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Mark W. Vorkink

*American University Washington College of Law*

Erin M. Scheick

*American University Washington College of Law*

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# The "War on Terror" and the Erosion of the Rule of Law: The U.S. Hearings of the ICJ Eminent Jurist Panel

by Mark W. Vorkink & Erin M. Scheick\*

**T**HE LASTING VIABILITY OF HUMAN RIGHTS instruments and their supporting legal framework is best tested during periods of conflict and political upheaval. Terrorism,<sup>1</sup> and the methods of its prevention, offers a litmus test for the sustainability of these instruments and for the rule of law as a whole. Government action to identify, apprehend, and prosecute those responsible necessarily strains the exercise of individual rights and freedoms. How this tension is resolved determines how and to what extent such rights may be realized.

In recognition of the conflict between individual rights and counterterrorism measures, in August 2004 the International Commission of Jurists<sup>2</sup> brought together more than 160 international jurists who adopted the Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism. The Declaration's 11 principles mediate the relationship between counterterrorism measures and human rights, and identify a core set of principles that states should adhere to in executing counterterrorism policies. To further explore this intersection, the ICJ established the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, whose eight members<sup>3</sup> are tasked with exploring the scope of modern terrorism and the effect of government counterterrorism efforts on human rights. Chaired by Justice Arthur Chaskalson, the Panel will conduct hearings and invite submissions from NGOs, lawyers, academics, and experts in ten countries and six geographic regions over the next 18 months. Ultimately, the Panel will issue a final report documenting their findings.

On September 6th–8th, 2006, the Panel conducted its U.S. hearings at American University Washington College of Law in Washington, D.C. Activists, lawyers, members of civil society, and government officials testified on the ramifications of the U.S. "War on Terror" and the effects of recently enacted Administration policies on human rights and the rule of law. This article documents the topics covered by these hearings and provides an overview of the salient issues raised. These include: (1) the political and legal framework of the "War on Terror"; (2) the impact of post-9/11 programs on human rights and the rule of law; and (3) the use of military versus criminal approaches to combating terrorism. Above all, the testimony given before the Panel evidenced an emerging consensus that the Bush Administration's "War on Terror" has resulted not only in an assault on individual human rights but, more broadly, in an erosion of the rule of law that threatens the continued strength of domestic and international legal systems.

## THE FRAMEWORK OF THE BUSH ADMINISTRATION'S COUNTERTERRORISM MEASURES

THERE IS LITTLE DOUBT THAT THE EVENTS of September 11th fundamentally altered U.S. approaches to security, intelligence, and counterterrorism. Yet while the attacks on the World Trade Center and the Pentagon confirmed the material nature of a terrorist threat, the scope of this threat, and the force necessary to counter

it, have remained divisive issues. A former legal advisor to the Bush Administration, Bradford Berenson, framed the current conflict as "akin to the Goth's sacking of Rome," which threatened "the possible emergence of another 1,000 years of religious obscurantism and the destruction of our liberal values." Such hyperbolic descriptions are indicative of two central propositions underlying the Bush Administration's counterterrorism policy: (1) the uniqueness of the terrorist threat and (2) the importance of interpretation in defining the reach of human rights, humanitarian, and constitutional law.



The Eminent Panel of Jurists, from left: Robert K. Goldman; Hina Jilani; Arthur Chaskalson; Mary Robinson; Georges Abi-Saab; and Vitit Muntarbhorn.

Conceptualizing modern terrorism as historically unprecedented is a common rhetorical-framing technique used to justify controversial counterterrorism measures. The Panel heard from a number of persons who stressed that the "War on Terror" was different from other conflicts. Efforts to combat this "new" threat must then, so the argument goes, be equally novel, and should neither be judged nor constrained by adhering to existing legal norms. This conceptualization is particularly evident in the use of a war or military paradigm as opposed to a law enforcement approach.

