From the beginning of this Administration, Secretary Rice has made very clear to me that, in addition to providing first-rate legal advice to the State Department’s officials, she expects the Office of the Legal Adviser to play a key role in our public diplomacy dialogue. Secretary Rice is aware that the historic commitment of the United States to international law and the rule of law has been questioned after September 11th, and she has personally and repeatedly reaffirmed our respect for and adherence to the rule of law, and our strong commitment to meeting our international legal obligations. “The United States,” she has said, “has been and will continue to be the world’s strongest voice for the development and defense of international legal norms.” She said that we respect our international legal obligations and international law and we will continue to do so. And, apropos for today’s discussion, she added this: “We’re going to continue to make that very clear to the world.”

Secretary Rice has asked me to ensure that I and my staff play a lead role in this effort, as we work to garner support around the world for US positions. I have therefore made it one of my top priorities as Legal Adviser to ensure that we effectively communicate our message to the rest of the world so that the international community understands our commitment to international law and the rule of law.

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as well as the carefully considered legal bases and rationales underpinning policy decisions made by the United States.

**Countering Myths**

This task is not always an easy one. We hear increasingly that the United States is not strongly committed to international law and international institutions. We hear that the United States acts “lawlessly” on the world stage. The United States refused to ratify the Kyoto Protocol. We “unsigned” the Rome Statute. We withdrew from the ABM Treaty. We went to war in Iraq without a legal basis under international law. And we have violated the Geneva Conventions by holding terrorists in Guantanamo without giving them lawyers or charging them with crimes. This is a troubling pattern of criticism, but US experts in international and national security law, including the lawyers in my office and many of you, are well positioned to explain why none of these acts were “lawless” and why many of these criticisms are simply wrong.

Of course, there are some challenges in public legal communications that do not necessarily exist with respect to our public communications generally. We need, for example, to maintain applicable legal privileges and cannot therefore always discuss exactly how we came to a particular position. Moreover, while legal strategic communications is about persuasion and listening, our commitment to stating the law correctly provides a firm limit to what we can say. Likewise, we are not always able to counter the facts underlying a legal debate because we cannot discuss information that could compromise the success of intelligence, law enforcement and military operations. This dilemma has made the job of explaining our legal position on renditions particularly difficult. Before asserting legal positions, we also need to consider carefully whether and how this might prejudice future policy positions or options. For example, one difficulty with publicizing lawful interrogation techniques to help address concerns of allies is that this public disclosure might facilitate terrorists’ training activities.

Another challenge unique to legal communications is identifying and responding to policy differences that are recast as disputes about law. The United States is, for example, often criticized for not supporting international law because it failed to sign or ratify a treaty. This happened with respect to the Kyoto Protocol, which the United States did not think was sound public policy and would harm the US economy. The decision not to ratify the Protocol was made on that basis and perfectly legal under international law.

With that background, I want to describe some of the specific public diplomacy efforts of the Office of the Legal Adviser, and I hope to encourage the US military
and other government lawyers and officials participating in this colloquium to engage in strategic dialogue about important legal issues as part of your work in the international arena. President Bush has said that public diplomacy is the job of every member of his Administration, and has directed Under Secretary for Public Diplomacy and Public Affairs Karen Hughes to ensure that every agency and department gives public diplomacy the same high level of priority that he does. By talking more clearly—and more often—about our legal positions, as Secretary Rice has said we must do, we can dispel myths, correct misunderstandings, and share and communicate some of America’s most basic values.

The Broader Context

The State Department’s overall communications strategy involves three strategic imperatives. Our first objective is to offer people throughout the world a positive vision of hope that is rooted in America’s belief in freedom, justice, opportunity and respect for all. President Bush and Secretary Rice have emphasized that people around the world should know that we stand for human rights and human freedom everywhere. Second, we seek to isolate and marginalize violent extremists and confront their ideology of tyranny and hate. One of the chief ways we do this is by undermining the efforts of extremists to portray the United States and the West as in conflict with Islam. We work to empower mainstream voices and demonstrate respect for Muslim cultures and contributions. Finally, we seek to foster a sense of common interests and values between Americans and people of different countries, cultures and faiths throughout the world.

