

USA

**‘JUDGE US BY
OUR ACTIONS’**

A REFLECTION ON ACCOUNTABILITY
FOR U.S. DETAINEE ABUSES 10
YEARS AFTER THE INVASION OF
IRAQ

**AMNESTY
INTERNATIONAL**



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The United States of America has the sovereign authority to use force in assuring its own national security. That duty falls to me as Commander in Chief...

And all Iraqi military and civilian personnel should listen carefully to this warning: In any conflict, your fate will depend on your actions... War crimes will be prosecuted. War criminals will be punished. And it will be no defense to say, 'I was just following orders'...

As we enforce the just demands of the world, we will also honor the deepest commitments of our country

US President George W. Bush, Address to the Nation on Iraq
17 March 2003

1. FROM TORTURE PHOTOS TO THE BIGGER PICTURE

In recent days there has been a good deal of discussion about who bears responsibility for the terrible activities that took place at Abu Ghraib. These events occurred on my watch. As Secretary of Defense, I am accountable for them and I take full responsibility...[P]art of what we believe in, is making sure that when wrongdoings or scandal do occur, that they're not covered up, but they're exposed, they're investigated, and the guilty are brought to justice.

US Secretary of Defense, Senate Armed Services Committee Hearing, 7 May 2004

Five months before the invasion of Iraq in mid-March 2003, the two chambers of the United States Congress passed a joint resolution authorizing the use of force against that country. Signing the resolution into law on 16 October 2002, President George W. Bush asserted that the congressional debate had been “in the finest traditions of American democracy”. A somewhat hollow tradition, it would seem, as the Bush administration considered the resolution “legally unnecessary” on the grounds that the President, as Commander in Chief of the Armed Forces, already had all the authority he needed.¹

A decade later, it seems that none of the three branches of the US government considers full accountability for war crimes and human rights violations committed by US forces in Iraq and elsewhere to be a legal requirement either. But accountability for human rights violations and real access to meaningful remedy for victims of such violations are obligations under international law, obligations that endure for all three branches of the US government.²

The USA, at least in part, pursued its military intervention in Iraq in the name of human rights.³ In an address three days before the invasion, President Bush asserted that once the government of Saddam Hussein was gone there would be “no more torture chambers” in Iraq and he warned Iraqi forces that in the coming conflict any “war crimes would be prosecuted” and it would “be no defense to say, ‘I was just following orders.’”⁴ A few days earlier, not known publicly at the time, President Bush himself had personally authorized the use of an interrogation technique known as “water-boarding” – mock execution by interrupted drowning – against a detainee being held at an undisclosed location in a secret US programme of enforced disappearance operated under presidential authority.⁵

The administration’s position that the President did not as a matter of law need congressional authorization to go to war (a position generally held by successive US administrations since 1950)⁶ carried through into the notion that President Bush had essentially unfettered authority on detentions in the context of the USA’s “war on terror” launched in response to the attacks of 11 September 2001. Six days before the invasion of Iraq, for example, the Office of Legal Counsel (OLC) at the US Department of Justice provided the Department of Defense with a memorandum on military interrogations, incorporating virtually all of a now notorious memorandum on torture which had been provided to the Central Intelligence Agency (CIA) on 1 August 2002 in the context of the secret detention programme it was operating.⁷ In the 14 March 2003 document, the OLC advised the Pentagon:

“One of the core functions of the Commander in Chief is that of capturing, detaining, and interrogating members of the enemy... Recognizing this authority, Congress has never attempted to restrict or interfere with the President’s authority on this score... Congress can no more interfere with the President’s conduct of interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield.”⁸

Whatever its motivation for invading Iraq, the Bush administration characterized the USA’s intervention there as part of the “war on terror”, and Congress had also framed its joint resolution as being “in furtherance of the war on terrorism”.⁹ In terms of the legal framework, there was a distinguishing factor in Iraq, in that the Bush administration declared the Geneva Conventions applicable to its conflict there, unlike in Afghanistan where