That the current conflict is different, unconventional, or asymmetrical in no way validates Administration calls for a *carte blanche* in mounting a U.S. response. Comparing the present conflict to the U.K.'s experience in Northern Ireland, ICJ President Arthur Chaskalson noted that:

There was almost complete acceptance by everyone we spoke to ... [in the U.K.] that they had really made a mistake in Northern Ireland. Their policies ... didn't stop terrorism, they provoked it: people who might not have become involved [with the IRA] became involved .... The Irish experience had been that the harsh measures that were taken were counterproductive, and that progress was made only when they [the U.K.] changed their policies.<sup>4</sup>

Emphasis on the uniqueness of the terrorist threat nonetheless remains a fundamental rhetorical device of the Bush Administration in arguments supporting its counterterrorism policies. There is as

\* Mark W. Vorkink and Erin M. Scheick are J.D. candidates at the Washington College of Law and Co-Editors-in-Chief of the Human Rights Brief.

yet little or no recognition by the administration that documented abuses and legal violations committed pursuant to these policies frustrate effective counterterrorism efforts.<sup>5</sup> Testimony before the Panel, focusing in large part on the “shades of gray” inherent in U.S. counterterrorism efforts, belies the Bush Administration’s approach to the rule of law, which is predicated on an insistence on interpretation and the recognition of the limits of traditional legal standards. “We do not engage in torture” is a persistent refrain. Little analysis is made, however, on the subjective definition of “torture” and how, if construed so narrowly, any and all interrogation methods would be permissible.

Parsing the definition of torture is but one example of how careful use of interpretation functions to circumvent clearly established legal principles. Officials sympathetic to the Administration’s position cautioned the Panel that its investigation of alleged abuses ignored the more fundamental issue of the underlying legal framework supporting Administration policies. “The debate exists one

opinion, torture does not reveal quick, reliable information. Information obtained by torture is used to imprison the guilty and innocent alike. Torture corrupts the perpetrator, and its application is never narrowly tailored. Stress, duress, and psychological pressure are all forms of torture, prohibited by Common Article 3 of the Geneva Conventions. Finally, torture is incongruous with international standards of morality.

In the five years since 9/11, there have been numerous allegations and extensive evidence of torture and cruel, inhuman and degrading treatment in detention and prison facilities run by the United States. Beginning in 2003, allegations of abuse of prisoners held in the Abu Ghraib prison in Iraq surfaced, and by early 2004, the media released lurid, disturbing photos depicting U.S. military personnel abusing prisoners. “Practices of forced nudity, taunting, waterboarding, and other practices have been held by the court to be violations of U.S. law,” declared Eric L. Lewis, member of the board of directors of the human rights advocacy group Global

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“You can’t just look at this as a few people who are affected; it’s actually a whole legal structure. You must look at the cumulative effect of what has happened.”

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step prior to that,” Berenson argued, “that is, whether the Administration is acting in violation of [its subjective interpretation of] the law.” Given the response of the majority of the witnesses, and the questions raised by the Jurists themselves, this position is far from tenable. The extreme nature of the violations documented refutes any suggestion that such abuses fall short of torture, regardless of the administration’s definition. Testimony before the Panel revealed that, to the contrary, these abuses represent an affirmative administrative policy to circumvent and disregard fundamental principles of U.S. and international law.

#### THE IMPACT OF POST-9/11 ADMINISTRATION COUNTERTERRORISM POLICIES

MUCH OF THE DISCUSSION PRESENTED DURING the three days of hearings focused on the immediate and potentially lasting effect of Bush Administration counterterrorism measures. Speaking on behalf of victims of torture, prisoners in indefinite detention, and citizens with constitutional claims, witnesses described how post-9/11 programs have inflicted direct and cognizable harm to individuals and the administration of justice. Testimony revolved around documented abuses, the weakening of judicial processes, and the global impact of U.S. policies, all of which are mutually reinforcing. “You can’t just look at this as a few people who are affected,” Justice Chaskalson urged, “it’s actually a whole legal structure .... You must look at the *cumulative* effect of what has happened.”<sup>6</sup> As will be shown, the continual erosion of judicial safeguards within the United States could precipitate an international decline in the strength of human rights and humanitarian law.

