantanamo was still important in the fight against terrorism and was a symbol of American power.

Another important event was the clash between the White House and the Military Court, as they repeatedly blocked tries to transfer prisoners from Guantanamo to ordinary correctional centers. However, although Obama succeeded in Court to revert this blockage, the Congress acted again in opposition to the proposal, making the president to enact the Defense Authorization Bill in 2011, which created new barriers to the transfer of prisoners and reaffirmed the importance of the prison.

Although the number of prisoners substantially fell due to popular pressure, people continue to be detained in Guantanamo nowadays.

Periodic Review Board

1. Overview of the organ

a. Creation

The Periodic Review Board, is a body created in March of 2011, by the Executive Order (EO) 13567, of Barack Obama. By the time, the social consequences of the mass arrest caused by the War on Terror began to gain strength, but whereas that the people arrested in Guantánamo were considered a national threat, their case and release should be controlled and analyzed by the government. The EO decided to pass the review of each case of Guantánamo Prison to representants of: Departments of Defense, Homeland Security, Justice, and State; the Joint Staff, and the Office of the Director of National Intelligence, that together, would decide if the prisoners would keep at the prison, be transferred to another jail, or released.

b. Function

According to the U.S. Department of Defense,

The PRB will consider the threat posed by each detainee under review. In particular, the PRB will be tasked with determining whether law of war detention remains necessary to protect against a "continuing significant threat to the security of the United States." In making this assessment, the Board will be given access to all relevant information in detainee disposition recommendations that have been produced by the Guantanamo Review Task Force (established by EO 13492), the work product of any prior PRB, and any additional relevant information that has become available. The PRB may also consider diplomatic considerations or security assurances related to the detainee's potential transfer, the detainee's mental and physical health, and other relevant information. The PRB will also receive and take into account all mitigating information relevant to whether the detainee poses a continuing significant threat. The PRB will not rely on information that has been obtained as a result of torture or cruel, inhuman, or degrading treatment to support a determination that continued law of war detention is warranted for a detainee.

(U.S. Department of Defense, 2011)

At the reunions, there will also be present

a uniformed military officer (“personal representative”) who will contest the arguments against the prisoner, and guarantee a fair analysis of the case. The detainee will have the opportunity to testify before the beginning of the discussion, contesting the reasons for which he was convicted. If the six representatives (Departments of Defense, Homeland Security, Justice, and State; the Joint Staff, and the Office of the Director of National Intelligence) do not reach a consensus, the case is transferred to a Review Committee, formed by the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

The flow of the debate will be presented later in the annex, by the rules guide.

Mohamedou’s Case: relevant information and timeline

Summarizing the content in the article, here are some dates that you have to remember:

1987: Mohamedou leaves Mauritania and goes to study in Germany;

1991/1992: He leaves Germany and goes to Afghanistan twice, to fight against the communist government;

1999: Slahi leaves Germany, and goes to Canada, to work in a mosque;

2000: After the investigations into 2000 millennium attacks, Mohamedou leaves Canada and comes backs to Mauritania;

2000: Before he got to Mauritania, American authorities arrested him in Senegal, for 1 month, to continue the investigation about the 2000 millenium attacks. After that, he went to Mauritania;

2001: He is called for further interrogation, and arrested soon thereafter, being taken to Jordan;

2002: After a few months in prison, he is taken to Guantánamo prison;

2005: Mohamedou writes “Guantánamo Diary”, and a writ of habeas corpus;

2009: On account of popular pressure, the request for habeas corpus is considered and analyzed by a judge, who asks for the release of Mohamedou, but the Obama administration enter an appeal.

2016: The time this committee is happening - Periodic Review Board analyses Mohamedou’s case.

Accusations

Mohamedou was accused, in a didactic language, for: auxiliating two Germans, who wanted to be part of al Qaeda, to arrive by the fastest way to Afghanistan (what the authorities

considered as membership recruitment); giving money to his cousin, Mahfouz Ould al-Walid, in 1999, who was counselor of Bin Laden and member of al Qaeda until after September 11; being in contact with Ahmed Ressam, that attended mosque in Canada where Mohamedou was working; the confessions of other prisoners, saying that Mohamedou was guilty and knew all the plans of 2000 millenium attacks; and his own confession in Guantánamo.

In a legal language, Mohamedou was accused of posing a “continuing significant threat to the United States”, a situation inserted over the “law of war detention” rules. In general lines, this juridical situation means simply that the detainee was involved with terrorism, posing a threat to American National Security.