Work of the Office of the Legal Adviser

Communications about our legal positions are an important part of the Department’s overall strategy. Some of the key communications challenges in our war with al Qaeda and the Taliban, and the conflict in Iraq, illustrate the point. For example, my office has had a central role in explaining the legal basis for our detention operations in Guantanamo and Iraq. We have also responded to the terrible abuses at Abu Ghraib and recent allegations of misconduct by US Marines at Haditha. More generally, I have personally participated in numerous meetings, conferences, symposia and similar gatherings in the United States and abroad regarding important legal topics relating to the conflict with al Qaeda and other issues, and I have led several delegations of US government officials to international conferences in Geneva.
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In each of these instances, I and my staff talk about the law to help our counterparts in ministries of foreign affairs around the world, as well as international organizations, non-governmental organizations, opinion makers and the public, understand our legal rationales and, in nations that lack a strong rule of law tradition, to help people understand the importance of law in forming good policy. At the same time, we listen to what colleagues, opinion makers and the general public around the world are saying about the law. By listening to their views and paying attention to their concerns, we show respect for them and we ultimately provide better advice to our clients.

Detention Operations

Let me turn to my first example of how the Office of the Legal Adviser has engaged in public diplomacy to advance the Department’s overall communications strategy, namely our central role in explaining the legal basis for our detention operations.

The Office of the Legal Adviser is clearly aware of the concerns people have raised with respect to our detention operations, especially the detention facilities at Guantanamo Bay and our rendition of terrorists in limited circumstances. I have personally engaged directly with my counterparts around the world to explain our legal positions on these matters and to discuss our shared interests in preventing terrorist attacks, gathering intelligence and bringing terrorists to justice. I have traveled to numerous European capitals to meet with legal advisers and other representatives from foreign ministries, the EU and international organizations, and conducted press events and roundtables with those that have a key influence on public opinions and policies. My main goal has been to explain more clearly the legal bases for our detention activities and address the legal concerns that have been raised over the last few years, including by our friends and partners. To do this, I have had to do three main things. First, I have explained with specificity how the US government complies with its Constitution, its laws and its international legal obligations in its detention activities. Second, I have worked to clarify misconceptions about various decisions by our government as well as misunderstandings about various aspects of international law and the Geneva Conventions. Finally, I have emphasized that the US government recognizes that many issues relating to our detention of captured enemy fighters remain a matter of concern in Europe, and elsewhere, and promised to talk more often and more clearly about the issues; at the same time, I have asked that responsible officials and commentators in Europe promote more balanced discussion within their own nations, among themselves and with the United States about the issues.
With respect to compliance with our legal obligations, it has not been enough for me to reiterate that the US government complies with its Constitution, its laws and its treaty commitments in its detention activities. I have spent many hours sitting with lawyers, officials, reporters and commentators explaining the various US criminal laws and international legal obligations that prohibit torture, and describing how US courts have interpreted those laws in specific circumstances. Likewise, I have talked about specific cases of unlawful treatment of detainees and described how the United States vigorously investigated and, where the facts have warranted it, prosecuted and punished those responsible. Unfortunately, it is easy to capture a criticism about a complex legal matter in a pithy sound bite—"prisoners linger in Guantanamo no-man’s land" or "US torture camp at Guantanamo"—but it requires paragraphs of explanation to describe how the United States is, in fact, complying with its legal obligations.

In each of these discussions I emphasize that, even if I cannot persuade my listeners that the position of the US government is clearly correct, at least there is "method" to what some perceive as our "madness," and that the positions we have taken are legally defensible.

One particular area that has been largely misunderstood by Europeans is the way in which the United States applies the Convention Against Torture’s prohibition against sending a person to a country "where there are substantial grounds that he would be in danger of being subjected to torture." The European Court of Human Rights has interpreted this prohibition such that it is impermissible for members of the Council of Europe to remove a person to a country where that person might be tortured. Our Senate, on the other hand, has opted for a standard that it is impermissible to remove a person to a country where it is "more likely than not" that that person would be tortured. Both of these standards are valid and each ensures compliance with the relevant Convention Against Torture obligation.

It has been extremely helpful to describe our standard in detail to my European colleagues and to explain that our standard emerged from a democratic process when our Senate ratified the Convention Against Torture in 1990 and was not developed by this or any other Administration. Many Europeans have been receptive to the point that our standard, although different than theirs, was carefully considered, promulgated by our Senate and intended to fulfill our obligations under the Convention. Also, I have emphasized that we share common values—above all a prohibition on torture and on cruel, inhuman or degrading treatment of any detainee—and common objectives in our counterterrorism efforts, including gathering potentially life-saving intelligence from captured terrorists. And, I have pointed out that we have foiled a number of deadly plots against cities and citizens...
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in Europe and elsewhere as a result of our law enforcement and intelligence cooperation.