#### DOCUMENTED ABUSES

Research from the Center for Victims of Torture debunks many common myths about torture.<sup>7</sup> Contrary to the Administration’s

Rights. Even so, “these practices have been shown to be a direct result of decisions and orders given by the administration and specifically, the Secretary of Defense.”

Though reports of secret CIA prisons surfaced nearly a year ago,<sup>8</sup> it was not until early September 2006 that President George W. Bush confirmed the existence of the secret facilities. The president denied allegations of torture, but admitted the use of “tough” interrogation tactics aimed at obtaining information for national security or prosecution purposes.<sup>9</sup> Fourteen high-profile detainees were recently transferred from the secret prisons to the U.S. army base in Guantánamo Bay, Cuba. However, allegations of prisoner maltreatment and abuse at the base are rampant, and three detainees committed suicide in June 2006. Furthermore, detainees at Guantánamo are frequently declared “enemy combatants” and face arbitrary and indefinite detention.

Finally, the U.S. has been complicit in suspected torture and cruel, inhuman, and degrading treatment through the reliance on extraordinary rendition. The Convention Against Torture, to which the U.S. is a party, expressly forbids the extradition of any person to a country where there are “substantial grounds” for believing that there is a danger of torture. Known as the principle of “non-refoulement,” States Parties should consider both historic and current patterns of gross, flagrant, or mass human rights violations as one factor when evaluating the risk of torture in a receiving country.<sup>10</sup>

International obligations, however, have not kept the U.S. from extraditing terrorist suspects to countries where there are “substantial grounds” for believing that there is a danger of torture or cruel, inhuman, and degrading treatment. Without any semblance of a judicial process, the U.S. has relied upon “extraordinary renditions” to send terrorist suspects to Syria, Egypt, and other countries in the Middle East and Asia where human rights abuses

are well documented.<sup>11</sup> The Bush Administration defends these renditions by claiming that, in all instances, diplomatic "assurances" are secured from the receiving country. However, these "assurances" bear no legal weight and thus present no legitimate protection to the extradited person. As it is difficult to document torture, which is generally practiced in secret, it is likewise difficult to challenge the breach of a diplomatic assurance. In practice, extraordinary renditions allow the U.S. to turn a blind eye to maltreatment and abuse of detainees in the name of national security.

### WEAKENING OF JUDICIAL PROCESSES

Between August 2004 and March 2005, 558 detainees held at Guantánamo Bay were assessed before an *ex parte* Combatant Status Review Tribunal, which found 520 to be "enemy combatants." According to the U.S., these "enemy combatants" could be held indefinitely (or until the end of the "war on terrorism"), without the right to speak with a lawyer or challenge their detention before a judicial body.<sup>12</sup> As of June 2006, only 14 "enemy combatants" had been charged with a crime triable before a newly established military commission. The nearly 500 detainees remaining at Guantánamo have not been charged with any crime and thus cannot expect to be brought before any court of justice.<sup>13</sup>

In *Hamdan v. Rumsfeld*,<sup>14</sup> the U.S. Supreme Court held that the military commissions established by the Bush Administration to try Guantánamo detainees violated both the Uniform Code of Military Justice and the Geneva Conventions. The proposed military commission would permit the use of hearsay, unsworn testimony, and evidence obtained through torture, and could forbid the defendant and the defendant's attorney from viewing the evidence to be used against the defendant at trial. The government maintained that the Geneva Conventions did not apply as the detainees were not prisoners of war. But the Supreme Court disagreed, maintaining that at the very least, Common Article 3 (the prevention of torture and cruel, inhuman, and degrading treatment) was applicable to the detainees held at Guantánamo.

Prior to adjourning for the mid-term election season, both houses of the U.S. Congress passed the controversial Military Commissions Act of 2006. The Act establishes Military Commissions, redefines U.S. obligations under Common Article 3 of the Geneva Conventions, strips detainees of their right to file habeas corpus pleadings, allows for evidence obtained by coercion or hearsay, and limits a defendant's right to examine government evidence.<sup>15</sup> In effect, the Military Commissions Act codifies the incremental erosion of defendant judicial rights that has occurred since September 11, 2001.

