

January 30, 2006

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Dear Jim and Charlotte:

Further to my phone conversation with Jim of early December 2005, please find attached a draft resolution on International Law that all the co-signators below (who are more than three members of the American Society of International Law (“the Society”)) are submitting by this letter to the President and Executive Director for adoption by the Society at its March 29, 2006 annual business meeting, pursuant to procedures identified at Article IX of the Constitution and regulations of the Society as posted at www.asil.org.

We are aware of point 4.b at page 32 of the “Report of the Ad Hoc Committee to Review the Organization and Activities of the American Society of International Law” of Spring 1983 (Prof. Alfred P. Rubin, Chairman). We are also aware of the note dated March 24, 2005 entitled “ASIL Consideration of Taking Positions on International Law Issues” by Rick Kirgis and the 1966 policy statement of the Executive Council on the adoption of resolutions.

The attached draft resolution on international law is in compliance with that policy statement.

Thank you for your attention to this submission. Please let me know if you need further information.

Warmest personal regards,

Benjamin G. Davis

Associate Professor of Law
University of Toledo College of Law (for identification purposes)
Current Society Member: Yes
Years of Membership: Since 2005

Attachment: Draft ASIL Resolution of January 27, 2006

By e-mail, registered return receipt requested and telefax

AMERICAN SOCIETY OF INTERNATIONAL LAW RESOLUTION

(Final Draft of January 27, 2006)

The American Society of International Law, at its centennial annual meeting in Washington, D.C. on March 29, 2006, Resolves:

- 1) Each state has a right of self-defense within the United Nations Charter and other international law.
- 2) The laws of war and occupation (“the laws of armed conflict”) apply to the United States of America.
- 3) In particular, the four Geneva Conventions (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949; and Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949) apply to the United States of America in its armed conflict(s).
- 4) Torture, cruel, inhuman or degrading treatment, or secret incommunicado detention of any person in the custody or control of the United States of America and/or other States, are fundamentally repugnant to international law, and violate international law in general and, in particular, international human rights and humanitarian law.
- 5) All branches of the United States Federal Government and non-governmental actors are required to adhere to the standards enumerated in international law that forbid secret incommunicado detention or torture and cruel, inhuman, or degrading treatment of people without exception. In this regard, the United States of America should conform to its U.S. constitutional jurisprudence as well as jurisprudence of prior tribunals such as the International Military Tribunal for the Far East and military tribunals at Nuremberg.
- 6) The international law of command responsibility applies to the United States of America.
- 7) The United States of America should assure command responsibility for its high level civilian authority and military general officers for any violations of international law.
- 8) Security and liberty should be maintained and enhanced in a manner that is completely consistent with the international law obligations of the United States of America.

SIGNED

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