Another area of concern with respect to our detention activities has involved our use of the concept of unlawful combatants. Certain academics and others have asserted that the term is not found in the Geneva Conventions but rather was invented by this Administration. I consistently point out that these criticisms are wrong; the concept of unlawful combatants is well recognized in international law by courts, in military manuals and by international legal scholars. By citing specific historical examples of the use of the term unlawful combatants and showing that the United States did not simply make up this term for its own purposes, I have persuaded many European colleagues that the term does, in fact, describe a long-standing category of actors. Some of these colleagues, of course, continue to disagree with our application of the concept, but they know that our legal analysis is rigorous and that we are genuinely concerned with ensuring that our detention activities comport with all of our relevant legal obligations.

Another important misconception that I have tried to correct involves President Bush’s signing statement in bringing into law the Detainee Treatment Act, the legislation that includes the well-known McCain Amendment. The President’s signing statement included a standard statement indicating that he would interpret the Act consistent with his authorities under our Constitution. Critics argue, and it has almost become urban legend, that the President’s statement “proves” that he intends to rely on his constitutional authority to ignore the McCain Amendment. In response, I point out that the President’s signing statement reflects a frequently used executive branch position about the execution of laws within the context of the President’s constitutional responsibilities, and was not meant to indicate that the President planned to ignore the provisions of the Act.

Our detention activities involve complex legal questions and people around the world have raised concerns about those activities. Often, our job is not so much a matter of explaining the Geneva Conventions or international legal principles, about which foreign audiences tend to be reasonably well informed—albeit sometimes with different views—as it is about communicating our commitment to those principles and explaining clearly US law and the bases for our legal decisions and practices. We talk about how US law comports with our international legal obligations, how US legal positions are well considered by all branches of our government, and we offer alternative explanations for what may seem to be substantive legal differences. When people understand our strong commitment to treating detainees in accordance with our constitutional, statutory and international legal obligations, they understand that we stand for the proper treatment of all people in all contexts.
A second example of how the Office of the Legal Adviser has engaged in public diplomacy to advance the Department’s overall communications is our work in responding to the terrible abuses at Abu Ghraib and recent allegations of misconduct by US Marines at Haditha.

I have personally engaged in outreach on both of these subjects at home and abroad, in coordination with the Department of Defense and other relevant agencies, and people have appreciated hearing candidly from the State Department’s Legal Adviser that the United States takes these incidents very seriously, acts on them promptly, investigates thoroughly and holds the wrongdoers accountable for their actions. We know that one of the great strengths of our nation is its ability to recognize its failures, deal with them and act to make things better. When we explain that we continue to do just that in the war on terror, we reaffirm one of our most basic values for people around the world. In addition, as a practical matter, lawyers play an important role in responding to events like Abu Ghraib and Haditha because we can discuss with authority the specific legal procedures to investigate the incidents and prosecute wrongdoers. Since extremists take full advantage of incidents like Abu Ghraib and Haditha to portray the United States as evil, only rhetorically concerned about human rights and in conflict with Islam, we undercut the terrorists’ efforts by addressing abuses and allegations head-on and describing our investigative and prosecutorial procedures.

With respect to crises like the abuses at Abu Ghraib and the allegations of misconduct at Haditha, one of the most important elements of our communications strategy is speed. In an age of mass media and electronic communication, the United States is competing for attention and credibility in a time when rumors can spark riots and protests, as we saw in connection with the inaccurate Newsweek report regarding a US soldier flushing a Koran down a toilet, and information, whether it is substantiated by facts or based on mere rumors, spreads instantly around the world and across the Internet. In these circumstances, we need to act quickly to counter misinformation and undermine the efforts of extremists to portray us as evil.