Rule Guide

The rules in this committee will follow the rules of a cabinet committee, with a few changes.

The debate will begin with the opening speech, which must contain the position of the representation in relation to the theme (if the representation do not has a position for or against the maintenance of the prison of Mohamedou, just say it, based on the arguments that you all received); and will not have a limited period - but is expected that the delegates do not abuse the time. The order of speeches will be: National Intelligence, Department of Defense; Department of Homeland Security; Department of State; Department of Justice; Joint Chiefs of Staff; and the Personal Representative.

After the speeches, the discussion will automatically pass for a moderate debate (which you can find the rules in the General Rule Guide given by the secretariat). If nobody wants to speak, the chair will have the power to select one of the parts to start the debate. None of the speeches will have a limited time. The delegates are free and responsible for their actions, but if they do not take the time to discuss necessary things, the chair will interfere.

The delegates may ask a motion for a unmoderated debate at any time, with the presence of arguments justifying the request - the period of time for de unmoderated do not need to be specified, but if the discussion is not being productive, the chair may return to the moderate debate.

At the end of each session, the representatives will have to speak again (following the same order in the first paragraph), saying what they thought about the debate, and what they expect for the next one.

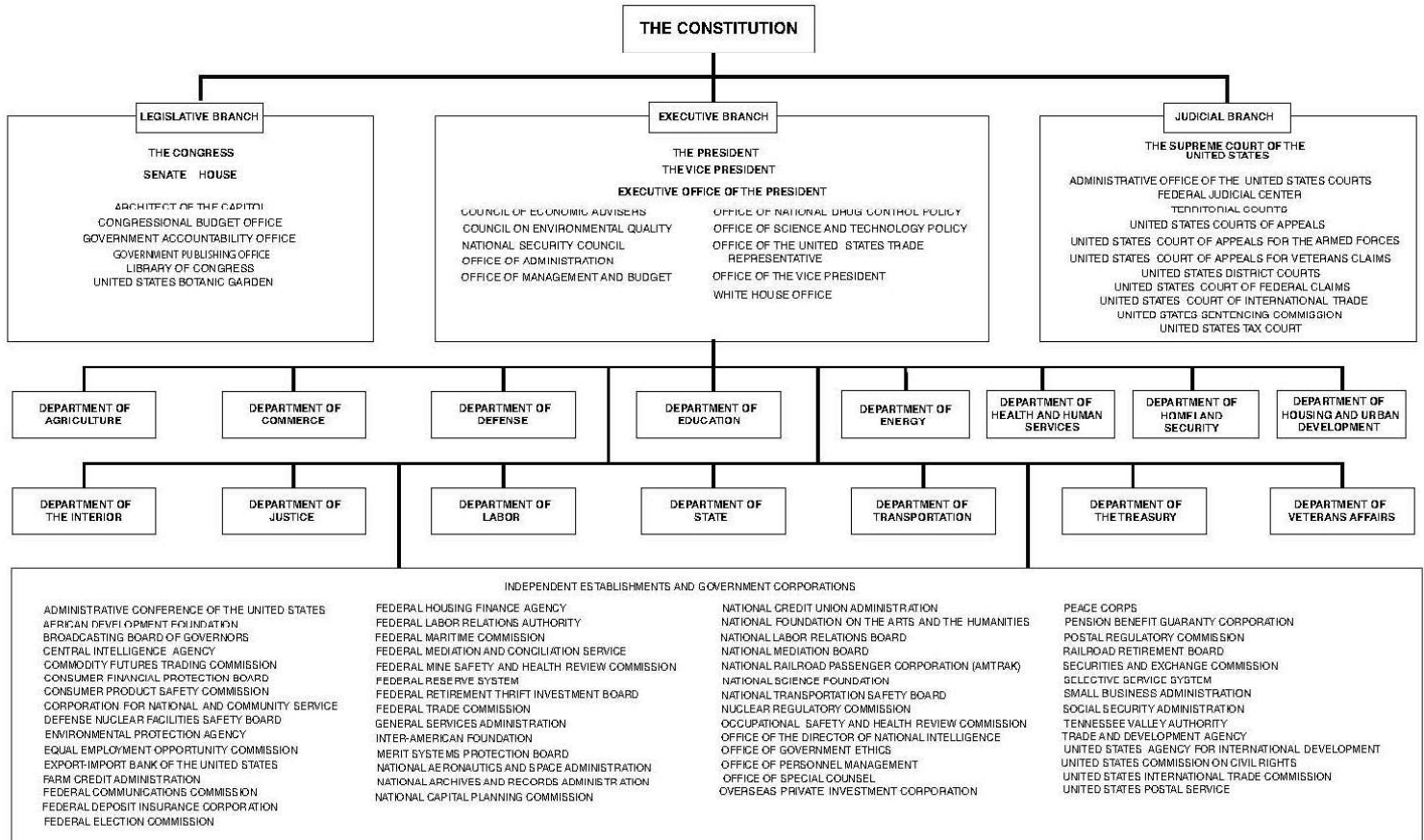
It is expected that at the end of the last day of debate, the delegates reach a consensus, what means the delegates will write a final document saying if Mohamedou should leave Guantánamo, change for another prison, or be released. After the reading of the document, the chair will ask if there is any representative against the resolution. If anyone raises their hands, the consensus was not reached, and the debate will have to pass to a Review Committee, as expressed in topic 2.

