



OCGG Law Section

Advice Program
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US Breaches of International Law and
Violations of Human Rights Abroad

War on Justice

Recommendation to
The United States
The European Union
The United Nations

by André Nilsen

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INTRODUCTION

Let us be clear about what is happening in the world today.

The United States is torturing people. The United States is treating people in a cruel, inhuman and degrading manner. The United States is denying people habeas corpus and fair trials. The United States is arbitrarily imprisoning people. The

United States is kidnapping people. The United States is sending people to other states it is encouraging, facilitating, and supporting to do all of the above.

All this is documented by credible evidence from a growing number of reliable sources, including the United Nations, the International Committee of the Red Cross, leading newspapers and independent NGOs.

MAIN POINTS

The 'war on terror' is a threat against humanity and civilization. The US must close its global system of abduction, rendition and detention. The UN, the US and the EU must set up independent inquiry commissions to find the truth. The US and the EU must enforce justice against all complicit.

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All this is, needless to say, illegal. These acts are grave breaches of international law. They constitute gross violations of a range of international treaties, customary international law and jus cogens. Some could amount to war crimes and crimes against humanity.

The United States is committing these acts against people who are, in accordance with the principle that you are innocent until found guilty in a court of law, innocent. All these people are real human beings like you and me. They have bodies that feel pain and minds that value freedom.

The United States is assaulting the very principles of human rights and the rule of law that lie at the heart of justice, form the bedrock of our civilization, and protect our humanity.

It makes a complete mockery out of its talk about spreading freedom and democracy in the world. There can of course be no freedom without human rights and no democracy without the rule of law.

The United States is doing all this in a deliberate, systematic and sophisticated manner that is calculatedly formulated as a matter of policy and efficiently implemented through its government agencies.

The leaders in its executive, legislature, judiciary, and administration are fully aware of what is going on. They are taking no action to stop it. In fact they are taking actions to scale it up. Most of its politicians, officials, officers, lawyers, intellectuals, academics, journalists, corporate executives, religious leaders and prominent individuals watch in silence.

WAR ON JUSTICE, GLOBAL GULAG AND GUANTANAMO BAY

We have all seen the images from Guantanamo Bay. Men kept in cages like animals; the orange jumpsuits, blinding goggles, deafening earmuffs and silencing gags that deprive them of their individuality and humanity. They can be held indefinitely. They can be tortured. They can be sentenced to death. By kangaroo courts, through kafkaesque processes. The guard, interrogator, torturer, prosecutor, defence counsel, judge and executioner all report to the same man. Let's call it what it is; it's a concentration camp.

Guantanamo Bay is however just the visible tiny top of a huge and growing iceberg. Over the last few years, the United States has built up and, as I write, is con-

tinuing to expand a global system of abduction, rendition, detention, and interrogation that in its nature and operation gravely breaches human rights, the rule of law and international law, including through acts of torture. Irene Khan, Secretary General of Amnesty International, on 25 May 2005 described this system as “the gulag of our times”.

This Global Gulag is one of the key tools used in what in the past was referred to as ‘the war on terror’ and now in the Quadrennial Defence Review Report, released 6 February 2006, has been re-branded ‘the long war’. Of course, this is not a real war. It is a phoney war. It sometimes involves fighting real wars – in line with the rest of the exercise usually illegal ones – but the project itself is not a war in the classical sense. It is instead a broad effort to transform world order. To stick to the terminology, let’s call it a War on Justice.

WORLD ORDER AND THE UNITED STATES

From the end of the Second World War and up to the late 1970s the United States was the architect, driving force and protector of a world order based on international law, the United Nations and multi-

lateral governance. It played a key role in negotiating the United Nations Charter and a range of international treaties, in setting up the United Nations and a number of international organizations, and in drawing all countries together as equals to exercise global governance in common through shared global rules.

Since the early 1980’s however the United States has sought to replace this with a world order based on military power, the United States, and unilateral action. It has been not only violating but undermining and even destroying some of the key pillars of international law while moulding other institutions to protect its power and embody its interests. It has been pursuing unconstrained, total, global and instant military control of land, sea, air, space and information to achieve ‘full spectrum dominance’. It has been sidelining some of the main bodies of the United Nations while promoting ad hoc coalitions-of-the-willing under the hegemony of the United States. It has been seeking to weaken other global powers such as Europe, Russia and China to achieve a unipolar rather than a multipolar world. It’s quite clear, the United States wants to run the world and it wants to do it alone.



