**ICCPR List of Issues Submission**

*Prolonged detention of foreign nationals aboard U.S. Coast Guard vessels without due process*

**Reporting Organization**

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**Issue Summary**

1. In November 2017, the New York Times [reported](https://www.nytimes.com/2017/11/20/magazine/the-coast-guards-floating-guantanamos.html?_r=0) that the U.S. Coast Guard routinely interdicts foreign vessels in international waters on suspicion of low-level drug smuggling, and takes their crews into detention. Detainees are held on the decks of Coast Guard ships for weeks or even months without arrest or charge, before they are eventually brought to the United States for arraignment in U.S. courts. The Coast Guard has operated these “floating Guantanamos” under Operation Martillo (“hammer”) since 2012, with over 700 individuals detained in this manner in 2017 alone.
2. The U.S. Coast Guard appears to have few protocols for managing detainees. Detainees are shackled to ship decks, where they are exposed to the elements and released only to defecate in buckets. Food is minimal and medical care is lacking. Detainees receive no notice of their rights under U.S. law and have no access to courts, lawyers, interpreters or their consulates. They are not permitted to contact their families, who are left to presume they have died at sea. In a very real sense, they are forcibly disappeared.
3. Operation Martillo has faced little scrutiny in U.S. courts. Detainees are not formally arrested or interrogated until they are brought to the United States, which prevents access to courts and counsel. Even once charged, U.S. courts have largely refused to review pre-arraignment treatment, leaving a sizable and dangerous legal gap for abuses that occur on the ships.

**Concluding Observations and ICCPR Legal Framework**

1. Relevant Articles of the ICCPR that relate to the issue: 7,[[1]](#footnote-1) 9, 10 and 17.
2. The Committee has not directly considered Coast Guard interdictions or detention practices in earlier reviews. However, in its [2006 concluding observations,](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nmt60Dd983WV9adoHS5ElevRLFLmq6%2b7CUYjElZEqbAgBGhH35y4ftuUZ%2flFEq2GVGWexcN9r9SLrEzw7YFljogHgKCQKyDTlpf78oXR%2bLGyg%3d%3d) the Committee expressed concern about a number of practices implemented in the aftermath of 9/11 that are relevant to the U.S. Coast Guard’s conduct today:
	1. The Committee expressed its concern about reports that the United States engaged in the practice of detaining people in secrecy for extended periods of time, noting that in such cases, the rights of detainees’ families were also violated.[[2]](#footnote-2) The Committee also stated that even when detention practices were acknowledged, holding persons incommunicado for extended periods of time violated their Covenant rights.[[3]](#footnote-3) It was also concerned more generally by reports of people being detained with “fewer guarantees than in the context of criminal procedures”.[[4]](#footnote-4)
	2. The Committee noted shortcomings in the “independence, impartiality and effectiveness” of investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment committed by U.S. agents in overseas detention facilities.[[5]](#footnote-5) The Committee emphasized the importance of providing adequate training and guidance to employees and contractors about their Covenant obligations.
	3. The Committee referred to legislation barring detainees at Guantanamo Bay from seeking review of their conditions of detention before a court.[[6]](#footnote-6) In the context of Coast Guard detentions, the *Ker-Frisbie* doctrine operates to similar effect.[[7]](#footnote-7) The doctrine provides that the way in which a defendant is brought before a court is typically irrelevant to proceedings, except in relation to motions to suppress evidence obtained prior to arrest and charge. While this does not technically foreclose the possibility of Coast Guard officials being prosecuted for illegal conduct, detainees are effectively precluded from seeking judicial review of their detention conditions.
3. In its [2014 concluding observations](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2bI55yhIwlkDk6CF0OAdiqu2L8SNxDB4%2bVRPkf5gZFbTQO3y9dLrUdEK%2bDHFgf%2bfMj%2f0%2fCMZOyL), the Committee expressed concern about the lack of comprehensive legislation criminalizing all forms of torture, including mental torture, committed within U.S. territory.[[8]](#footnote-8)

**Current U.S. Government Policy or Practice**

1. The U.S. Coast Guard has made arrests in international waters since the 1980s, but has expanded the scale of operations in recent years. Over that time, detention conditions aboard Coast Guard vessels are reported to have worsened. In 2012, when Operation Martillo was launched, Coast Guard detentions averaged about 200 annually. In 2016, that figure was 585, before climbing to 700 in 2017. In 2014, Gen. John Kelly, as Commander of DOD Southern Command, [spoke publicly](https://www.defenseone.com/threats/2014/07/top-general-says-mexico-border-security-now-existential-threat-us/87958/) about the need for the United States to protect itself from the “existential” threat posed by the drug trade in Central America. In 2013, at a Senate Armed Services Committee hearing, Kelly [advocated](https://www.govinfo.gov/content/pkg/CHRG-113hhrg80190/pdf/CHRG-113hhrg80190.pdf) for more resources for the Coast Guard, so that it could increase maritime drug interdictions.[[9]](#footnote-9) No information has been provided by the current administration as to whether Operation Martillo will continue at its current pace.