All the points and motions of a model UN debate will be accepted, except those related to the list of speeches, which we won't have in this committee (the rules of model UN may be find with the documents give by the secretariat). The documents produced by this committee are: the final resolution (a formal document which will contain the most important decision of the debate); unilateral requests (any action that a representative of a Department wants to take during the sessions, that concerns exclusively its Department, provided that it does not change the Government's budget - the Joint Chiefs of Staff, as a recommendatory group, do not have this power, neither the Personal Representative); and the communicates (a letter asking something for someone that is not in the committee - it may only be sent after the rest of the delegates reaches a consensus for its released, and if they do not, they should vote the request, and the communicate will be sent if the half of the representatives approve).

It is important: (I) to imagine that you all are representatives of the most important areas of US, therefore, diplomacy, decorum, and the ability to moderate yourselves will the taken into account; (II) the names of your representations are fake, because the exactly name of all those who were at the reunion of PRB to discuss the case of Mohamedou, were not public; (III) disrespect and sexism of any kind will not be tolerated, and the chair will take action in any of these cases.

Charts

THE GOVERNMENT OF THE UNITED STATES

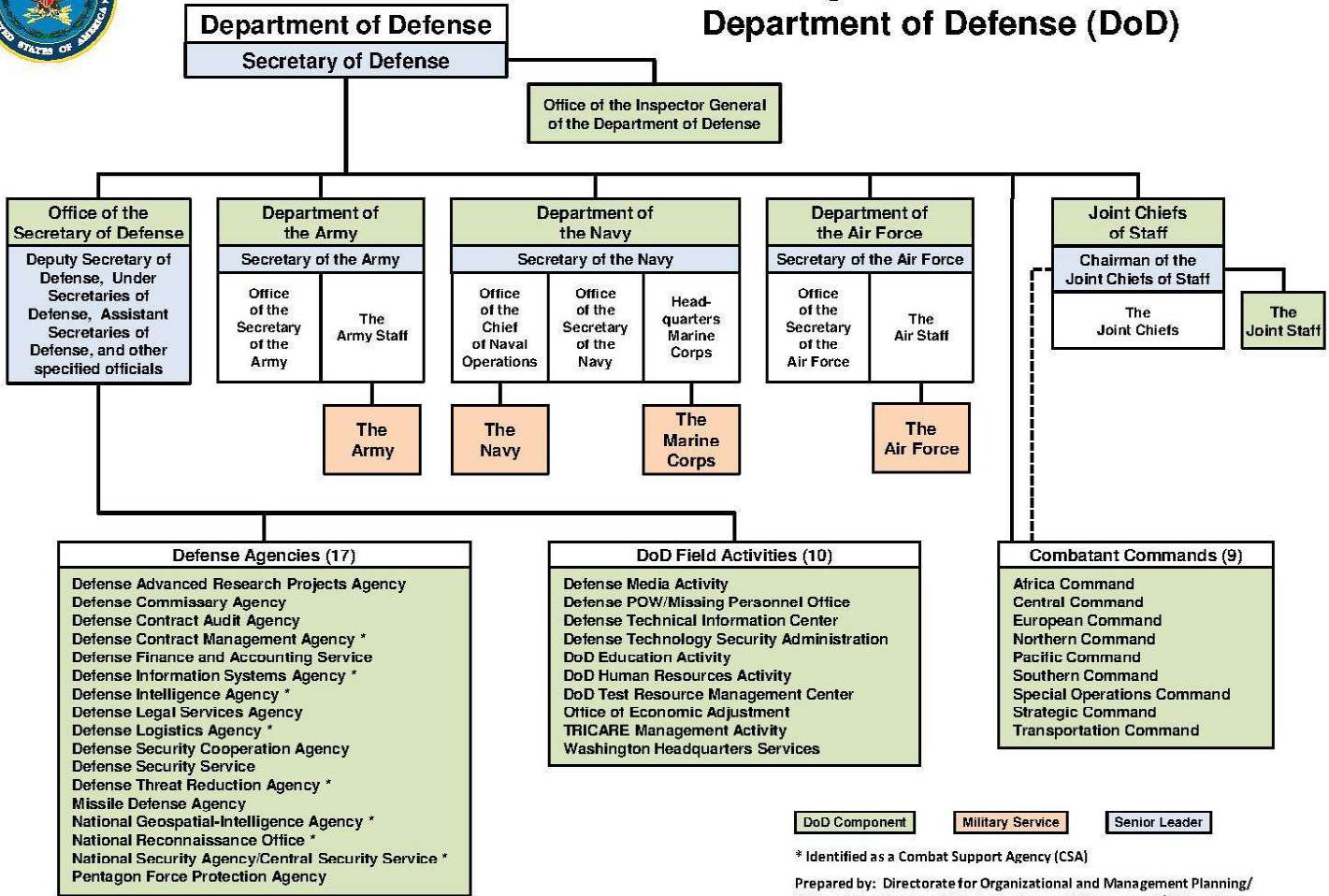


The United States governmental structure is quite simple, in fact. Considering just the Executive Branch, in which all the main departments here represented are connected, one can find 15 departments and 57 independent governmental agencies and corporations. The departments are the administrative arm of the Government, focusing on major areas of the State (agriculture, treasury, international relations, etc.) and under the President's direct control, while the government agencies are quite independent, having specific norms and statutes, which allow them to be "free", in some part, as the power of rulemaking.

The diagram above demonstrates this situation quite clearly.



Organization of the Department of Defense (DoD)