One could see the first tendencies under Ronald Reagan, these declined somewhat under George H. W. Bush, they returned again with force under Bill Clinton, and they have been made the paradigm under George W. Bush. Under George W. Bush the United States is conducting what amounts to an all-embracing, never-ending, no-holds-barred campaign to complete, secure and perpetuate the transformation of world order from one based on justice to one based on force. This is a step back in civilization from a state of law to a state of nature. And it is a step back for humanity from respecting our common human dignity to treating each other like animals.

A B D U C T I O N , R E N D I T I O N A N D D E T E N T I O N

One of the most horrendous elements of this War on Justice is the Global Gulag. Some elements of it such as Guantanamo Bay have been designed, constructed, operated and controlled exclusively by the United States. Other elements of it such as some of the torture jails are hosted and run by other states but are none the less contributing to and influenced by the global system so that ultimate responsibility rests with the United States.

At Guantanamo Bay, operated by the Department of Defence, according to data released last autumn, at least 264 detainees have been sent to other countries and approximately 520 detainees are still held. Only 17 detainees have been designated as eligible for trial by a military commission with 3 detainees later transferred to their country of origin. Just 9 detainees have actually been referred to a military commission. The United States has recently awarded contracts to construction companies to expand its facilities.

At an unknown number of secret detention and interrogation centres around the world including in Asia and Europe, some operated by other government agencies including the CIA and others operated by other states, an unknown number of 'ghost' detainees are held. The United States has recently enlisted the support of African states to build more facilities.

Some of the detainees have been captured by the United States on the battlefields in Afghanistan and Iraq, but many others come from other countries where they either have been abducted by the United States without the knowledge of the country's government, as we know has happened in Italy, or rendered to the United States by the country's gov-

ernment, as we know has happened in Sweden. Many of the detainees have thereafter been moved around among the various detention and interrogation centres through a rendition program that has been operating with the support of the airspace, territory, airports, infrastructure and in some cases even personnel of several Member States and candidate countries of the European Union.

H A B E A S C O R P U S A N D F A I R T R I A L S

A deeply worrying aspect of the Global Gulag is that all the detainees are denied habeas corpus and fair trials. They are deprived of their rights to challenge the lawfulness of their detention and have their cases tried by competent, independent and impartial courts of law that respect the basic requirements of due process such as presumption of innocence, access to defence counsel, information about the reasons for arrest, information about the evidence of the prosecution, and examination of witnesses. The detainees at Guantanamo Bay were given the right to file petitions for habeas corpus in a 2004 ruling made by the Supreme Court but they lost this right again in the 2005 Detainee Treatment Act adopted by Congress.

T O R T U R E A N D C R U E L , I N H U M A N A N D D E G R A D I N G T R E A T M E N T

The most hideous part of the Global Gulag is that the detainees are subject to torture and cruel, inhuman and degrading treatment. The United States from late 2001 set out to twist, narrow and undercut the definitions, prohibitions and punishability of torture and abuse in international law.

The main culprits are the political leaders George W. Bush (President), Donald Rumsfeld (Secretary of Defence), Condoleezza Rice (National Security Advisor, Secretary of State), John Ashcroft (Attorney General), George Tenet (Director of Central Intelligence) and Porter Goss (Director of Central Intelligence); the civilian lawyers Alberto Gonzales (White House General Counsel, Attorney General), Jay Bybee (Assistant Attorney General, federal judge), John Yoo (Deputy Assistant Attorney General, Berkeley professor), Patrick Philbin (Deputy Assistant Attorney General) and Robert Delahunty (Special Counsel); the military lawyers William Haynes (Department of Defence General Counsel), Mary Walker (Air Force General Counsel), Lieutenant Colonel Diane Beaver (army lawyer) and Lieutenant

Colonel Jerald Phifer (army lawyer); the military officer Major General Geoffrey Miller (head of detention operations at Guantanamo Bay, advisor on interrogation policy in Iraq), and intelligence officers whose identities remain unknown.

Guantanamo Bay, according to the United Nations, in its nature and operation “amounts to torture” and according to the International Committee of the Red Cross constitutes “an intentional system of cruel, unusual and degrading treatment and a form of torture”. The secret detention and interrogation centres have not been independently inspected but there are good reasons to believe that even more outrageous forms of torture and cruel, inhuman and degrading treatment are committed. Jails in Syria, Jordan, and Egypt have long been notorious. CIA centres, however, do not appear to be far behind.