President Bush had decided that no detainee captured in that context would qualify for prisoner of war status or have the protections of common Article 3 to the Geneva Conventions.¹⁰ The damage done by that decision would spread to Iraq nonetheless. Indeed in a 232-page report issued in 2008, the US Senate Armed Services Committee (SASC) found that the decision “to replace well established military doctrine, i.e., legal compliance with the Geneva Conventions, with a policy subject to interpretation, impacted the treatment of detainees in US custody”, not only in Afghanistan and Guantánamo, but also in Iraq.¹¹ As elaborated upon below, the SASC noted that:

“Notwithstanding differences between the legal status of detainees held in Iraq and those in Afghanistan, the SMU TF [Special Mission Unit Task Force] used the same interrogation approaches in both theatres. In addition, the CJTF-7 [Combined Joint Task Force 7] included interrogation policies that had been authorized for use at GTMO [Guantánamo]. By September 2003, interrogation approaches initially authorized in a war in which the President had determined that the protections of the Geneva Conventions did not apply, would be authorized for all US forces in Iraq.”¹²

The USA determined that it became an occupying power in Iraq in mid-April 2003 when the creation of the Coalition Provisional Authority was announced after the fall of Saddam Hussein’s government. At this point, if not before, the US administration viewed itself as engaged in two armed conflicts in occupied Iraq: “the armed conflict with and occupation of Iraq” governed by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention), and “the armed conflict with al Qaeda” to which the Fourth Geneva Convention “does not apply”.¹³ The occupation was deemed to have ended in late June 2004 with the formation of an Interim Government of Iraq.¹⁴

That the USA’s “war on terror” mentality infected its operations in Iraq was indicated, for example, by the US practice of making non-Iraqi detainees wear wristbands marked “terrorist”.¹⁵ Individual cases added further detail to this picture. A Syrian national kept incommunicado “in a totally darkened cell measuring about 2 meters long and less than a meter across, devoid of any window, latrine or water tap, or bedding”, for example, had the inscription “the Gollum” and a picture of this character from the film *Lord of the Rings* pasted on the door of his cell in Abu Ghraib prison.¹⁶ As Amnesty International has pointed out time and time again over the decades, torture and other ill-treatment are facilitated when the detainee or prisoner becomes cast as the dehumanized “other”.

In any event, as in the armed conflict in Afghanistan and the USA’s global “war on terror”, Iraq became another country in which the USA committed human rights violations, including crimes under international law. Forged long before the March 2003 invasion, certain hallmarks of the USA’s wider post-9/11 response – secret detention, secret detainee transfers, enforced disappearance, torture and other cruel, inhuman or degrading treatment – all subsequently occurred at the hands of US forces in Iraq.

It was nevertheless an episode relating to US detentions in Iraq – the broadcast by CBS News on 28 April 2004 of leaked photographs taken by US soldiers of detainee abuse at Abu Ghraib prison – that perhaps more than anything else put the Bush administration on the defensive about its interrogation and detention policies. A federal judge recalled the broadcast in a ruling five years later:

“The broadcast showed sickening photographic evidence of US soldiers abusing and humiliating Iraqi detainees at Abu Ghraib. It showed photographs of naked detainees stacked in a pyramid; a photograph of two naked and hooded detainees, positioned as though one was performing oral sex on the other; and a photograph of a naked male detainee with a female US soldier pointing to his genitalia and giving a thumbs-up sign. Another photograph showed a hooded detainee standing on a narrow box with electrical wires attached to his hands. A final photograph showed a dead detainee who had been

badly beaten. US soldiers were in several of the photographs, laughing, posing, and gesturing".¹⁷

The photographic evidence of torture and other ill-treatment committed at Abu Ghraib between September and December 2003 triggered Amnesty International's call in May 2004 for a full independent commission of inquiry into all US detention and interrogation policies and practices, across the globe, including in Iraq, with a view to ensuring, among other things, "accountability at the highest level". The organization made this call precisely because the evidence of war crimes at Abu Ghraib had not come out of the blue, but followed persistent claims of the unlawful treatment of detainees in US custody during the previous two and a half years of the so-called "war on terror", with the USA continuing "daily to violate international law and standards in its detention policy".¹⁸ Until faced with the Abu Ghraib photos, US administration officials had largely dismissed allegations of US abuses in Afghanistan, Guantánamo, Iraq and elsewhere, and calls for investigation into them, as ill-informed and, as Secretary of Defense Donald Rumsfeld once put it, "isolated pockets of international hyperventilation".¹⁹