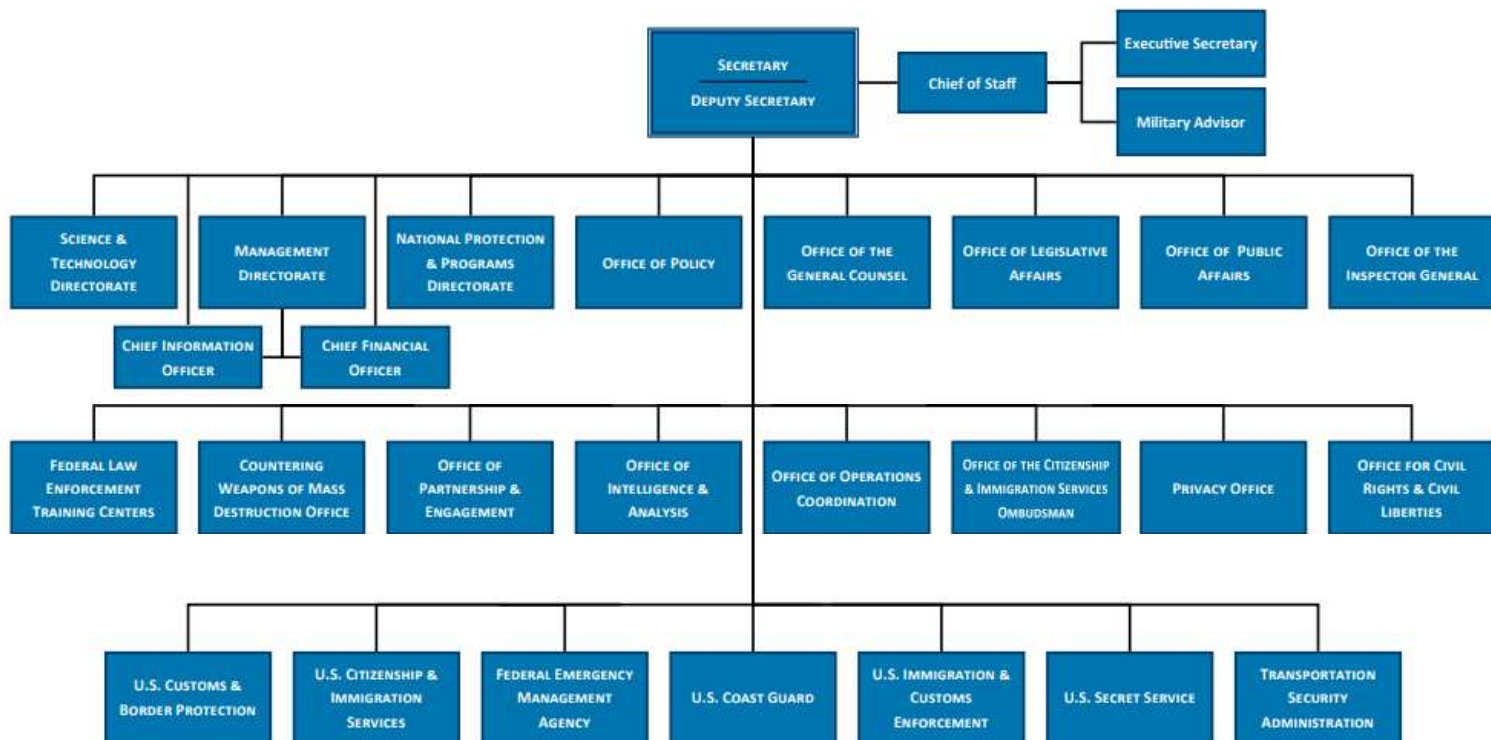
Positioning of Departments

a. Department of Defense

The Department of Defense is responsible for all corps in the United States that deals with defense, like the Air Force, Army, Navy, National Intelligence, Marine Corps, and others subdepartments which you can find on their website. It is lead by the Secretary of Defense, who is chosen by the President of the United States - in 2016, the Secretary of Defense was Ashton Carter.

The delegates responsible for representing the Department of Defense must focus their attention on the verification of the armed forces' procedures throughout the process which led to the detention of Mohamedou, and the procedures inside Guantánamo (once a procedure was not respected, the information obtained from it becomes inadmissible).