### GLOBAL IMPACT

The global impact of the U.S.-led "War on Terror" and the subsequent procedures employed by the Administration to capture and detain suspected terrorists must not be understated. When asked whether U.S. actions in the fight against terrorism could erode the international human rights framework, Justice Chaskalson responded:

I think this does pose a threat to it. So far, at the international level, there has been an insistence on compliance with international human rights and humanitarian law standards, but I do think we are seeing as we move around the world, we are seeing practices that are quite questionable in relation to those standards. And it does have an impact because this network is interdependent, and you start tinkering with it, it is potentially

dangerous because it could start unraveling and that would be a very serious thing.<sup>16</sup>

In light of the Military Commissions Act of 2006, which redefines Common Article 3 and grants the president the power to issue Executive Orders further interpreting the meaning of the article, Justice Chaskalson's warning of the "unraveling" of the international human rights system rings true. The president's reinterpretation of a 50-year old instrument of international law threatens the foundation of worldwide consensus on the laws of war. Furthermore, the Administration's disregard for the protections enshrined by Common Article 3 — what can be viewed as the heart of the Geneva Conventions — will jeopardize prohibitions of torture worldwide. Jumana Musa, of Amnesty International, highlighted this fact:

What is more worrisome is that there are several countries that have done similar things in setting up military commissions. In the past we have influenced these countries, and now the U.S. is losing its ability to influence other countries. Hosni Mubarak, president of Egypt, declared that this movement of the U.S. to military commissions validates the historic use of military commissions elsewhere.

The Administration's clampdown on other civil liberties and fundamental freedoms reinforces Musa's sentiment. Though the U.S. is a beacon of "freedom of the press," the increasing secrecy within the Administration and the fear of espionage is threatening the freedom of journalists throughout the country. Warrantless wiretapping programs and the targeting of Arab and Muslim-Americans for suspected terrorist activity likewise threaten civil liberties within the U.S., and the implications of these policies are far-reaching. The ironic impact the fight against terrorism is having on U.S. domestic policy is profound, even as the U.S. continues to advocate for expanding democracy and freedom around the world.

### THE IMPLICATIONS OF THE "WAR ON TERROR"

POLITICAL DISCOURSE REVEALS THE BUSH Administration's success in framing the present conflict as a "war on terror" — whether or not such a description is legally appropriate. In many respects, the government's invocation of a military paradigm is a leading cause of the abuses documented above; the language of war serving, above all, as a justification for the use of so-called "emergency" procedures. But as one witness noted, "The problem is that it is part metaphor and part reality. The constant use of the word 'war' is a debater's trick to persuade the audience that anything goes, and that executive power is supreme over either legislative or judicial [power]." Testimony before the Panel showed that one of the greatest obstacles to the maintenance of human rights today is this struggle against the pervasiveness of this military paradigm.

The administration contends that use of a war framework is warranted in light of the potential magnitude of harm and the undeterable nature of the belligerents. In support of this argument, administration officials cite to Osama bin Laden's declaration of war and to NATO's invocation of Article 5 immediately following the 9/11 attacks. With specific regards to the latter, it has often been stated that "If there was one lesson of 9/11, it was that this was not simply a criminal act, and that the war being waged against us was really a war, not metaphorically or abstractly." Yet this position is untenable. That the orchestration of the 9/11 plot was as unorthodox as it was abominable does not warrant the invention of an equally aberrant response. "There is a tendency to say

that because terrorism is different, the [existing] structure doesn't apply," Justice Chaskalson noted. Testimony given on behalf of the administration clearly showed that it is this presumed uniqueness of the threat that operates as the primary rhetorical ammunition for the government's "War on Terror." When pressed by the Panel, however, this justification failed.