The need for a commission of inquiry has only grown over the years as ever more evidence of human rights violations, including crimes under international law, committed by the USA has emerged.²⁰ The USA has failed to establish such a commission, however, and early in his first term President Barack Obama said that he opposed the creation of such a body on the grounds that the USA's "institutions are strong enough to deliver accountability".²¹ Yet, the three branches of the US government – including during the first four years of the Obama administration – have effectively collaborated to keep accountability to a minimum and remedy largely blocked on a range of abuses committed by the USA in the post-9/11 context.²² The impunity enjoyed by senior executive and military officials in relation to US war crimes and human rights violations in Iraq should be viewed against this backdrop.

Even where former Bush administration officials have themselves admitted personal involvement in conduct that under international law should trigger criminal investigation of them, nothing has happened. No criminal investigation followed former President Bush's confirmation in his 2010 memoirs that he authorized the CIA's use of secret detention outside the USA and that he personally approved the use of "enhanced interrogation techniques" against named detainees held in secret CIA detention. Both the CIA and the military resorted to secret detention in Iraq, and secret detainee transfers out of and through Iraq occurred, including into the CIA "high-value detainee" programme. In similar vein, no criminal investigation followed Secretary Rumsfeld's revelation in 2004 that he and CIA Director George Tenet had collaborated in 2003 in sanctioning a secret detention policy in Iraq – one case of many so-called "ghost" detainees held there (see below).

Neither confirmation by a Bush administration official in 2008 that "we tortured" a Saudi Arabian national in Guantánamo (see below) nor Donald Rumsfeld's confirmation in his 2011 memoirs that he had authorized "counter-resistance" techniques against this detainee resulted in a criminal investigation of him or other officials.²³ Nor did the conclusion of the Senate Armed Services Committee in 2008 that it was Secretary Rumsfeld's authorization of "counter-resistance" techniques for use at Guantánamo – including stress positions, isolation, forced nudity, 20-hour interrogations (*per se* incorporating sleep deprivation), exploitation of detainee phobias (such as fear of dogs), sensory deprivation and hooding – was not only "a direct cause of detainee abuse" at Guantánamo, but also a factor in the subsequent use of "abusive techniques" by US personnel in Iraq, including at Abu Ghraib.²⁴

There is of course no single explanation for the range of human rights violations committed by the USA in Iraq and elsewhere. The USA's pick and choose approach to international law undoubtedly has played a part, as have inadequate planning for detentions and training of personnel involved in detentions, the blurring of lines between interrogators and guards, discrimination, racism, and cultural ignorance and insensitivity, the demonization of "war on

terror” detainees by senior US officials, the authorization of interrogation techniques and detention conditions that violated international law, and resort to unauthorized and sadistic conduct by individual personnel.²⁵

On the other hand, officials have on occasion offered simplistic explanations. Secretary Rumsfeld, for example, echoed an administration line when he told a congressional hearing that what was depicted in the Abu Ghraib photographs was “fundamentally un-American”.²⁶ Whether or not such acts could be described as “un-American”, they violated the absolute prohibition of torture and other cruel, inhuman or degrading treatment under international law, and Secretary Rumsfeld had himself personally authorized interrogation techniques which violated this prohibition.²⁷

In the images from Abu Ghraib and the brutal interrogation techniques made public long before I was President, the American people learned of actions taken in their name that bear no resemblance to the ideals that generations of Americans have fought for... I believe that our existing democratic institutions are strong enough to deliver accountability. The Congress can review abuses of our values, and there are ongoing inquiries by the Congress into matters like enhanced interrogation techniques. The Department of Justice and our courts can work through and punish any violations of our laws

President Barack Obama, 21 May 2009

Amnesty International considers that information in the public domain provides ample evidence for the US authorities to subject George W. Bush and Donald Rumsfeld to criminal investigation for actions in relation to detainees.²⁸ This information includes admissions made by these former officials in memoirs published in recent years.