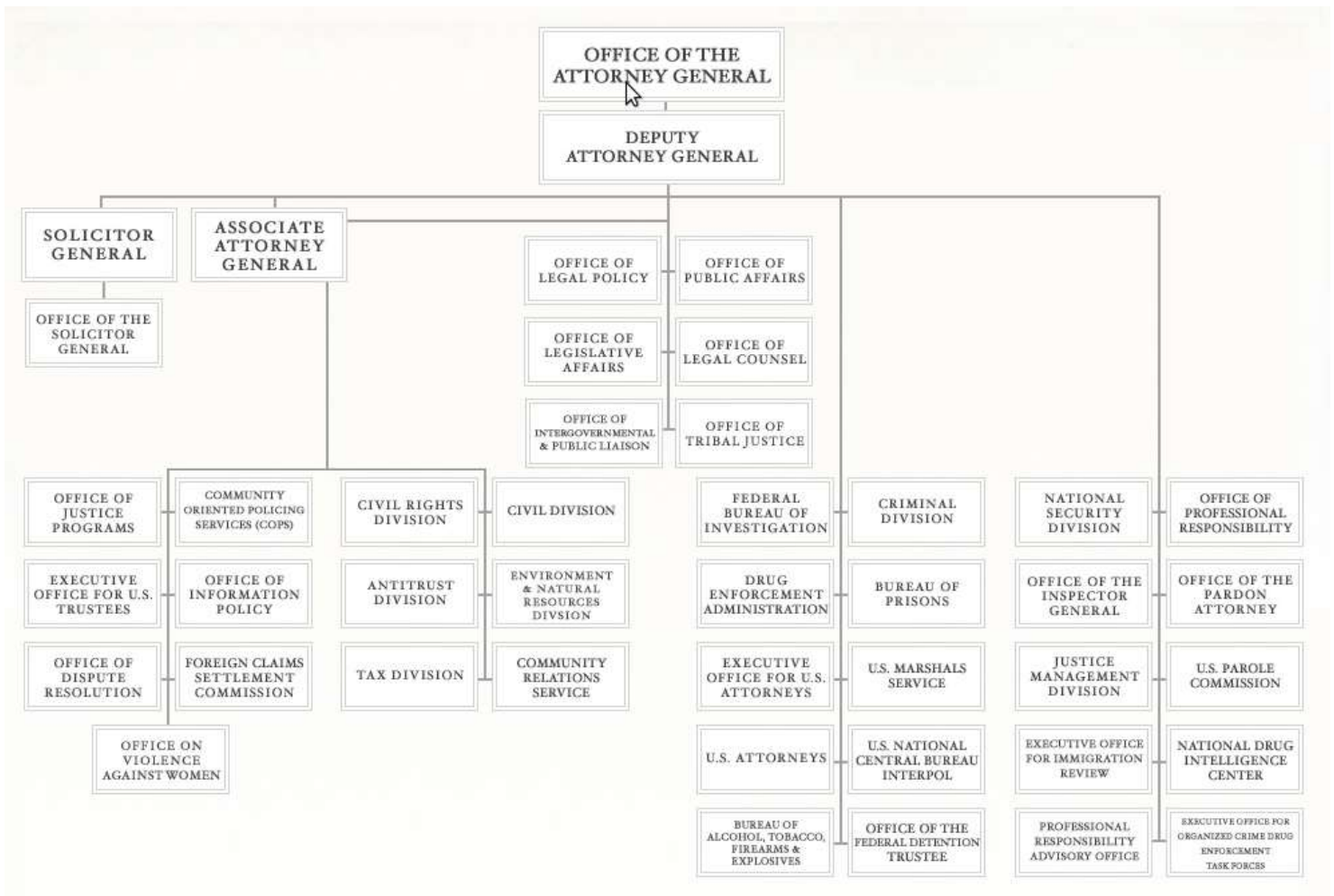
U.S. Department of Homeland Security



b. Department of Homeland Security

U.S. Department of Homeland Security was created in 2002, during the first years of War on Terror, receiving the major responsibility of protecting the country against emergencies like a terrorist attack, or a natural disaster. It's different from the Department of Defense because the Department of Homeland Security deals with the internal sphere of US, working directly with civilians for helping the country. In 2016, the Secretary of Homeland Security was Jeh Johnson.

The representatives of the Department of Homeland Security must focus on a pragmatic line of argument, putting homeland security ahead of human rights (but without totally ignoring them).



c. Department of Justice

This is not a legal committee, and should not be called a habeas corpus situation, because we will deal with different procedures, and extreme cases. However, the arguments must follow the American law (military law, criminal law, or international law lato sensu, what is in the interest of delegates - you can find more information in the article). The representatives of the Department of Justice must argue above all, with legal arguments, and not the moral dichotomy between human rights and homeland security.

In 2016, the Attorney General was Loretta Lynch.

d. Department of State

The US Department of State is what we call in other countries, the Ministry of Foreign Affairs. This means that the Department of State assists the president and other Departments - including in military issues - about its activities, and it's responsible for the position of the country in front of the rest of the world, which was extremely important during the War on Terror because of American interference in Muslim countries. In 2016, the Secretary of State was. In 2016, the Secretary of State was John Kerry.