One of the key ways we achieve speed at the State Department is through our rapid response unit, a recent initiative of the Secretary and Karen Hughes. Early each morning our rapid response unit meets to determine what the critical media issues for that day are around the world and what our strategy should be to respond to them. Our lawyers work closely with the rapid response unit to ensure legal issues are properly addressed and that the legal bases for our positions and decisions are accurately and appropriately communicated.
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Whether we are responding to a crisis like Abu Ghraib or Haditha or working to explain our legal positions to audiences around the world, talking directly to the press is an important element of our communication strategy. The media plays an important role in shaping perceptions around the world so, just as it is necessary to meet privately with government officials, NGOs and opinion makers, we need to speak publicly to the press to explain our positions. Outreach to Arab media has been especially important after September 11th and I have reached out to them, and the foreign press center generally, as often as possible during my tenure. The foreign press, including Arab media like al-Jazeera, has been very receptive to hearing our legal positions and replaying them in the Arab and Muslim world and elsewhere.

Delegations and Meetings

Before closing, let me briefly touch on the final example where I and my staff engage in public diplomacy as an important part of the Department’s overall communications strategy—an example that actually cuts across all of our legal public diplomacy efforts. In addition to the strategic dialogues about critical issues of mutual interest with my European colleagues that I mentioned, I have made it a priority, at the urging of Secretary Rice and Under Secretary Hughes, for me and my staff to talk more often and more clearly about legal matters around the world. We look for opportunities and have increased our budget to attend meetings, conferences, symposia and similar gatherings to listen carefully to our colleagues; show respect for important issues and international law and institutions generally; explain clearly the legal bases for our policies and actions; and advocate forcefully to convince other nations to cooperate with us and live up to their own commitments.

Since becoming Legal Adviser, I have spoken at events hosted by the American Society of International Law, the American Bar Association, the Atlantic Council of the United States, George Washington University Law School, Princeton University and other institutions. Last year, I spoke at the Round Table on Current Problems of International Humanitarian Law in San Remo, Italy, which is the premier conference in the field. I have invited numerous groups and colleagues from around the world to the State Department to discuss critical issues of mutual interest. Whenever possible and appropriate, I have tried to involve the Secretary and other colleagues in our international legal public diplomacy efforts. Many of you might have heard or read the Secretary’s remarks at the last two Annual Meetings of the American Society of International Law, the American Bar Association’s recent Rule of Law Symposium in Washington, DC, or the Diplomatic Reception of the Washington Foreign Law Society at the State Department last year.
John B. Bellinger III

I have led two delegations to international conferences in Geneva to work to enable the Israeli national society, the Magen David Adom, to join the International Movement of the Red Cross and Red Crescent. In May 2006, I led another delegation of senior US government officials to Geneva where we presented our second periodic report to the UN Committee Against Torture, and then responded to the Committee’s subsequent report, which contained its main findings and recommendations to the United States.

The Office of the Legal Adviser’s leadership of the delegation to the UN Committee Against Torture is an excellent example of how the Department’s lawyers contribute to the Department’s overall communications strategy by effectively participating in meetings, conferences and delegations around the world. We provided the Committee with an extensive report and thorough answers to the many questions they posed, demonstrating our commitment not only to fulfilling our obligations under the Convention Against Torture, but to engaging in a productive dialogue with the Committee. Moreover, by sending a high-level delegation to Geneva to present our report and engaging in a dialogue with the Committee, we demonstrated our respect for our obligations under international law and our commitment to the Convention’s principles.

Conclusion

Our legal public diplomacy efforts have not gone unnoticed. Following our Convention Against Torture presentation, for example, the Economist newspaper devoted an entire article to describing “some welcome signs of a change of tone from the Bush administration.” They commended our delegation for fielding tough questions on the treatment of detainees with unusual candor and even deference, and cited our discussion with European colleagues on renditions and other detention issues. The Economist was unwilling to applaud our policies, but they were willing at least to say that “public relations are improving.”

I hear time and again from people around the world that they are grateful for our increased dialogue about critical matters of law—even if we only agree to disagree in some cases, the dialogue is essential. People want to know what we stand for and why. And if we do not tell them, our critics—or worse, extremists—will tell them for us. This is why I and my staff will continue to work to communicate effectively our message to the rest of the world so that the international community understands our commitment to international law and the rule of law, as well as the carefully considered legal bases and rationales underpinning our actions. I encourage each of the US military and other government lawyers and officials—or future lawyers and officials—here to review your own work and consider how you,
too, can play a role in our public diplomacy dialogue. As the President has said, public diplomacy is an important part of each of our jobs. We each need to see ourselves as international diplomats as we conduct our work.