Although some policy reviews and changes, investigations, and courts martial for some mainly low-ranking soldiers followed the Abu Ghraib revelations, US human rights violations continued in Iraq and elsewhere subsequent to this episode, authorized and unauthorized. And to this day the USA remains in serious breach of its international obligations on truth, accountability and remedy. Iraq is a part of this bigger picture. This paper recalls some cases and some issues in Iraq and, placing them in the broader Bush “war on terror” context, reflects on the absence of high-level accountability.²⁹

Amnesty International reiterates its call on the US authorities to:

- establish a full independent commission of inquiry into all human rights violations committed in the context of the USA’s detention, interrogation and detainee transfer policies operated since 11 September 2001, with any such body drawing upon international expertise and applying international law and standards;
- initiate or re-open criminal investigations against any official or former official against whom there is already evidence of involvement in crimes under international law, including torture and enforced disappearance;
- release the 2012 Senate Intelligence Committee report on the CIA’s secret detention and interrogation programme without the use of redaction to obscure any human rights violations under international law;
- ensure access to remedy for anyone with credible claims of human rights violations committed against them by US personnel;
- ratify, among other treaties, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court;
- withdraw all limiting conditions attached to the USA’s ratification of the UN Convention against Torture and the International Covenant on Civil and Political Rights, including to Article 16 of the former and Article 7 of the latter.³⁰

2. 'I HAVE DIRECTED A FULL ACCOUNTING FOR THE ABUSE'

As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the [International] Covenant [on Civil and Political Rights]. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance
UN Human Rights Committee³¹

Following the release of the Abu Ghraib photos, the White House categorically rejected “any connection” between the decision not to apply the Geneva Conventions to detainees in Afghanistan and Guantánamo and what had happened in Iraq, where it did apply the Geneva Conventions.³² Yet its selective disregard for the Geneva Conventions was part of a policy which at best sowed confusion about interrogation rules among its armed forces in Iraq, and at worst gave a green light to torture or other cruel, inhuman or degrading treatment, and other unlawful detention practices.³³

Indeed, military investigators found that a contributory factor to abuses in Iraq was “confusion about what interrogation techniques were authorized” because of “the proliferation of guidance and information from other theatres of operation”, as well as “individual interrogator experiences in other theatres; and, the failure to distinguish between interrogation operations in other theatres and Iraq”.³⁴

A military investigation found that in Abu Ghraib, “removal of clothing was employed routinely and with the belief that it was not abuse... Many of the Soldiers who witnessed the nakedness were told that this was an accepted practice. Under the circumstances, however, the nakedness was clearly degrading and humiliating.”³⁵ The 2009 report of a review of the involvement of Federal Bureau of Investigation (FBI) personnel in detentions across the USA’s theatres of operation, conducted by the Office of the Inspector General at the US Department of Justice, found that “frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations”. The agents also reported the military’s use of “stress positions, prolonged shackling, and forced exercise”, as well as the phenomenon of “ghost detainees”³⁶ – the holding of unregistered detainees (usually for the CIA) and hiding them from the International Committee of the Red Cross (ICRC), a practice amounting to enforced disappearance, a crime under international law.³⁷

Some FBI personnel who were deployed to Iraq in 2004 expressed confusion and concern to their superiors about what constituted “abuse” (which they were supposed to report under their policy) when the military and the CIA were using authorized techniques that were prohibited under FBI policy. In an email written three weeks after the Abu Ghraib photos were broadcast by CBS News, an officer with the FBI wrote:

“This instruction [to report abuse] begs the question of what constitutes ‘abuse’. We assume this does not include lawful interrogation techniques authorized by Executive Order. We are aware that prior to a revision in policy last week, an executive order signed by President Bush authorized the following techniques among others: sleep ‘management’, use of MWDs (military working dogs), ‘stress positions’ such as half squats, ‘environmental manipulation’ such as the use of loud music, sensory deprivation through the use of hoods, etc. We assume the OGC [Office of General Counsel at the FBI] instruction does not include the reporting of these authorized interrogation techniques, and that the use of these techniques does not constitute ‘abuse’.