It is extremely important that the representatives of Department of State in this committee act in a rigorous diplomatic language - what means no extreme position that could affect the American image, and a strict decorum - and try to conciliate the arguments, having as a goal a resolution that is beneficial to all parts involved.

e. Office of the Director of National Intelligence

The National Intelligence is subordinate to Department of Defense, so, as the representatives of the Department of Defense will focus on the procedures of the army, the representatives of the National Intelligence should focus on how the information accusing Mohamedou, were obtained. The National Intelligence was responsible for the investigation of Mohamedou's life in German, Afghanistan, and Canada, so its representatives must clarify to the rest of Periodic Review Board, the arguments that led to the prison of Mohamedou.

f. Joint Chiefs of Staff

The Joint Chiefs of Staff is a group inside the Department of Defense, responsible for advising the President of United States, and the Office of the Director of National Intelligence, on military issues. It is important to know that it is a recommendatory group - the individuals do not have the authority to take any decision. The group is formed by the: Chairman of the Joint Chiefs of Staff; Vice Chairman of the Joint Chiefs of Staff; Chief of Staff of the Army; Commandant of the Marine Corps; Chief of Naval Operations; Chief of Staff of the Air Force; and the Chief of the National Guard Bureau. In our committee, the group will be represented by the Chairman and the Vice Chairman of the Chief of Staff, who will have to follow a line of argument based on recommendations and focus on broad military issues.