ABC News reported on 18 November 2005 that the CIA leaders in mid March 2002 approved a number of harsh interrogation techniques to be used against ‘ghost’ detainees. These techniques include hitting detainees, forcing detainees to stand for more than 40 hours, keeping detainees naked and doused in cold water in a cold cell, and waterboarding detainees. The techniques have led to false

confessions and several deaths. This is all according to former and current intelligence officers. Some parts are corroborated by leaks from a classified report by CIA Inspector General John Helgerwon. Other parts are consistent with the accounts of escaped detainees. The CIA has not denied any of the allegations.

INTERNATIONAL LAW AND HUMAN RIGHTS

All of the above constitute grave breaches of international law.

The United States is party to several relevant international human rights law treaties, which apply both inside and outside situations of armed conflict, notably the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Some of the provisions of these treaties reflect norms of customary international law. The prohibition of torture enjoys jus cogens status.

The United States is also party to several relevant international humanitarian law treaties, which apply inside situations of armed conflict, notably the 3rd Geneva Convention relative to the Treatment

of Prisoners of War and the 4th Geneva Convention relative to the Protection of Civilian Persons in Time of War. Many of the provisions of these treaties reflect customary international law. Although the United States is not party to the Additional Protocols I and II to the Geneva Conventions, some of the provisions of these protocols reflect norms of customary international law.

These sources of international law give rights to anyone within the effective control of a state regardless of whether they are held on its territory or somewhere else. There can be no such thing as a legal black hole as the United States has argued Guantanamo Bay is. It is also not possible for a state to escape its obligations to respect these rights by inventing new grey zone categories of wars or enemies as the United States has been attempting with the rhetoric about 'the war on terror' and 'unlawful enemy combatants'.

It is crystal clear in international law that the right to life, the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment and the recognition of everyone as a person before the law – including habeas corpus, the presumption of innocence and minimum fair trials – can never be derogated from, not even during a public emergency or

armed conflict threatening the life of a nation. There are no exceptions, not even in a 'ticking bomb' scenario.

There is no lack of evidence that the United States through its policies and practices grossly violate these rights in the Global Gulag. The first revelations were documented in 'Chain of Command - The Road from 9/11 to Abu Ghraib' by Seymour Hersh (2004 Penguin). Most of the memos and reports are available in 'The Torture Paper -.The Road to Abu Ghraib' by Karen Greenberg and Joshua Dratel (2005 Cambridge University Press). A lucid outline of the legal framework can be found in 'Lawless World - Making and Breaking Global Rules' by Philippe Sands (2006 Penguin). The most damning documentation of torture at Guantanamo Bay is 'Situation of detainees at Guantanamo Bay - Report of Leila Zerrougui, Leandro Despouy, Manfred Nowak, Asma Jahangir, and Paul Hunt' by the United Nations (2006 United Nations). There is also no lack of indications that the European Union has been deeply complicit in gross violation of these rights by supporting the Global Gulag. An overview is presented in 'Alleged secret detentions in Council of Europe member states – Information Memorandum II – Report of Dick Marty' by the Council of Europe (2006 Council of Europe).

RECOMMENDATIONS

To anyone with eyes to see with, a brain to think with and a minimum of moral consciousness, it is clear what needs to be done.

First, the crimes must be brought to a halt. The United States must immediately shut down the entire global system of abduction, rendition, detention and interrogation.

Second, complete truth must be established. The United Nations, the United States and the European Union must immediately establish independent inquiry commissions consisting of high level personalities with sufficient rights, powers, budget and secretariat to conduct extensive in depth investigations. Intrusive inspections should be carried out in the offices, computer systems and archives of all presidents, prime ministers, foreign, defence, interior and justice ministers and the leaders of the civil, military, intelligence and police services who may have been involved or complicit. These should be public investigations with full transparency of all proceedings, open hearings of all witnesses and complete disclosure of all findings.

Third, full justice must be enforced. The United States and the European Union must urgently investigate, arrest, prosecute, trial and punish all the political leaders, civilian lawyers, administrators and staff, military lawyers, officers and soldiers, intelligence lawyers, officers and agents, and any other individuals who have been involved or complicit in accordance with the principle that everyone who knew but did not act is guilty.

Fourth, a just world order must be restored. 'The war on terror' or 'the long war' must be recognized as the War on Justice it is and rejected as a legitimate premise for the conduct of public policy and international affairs.

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