In her testimony before the Panel, Gabor Rona, International Legal Director at Human Rights First, reiterated that International Humanitarian Law (IHL) conceives of only two "states" of armed conflict: (1) international armed conflict — conflicts between sovereign states; and (2) non-international armed conflict — insurrections, civil wars, or guerilla operations that are fundamentally domestic in both their scope and objective. Temporarily setting aside the more problematic issue of defining the United States' "enemy," the paradox presented by the "War on Terror" is that while waged globally, the belligerent identified by the U.S. is

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“The war on terror has been as much tactical as political. Even if you can classify it as a war, if we accept that, we should accept the totality of the rule of law, rather than selectively using the rules of war for political purposes.”

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unquestionably a non-state actor. This situation is prohibited by IHL. Armed conflicts must either be international, with exclusive state participation, or non-international, involving one of many non-state actors. Clearly, the "War on Terror" falls outside established legal understandings of IHL.

That this "war" is incongruous with international law has not, however, deterred the government from its military approach. One of the primary reasons for its continued use is the administration's admitted refusal to employ a law enforcement (or criminal) model. As Professor Baher Azmy of Seton Hall Law School argues, U.S. adoption of a criminal law paradigm akin to that successfully implemented by many European countries would proscribe, among other things, secret prisons, indefinite detentions, and targeted killings of individuals affiliated with various organizations. The ubiquitous use of these rights-abusive techniques makes clear the administration's reluctance to criminally prosecute suspects. Not wanting to resort to criminal law, and recognizing the constraints of universally accepted laws of war, the administration has devised a legal strategy to wage its "War on Terror" that is unprecedented in its arbitrary (and unsupported) interpretation of domestic and international law. The most shocking examples of this new legal framework include the enemy combatant designation, and the undefined nature of the government's military campaign.

Witnesses expressed grave concern regarding the implications of designating individuals as "enemy combatants." Pursuant to the law supporting the "War on Terror," an enemy combatant is legally an unprivileged belligerent, and retains none of the rights traditionally afforded military personnel in international armed conflicts — including mandated detention schemes, POW status, and freedom from torture and cruel, inhuman, or degrading treatment or punishment. Lacking these protections, the administration's "notion of a global war ... suggests that if I can identify an Al-Qaeda member [or one affiliated with an organization linked to Al-Qaeda], I should be able to directly attack that person and that would not constitute a violation of either the law of war or human rights law." In more precise terms, Executive Director of Human Rights Watch Kenneth Roth noted that once you are designated an enemy combatant, "the administration could simply shoot you and not even resort to detention." This conclusion is all the more shocking when one considers the complete absence of procedural safeguards of the Combatant Status Review Tribunals used to determine whether an individual is an enemy combatant.

It is clear that the legal framework of the "War on Terror" has resulted in numerous violations of human rights and humanitarian law. What is less understood, and what many witnesses articulated, is that the scope of this conflict and its undefined objective presents a significant obstacle to any foreseeable solution. Witnesses for the administration were asked repeatedly to define the terms of this new conflict, and to identify both the nature of the "enemy" and a timeline for the hostilities. No clear answers were given. Berenson argued that contrary to the suggestions of the Panel, this war was being waged against a readily identifiable enemy: Al-Qaeda. But his inclusion of other groups who "use the same means" as Al-Qaeda lends support to arguments made by opposing witnesses that, in actuality, the "war on terror" lacks any real meaning because "one cannot engage in a war against a method [or means] of war." Moreover, in addition to lacking a clearly defined "enemy," a deficiency that has allowed for the easy manipulation of military objectives (the Iraq invasion a clear case in point), the Panel expressed concern over the seemingly endless nature of the "War on Terror." The effect of this on human rights is most apparent with respect to the detention of enemy combatants. Under U.S. interpretation of the law of war, those designated as enemy combatants can be held until the cessation of hostilities. With no end in sight, this designation is, in effect, a mandatory life sentence for any detainee, executed pursuant to a determination hearing lacking even a bare minimum of procedural protections.