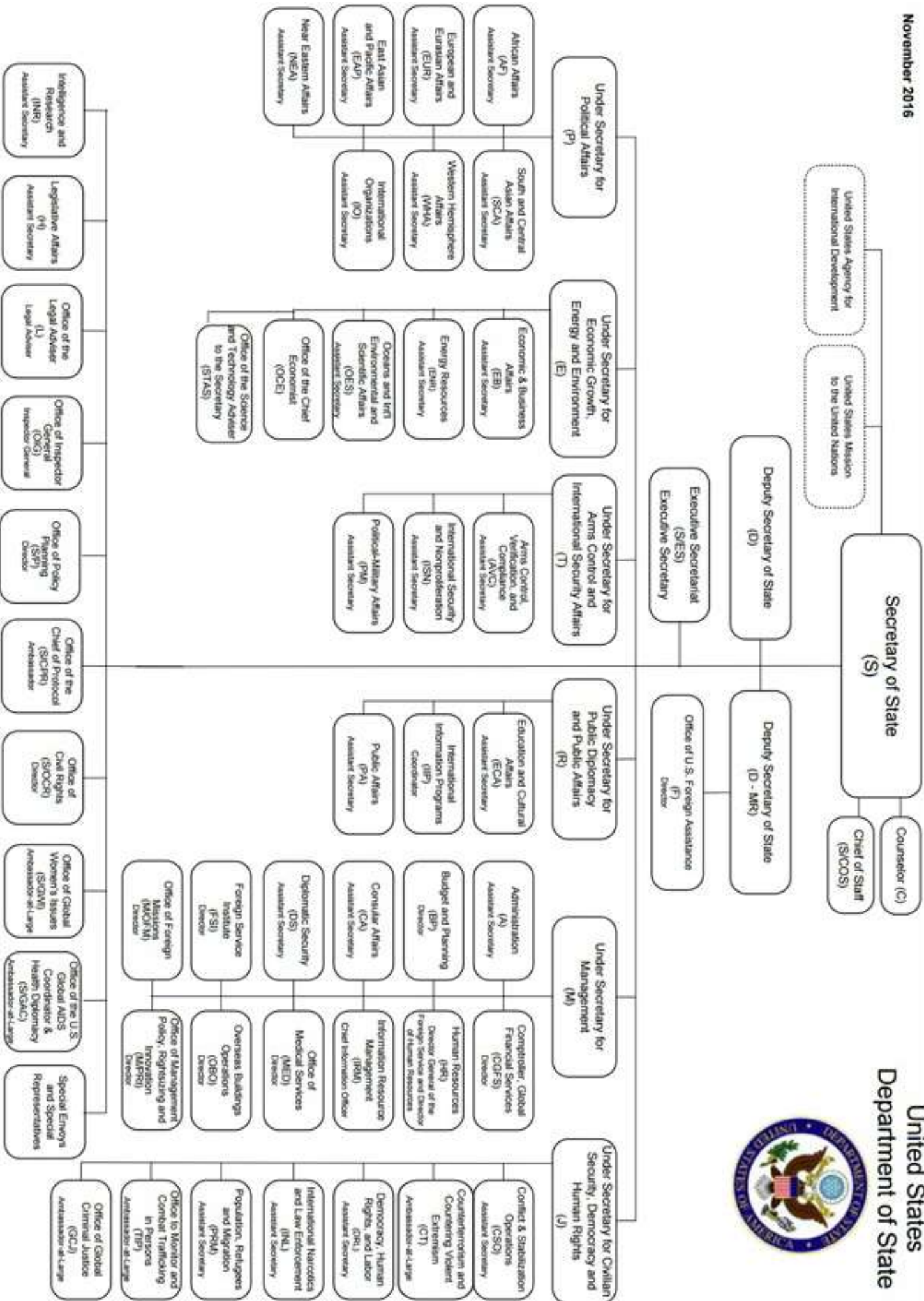
g. Personal Representative

The personal representative is a military, responsible for arguing against all accusations made to the prisoner (in our case, Mohamedou Ould Slahi). The representative is allowed to have all the documents used by the government representatives, least those whose disclosure would threaten national security. In these cases, the representative will receive a summary of the document.

It is important that the delegate who will represent this role, follow a line of argument, above all, based on the defense of Mohamedou, respectfully confronting the accusations. The personal representatives may use legal or cultural arguments, and they will not have the opportunity to vote in the end of the debate.

November 2016

United States
Department of State



Medical Report



ARMED FORCES INSTITUTE OF PATHOLOGY
Office of the Armed Forces Medical Examiner
1413 Research Blvd., Bldg. 102
Rockville, MD 20850
1-301-319-0000



EXAMINATION REPORT

CASE TITLE:
PERIODIC REVIEW BOARD – DETAINEE 760

DECEASED:
MOHAMEDOU OULD SLAHI

SEX:
MALE

AGE:
45

DATE AND HOUR OF EXAM:
May 27, 2016

PATHOLOGIST:
Dr. Henry Galbraith

FINAL DIAGNOSES:

45-year-old man detained at Guantanamo Bay Prison

I. Patient suffering from minor external injuries

- A. Wounds in the chest
- B. Repeated trauma evidence all over the body, but insignificant
- C. Bruises on the neck
- D. Minor discomfort on the ribs
- E. No internal injuries

II. Toxicology

- A. Volatile screen: No evidence.
- B. Drug screen: No evidence.