**Human Rights Committee General Comments**

1. [General Comment 20](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_GEC_6621_E.doc), in respect of Article 7, states that the “prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim”.[[10]](#footnote-10) It stressed the need for persons involved in arresting or detaining people to receive appropriate instruction and training.[[11]](#footnote-11)
2. [General Comment 35](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1l5979OVGGB%2bWPAXjdnG1mwFFfPYGIlNfb%2f6T%2fqwtc77%2fKU9JkoeDcTWWPIk9w2OzZSLwlub%2f%2f5eBlsKsYAj5kvl4zqJZkm7wRT9ol), in respect of Article 9, provides that detention may be arbitrary if detainees’ treatment does not relate to the ostensible purpose of detention.[[12]](#footnote-12) The Committee noted that “arrest” means the commencement of a deprivation of liberty, and stated that any delay in communicating reasons for detention must be kept to an absolute minimum.[[13]](#footnote-13)
3. [General Comment 21](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_GEC_4731_E.doc) provides that the application of Article 10 cannot depend on a State’s material resources.[[14]](#footnote-14) This suggests that operational considerations, budgetary restrictions or convenience could not justify Coast Guard detentions for longer than strictly necessary.

**Recommended Questions**

1. In light of reports that detainees are subjected to conduct that amounts to inhumane treatment, what is the U.S. government doing to ensure that detainees have adequate food, water, medical care and shelter while in Coast Guard custody?
2. What is the U.S. government doing to ensure that detainees have access to legal assistance and means to communicate with their families while in Coast Guard custody?
3. What is the U.S. government doing to ensure Coast Guard officials bring detainees to U.S. territory for arraignment in U.S. courts as expeditiously as possible following interdiction?
4. What remedies does the U.S. government intend to provide to detainees who have suffered due process rights violations while in Coast Guard custody?

**Suggested Recommendations**

1. Limit detention periods to the minimum time required to transport detainees directly from the place of their interdiction to US soil.
2. Ensure that while detainees are in Coast Guard custody, officials provide them with:
	1. sufficient food, water, medical assistance and shelter;
	2. means to contact their families; and
	3. access to legal assistance and interpreters.
3. Implement training regimes for Coast Guard officials to ensure that treatment of detainees complies with the United States’ Convention obligations.
1. We note that the United States considers itself bound by Article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means conduct prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the United States Constitution. [↑](#footnote-ref-1)
2. U.N. Human Rights Committee, Concluding Observations - United States of America, CCPR/C/USA/CO/3/Rev.1 (2006) [12]. [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. Id. at [19]. [↑](#footnote-ref-4)
5. Id. at [14]. [↑](#footnote-ref-5)
6. Id. at [15] [↑](#footnote-ref-6)
7. See *Ker v. Illinois,* 119 U.S. 436, 439 (1886) (holding that "mere irregularities in the manner in which [a defendant] be brought into custody of the law" are irrelevant so long as the defendant is "regularly indicted by the proper grand jury in the state court [and] has a trial according to the forms and modes prescribed for such trials”); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (affirming the principle articulated in *Ker* that "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction") (internal citations omitted). The effect of the doctrine is to effectively bar arguments that illegal pre-trial conduct could undermine an otherwise valid criminal conviction, provided criminal proceedings, once commenced, comply with the procedural due process requirements that govern arraignments and trials. [↑](#footnote-ref-7)
8. U.N. Human Rights Committee, Concluding Observations - United States of America, CCPR/C/USA/CO/4 (2014) [12]. [↑](#footnote-ref-8)
9. See page 28. [↑](#footnote-ref-9)
10. U.N. Human Rights Committee, General comment No. 20 [5]. [↑](#footnote-ref-10)
11. Id. at [10]. [↑](#footnote-ref-11)
12. U.N. Human Rights Committee, General comment No. 35 [14]. [↑](#footnote-ref-12)
13. Id. at [27]. [↑](#footnote-ref-13)
14. U.N. Human Rights Committee, General comment No. 21 [4]. [↑](#footnote-ref-14)