In the end, whether the U.S. is engaged in a "war" under established principles of international law is less important to the protection of human rights than whether the U.S. is strictly adhering to fundamental procedural guarantees in whatever counterterrorism policy it adopts. As ICJ Jurist Hani Jilani stressed, even if the U.S. succeeds in its argument that a state of war exists between it and Al-Qaeda or another organization, war, like law enforcement, must be conducted pursuant to clearly established rules. The Supreme Court's recent decision in *Hamdan v. Rumsfeld*<sup>17</sup> revealed that, at least in terms of Common Article 3, the administration's capricious and deficient procedures were legally impermissible. Ultimately, testimony on the applicability of a military framework suggests that "the war on terror has been as much tactical as political. Even if you can classify it as a war, if we accept that, we should accept the totality of the rule of law, rather than selectively using the rules of war for political purposes."

### CONCLUSION

AT THE CLOSE OF THEIR TESTIMONY, MANY witnesses stressed that while individual violations were deplorable, their aggregate effect on human rights and the rule of law was most detrimental. When combined with the rhetoric of U.S. foreign policy, the "War on Terror" has significantly reduced the global capacity of a human rights discourse.

Speaking on behalf of the Carter Center, Senior Advisor for Human Rights Karin Ryan argued that the rhetorical linkage between terrorism and democracy has ill-served an already battered human rights community. Terrorism is too often juxtaposed with democracy, with the latter serving as a cure-all for the myriad social, political, and economic factors that can precipitate terrorist activities. U.S. advancement of democracy, then, as a fundamental element of its foreign policy strategy in the "War on Terror" has led in some cases to a backlash against democratic movements that are viewed with suspicion as agents for U.S. hegemony. "This conflation of democracy and the fight against terrorism," Ryan noted, "is a problem for human rights activists who are cast in a pro-Western light in their [advocacy] for democratic reforms." Responding to this comment, ICJ Jurist Hina Jilani asserted that democracy, or its absence, is not the problem. Instead, disenchantment with the conduct of so-called democratic governments poses the greatest threat to the viability of democratic institutions. If the United States and others want to speak in the language of democracy and human rights, their policies must reflect these values, particularly those linked to counterterrorism measures.

Beyond the criticisms and the deficiencies of current counterterrorism measures, there remain a number of persistent questions that have not yet been addressed by either the U.S. or the human rights community. Foremost among these is the status of detainees. Morton Halperin, Director of U.S. Advocacy for the Open Society Institute, openly admitted that "what you can do with people of whom you have evidence of terrorism is a difficult question." That some individuals at Guantánamo Bay might, if given the opportunity, commit acts of violence against civilian targets is not disputed. The problem lies in the government's inability (or unwillingness) to normalize their legal status. "Democratic countries need to sit down and figure out what to do about detainees because, undoubtedly, there are some people who can't be convicted but who might still be a threat." Whether or not one agrees with the administration's framing of the "War on Terror," there is little argument that, in its wake, a legal vacuum was created. How long will this "war" last? Who can be prosecuted? Where should detainees go after their release? These were questions raised during the hearings to which there are no clear answers. Only over time, and through careful and sustained negotiation among civil society groups, national governments, and international organizations, can a resolution be achieved.

Upon completing their 18-months of international hearings, the ICJ Eminent Jurists will issue a report in 2007, documenting the intersection between terrorism, counterterrorism, and human rights. While it is unlikely to contain explicit recommendations for how countries should model their counterterrorism programs, there is a good chance it will identify those procedures legally permissible under international law. Testimony before the Panel revealed that counterterrorism measures often fall far short of these legal benchmarks. Nonetheless, there is cause for some optimism.

Witnesses noted that the U.S. has proceeded in this direction before, most notably in the passage of the Alien and Sedition Acts of 1798. Yet the inherent checks and balances within U.S. law and government functioned over time to redirect national policies towards a rights-protective framework. More importantly, the strong showing of the NGO community at the ICJ hearings illustrates the extent to which U.S. and international civil society are mobilized. Private law firms, reluctant at first to defend detainees, are now getting involved at increasing levels because of the overall threat to the rule of law.