ADDITIONAL PERSONNEL PRESENT AT AUTOPSY: Nobody.

IDENTIFICATION: Documents and fingerprints collected confirmed the patient identity. no further identification tests were needed.



EXTERNAL EXAMINATION:

The body is that of a malnourished, appearing, 172 centimeters tall, 50 kilograms Arabic man whose appearance is consistent with the reported age of 45 years and 8 months.

The scalp is covered with *closely shaved dark* hair. The irides are dark-brown, and the pupils are round and equal in diameter. There are no bulbar or palpebral conjunctival petechiae. The ears are unremarkable. The nares are patent and the lips are atraumatic. The nose and maxillae are palpably stable. The teeth appear native and in fair repair.

The neck is straight. The chest is symmetric. *The breasts are free of palpable masses.* Some wounds on the chest consistent with repeated beating. The abdomen is *flat, with remarkable small burning and frost marks, consistent with sudden temperature oscillation.* The genitalia are those of a normal *uncircumcised adult.* Pubic hair is absent. The back, buttocks, and anus are unremarkable.

The upper and lower extremities are symmetric and without clubbing or edema. Arms, legs, hands and feet show signs of repeated trauma, but without apparent major wounds.

There are no signs of tattoos or other corporal identification marks.

CLOTHING [AND PERSONAL EFFECTS]:

The following clothing items were examined separately from the body at the time of examination:

- Prisoner uniform

MEDICAL INTERVENTION:

- No signs of previous medical intervention.

RADIOGRAPHS:

No radiographs were taken.



FURTHER EXAMINATION:

HEAD: Injuries, if any, unremarkable. There are no skull fractures. Patient was lucid by the time of the examination and responded coherently to the asked questions.

NECK: Signs of small bruises on the neck, without medical relevance. The tongue showed signs of bite marks and hemorrhage. There is no soot staining of the larynx or trachea.

BODY CAVITIES: The ribs, sternum, and vertebral bodies are palpably intact, but the patient seemed to be suffering a minor discomfort in his ribs. No signs of excess fluid in the pleural, pericardial, or peritoneal cavities.

RESPIRATORY SYSTEM: The patient appears to be breathing well, although appeared to be tired. No signs of blood, vomitus or foreign material in the lungs at first analysis. The pulmonary vascular tree is free of thromboembolism. Damage, if any, unremarkable.

CARDIOVASCULAR SYSTEM: Damage, if any, unremarkable. Patient appears to be in good condition.

LIVER & BILIARY SYSTEM: *Not examined.*

SPLEEN & HEMATOPOIETIC SYSTEM: *Not examined.*

GENITOURINARY SYSTEM: The right and left kidneys appear to be intact, although there are significant bruises in that skin area. No signs of blood in urine, which is dark yellow.

Externally, the testes are free of mass lesions, contusions, or other abnormalities.

GASTROINTESTINAL TRACT: *Not examined.*

ADDITIONAL PROCEDURES:

- *Patient wasn't photographed due to security reasons.*
- **Specimens retained for toxicologic testing:** blood and urine.

Joint Chiefs of Staff. Accessed jul, 30, 2018. Link in < <http://www.jcs.mil/> >

Office Director of National Intelligence. Accessed jul, 29, 2018. Link in < <https://www.dni.gov/index.php> >

SLAHI, Mohamedou. O Diário de Guantánamo. Organization Larry Siems; translation Donaldson M. Garschagen, Paulo Geiger: 1. Ed. São Paulo: Companhia das Letras, 2015.

US Department of Defense. About the Periodic Review Secretariat. Accessed jul, 30, 2018. Link in < <http://www.prs.mil/About-the-PRB/> >

US Department of Defense page. Accessed jul, 29, 2018. Link in < <https://www.defense.gov/> >

US Department of Homeland Security page. Accessed jul, 29, 2018. Link in < <https://www.dhs.gov/> >

US Department of State page. Accessed jul, 29, 2018. Link in < <https://www.state.gov/> >

US Department of Justice. Accessed jul, 29, 2018. Link in < <https://www.justice.gov/> >