In the end, Justice Chaskalson noted that in the face of these strong-arm policies:

There needs to be an awareness of the importance of these rights — why we have these rights. They come out of long struggles in the history of unfair procedures .... Over the years, these protections have been brought to try to promote a more open and democratic society. They lie at the core of democracy because to achieve such a society, you must comply with the rule of law, impose certain constraints on the exercise of government power, and ensure vigorous public debate. As soon as you start encroaching upon these rights, you start to damage the pillars upon which a democratic society is built.<sup>18</sup> *HRB*

### ENDNOTES: The "War on Terror"

<sup>1</sup> There is no official legal definition of terrorism, and it is not the intention of this paper to offer one. The ongoing dialogue over the meaning of this term is nonetheless inseparable from the debate concerning methods for its prevention.

<sup>2</sup> The International Commission of Jurists is an international non-governmental organization founded in Berlin in 1952 and dedicated to the implementation and promotion of international law and the advancement of human rights. The Commission is composed of sixty eminent jurists who collectively represent the range of international legal systems.

<sup>3</sup> These include: Justice Arthur Chaskalson, President of the ICJ and Chair of the Panel, and former President of the Constitutional Court of South Africa; George Abi-Saab, a leading expert in public international law and former judge at the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia and for Rwanda; Robert K. Goldman, Professor of Law at American University Washington College of Law and former UN Human Rights Commission expert on Counter-Terrorism and Human Rights; Hina Jilani, Lawyer of the Supreme Court of Pakistan and former UN expert on human rights defenders; Vitit Muntarbhorn, Professor of Law at Chulalongkorn University, Bangkok, and current UN expert on human rights in North Korea; Mary Robinson, former UN High Commissioner for Human Rights and the first female President of Ireland; Stefan Trechsel, expert in criminal law and former President and member of the European Commission on Human Rights; and Judge E. Raúl Zaffaroni, current judge of the Supreme Court of Argentina and an expert on Latin American and international criminal law.

<sup>4</sup> Interview with Justice Arthur Chaskalson, President, ICJ Panel on Terrorism, Counter-terrorism, and Human Rights, in Washington, D.C. (Sept. 13, 2006).

<sup>5</sup> This is most clearly illustrated in the recently declassified portions of the National Intelligence Estimate. Declassified Key Judgments of the National Intelligence Estimate on Global Terrorism, *THE NEW YORK TIMES*, September 26, 2006 at A16, <http://www.nytimes.com/2006/09/27/world/middleeast/27itext.html>. (accessed Oct. 3, 2006).

<sup>6</sup> Chaskalson, *supra* note 4.

<sup>7</sup> Center for Victims of Torture, *Eight Lessons of Torture*, <http://www.cvt.org/main.php/Advocacy/TheCampaignToStopTorture/WhatCVTknowsaboutTorture> (accessed Oct. 10, 2006).

<sup>8</sup> Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, *THE WASHINGTON POST*, Nov. 2, 2005 at A1, <http://www.washingtonpost.com/wpdyn/content/article/2005/11/01/AR2005110101644.html>.

**ENDNOTES: The “War on Terror”** *continued from page 6*

<sup>9</sup> CNN, *Bush: CIA Holds Terror Suspects in Secret Prisons*, <http://www.cnn.com/-2006/POLITICS/09/06/bush.speech/index.html> (Sept. 7, 2006).

<sup>10</sup> Convention Against Torture, art. 3, Dec. 10, 1984, *available at* [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm).

<sup>11</sup> Human Rights Watch, *Outsourcing Torture: Renditions and Diplomatic Assurances*, <http://hrw.org/campaigns/torture/renditions.htm> (accessed Oct. 12, 2006).

<sup>12</sup> BBC News, *Q & A: Guantánamo hearings*, <http://news.bbc.co.uk/1/hi/world/americas/3541126.stm> (June 13, 2006).

<sup>13</sup> *Id.*

<sup>14</sup> 548 U.S. \_\_\_, 126 S.Ct. 2749 (2006).

<sup>15</sup> Military Commissions Act of 2006.

<sup>16</sup> Chaskalson, *supra* note 4.

<sup>17</sup> 548 U.S. \_\_\_, 126 S.Ct. 2749 (2006).

<sup>18</sup> Chaskalson, *supra* note 4.