As stated, there was a revision last week in the military’s standard operating procedures

based on the Executive Order. I have been told that all interrogation techniques previously authorized by the Executive Order are still on the table but that certain techniques can only be used if very high-level authority is granted".³⁸

An example of where an FBI agent did not contemporaneously report what he saw in a US military facility in or near Baghdad, apparently because he did not consider it necessary, involved an incident in late 2003 or early 2004 where the agent later said he had observed "detainees stripped naked or nearly naked and marched around a room". Another incident was one in which two FBI agents at this facility in April or May 2004 had seen a detainee shackled to the floor, "naked and blindfolded". Neither of the FBI agents questioned the military about this, or reported it to their FBI superiors.³⁹

In November 2005, FBI agents transmitted questions and concerns to the FBI's Counterterrorism Division (CTD) and its OGC about issues arising from FBI "participation" in the above Baghdad facility, where detainees were apparently being held in secret and denied access to the ICRC. Among other things they wrote that "With the current issues involving secret detention facilities, we as FBI agents... want to ensure that the full scope of our duties here are [sic] known by upper management". The CTD responded that the FBI's executive leadership, including the Director and Deputy Director, had been "fully briefed on the CTD mission" at the facility in question. The response also noted that the Geneva Conventions did not apply to the detainees held at the facility, and because of this there was "no requirement that detainees at the facility..." (the final part of this sentence has been redacted from the public record).⁴⁰ The facility was apparently still operating in mid-2006, when an FBI OGC communication referred to the "severe physical conditions" being endured by detainees held at the facility.⁴¹

The Inspector General's report found evidence that among the interrogation techniques used by the military at this facility were deprivation of food and water for detainees' first 24 hours after their arrival; sleep deprivation; nudity, stress positions, dripping cold water, forced exercise; keeping "non-cooperative" detainees handcuffed (behind their backs) while in their cells; hooding and blacked-in goggles during interrogations; and threatening detainees with arrest and prosecution of family members. The Inspector General recommended no action except that "the military make its own findings regarding whether these practices at the facility violated military policies".⁴²

The name of the facility is redacted in the Inspector General's report. In 2006, the New York Times had published evidence of abuses by a Special Operations forces unit until mid-2004 based at a secret facility at Baghdad International Airport known as Camp Nama, to which the ICRC had no access. The unit was at that time known as Task Force 6-26 (previously Task Force 20 and then 121 and subsequently Task Force 145). "High-value" detainees were interrogated in a black, windowless room dubbed the Black Room. Alleged abuses included beatings, hooding, use of loud music, forced nudity, and cold water dousing. In the summer of 2004 the unit reportedly relocated to Balad, its operations "now shrouded in even tighter secrecy".⁴³ Documents released into the public realm point to possible war crimes committed by TF 6-26 personnel. For example, a June 2004 memorandum from a Defense Intelligence Agency (DIA) officer reported how during an interrogation on or around 11 May 2004 in Baghdad, "four of five non-interrogator personnel from the Task Force entered the room and began slapping the detainee while he was attempting to respond to the questioning [of the US Army interrogator]".⁴⁴ Another memo, dated 25 June 2004, from the Director of the DIA, reported that "prisoners arriving at the Temporary Detention Facility [at Camp Nama] in Baghdad with burn marks on their backs. Some have bruises, and some have complained of kidney pain."⁴⁵ A DIA interrogator had reported witnessing TF 6-26 personnel "punch a prisoner in the face to the point the individual needed medical attention".⁴⁶

By late 2004, 10 unit members had reportedly been reprimanded for detainee abuse, including four for "excessive force" which apparently involved the "unauthorized" infliction

of electro-shocks with tasers.⁴⁷ By 2006, nearly three dozen members of the unit were reported to have been disciplined or reprimanded in relation to detainee abuse. Again, criminal accountability and any accountability up the chain of command appear to have been minimal. Yet that interrogation techniques were approved up the chain of command is indicated by what a former interrogator with the unit told Human Rights Watch: "There was an authorization template on a computer, a sheet that you would print out, or actually just type it in. And it was a checklist. And it was already typed out for you, environmental controls, hot and cold, you know, strobe lights, music, so forth... But you would just check what you want to use off, and if you planned on using a harsh interrogation you'd just get it signed off".⁴⁸

The principle author of the two OLC interrogation memorandums noted above – one dated 1 August 2002 for the CIA, and the other dated 14 March 2003 for the Pentagon – which, among other things, asserted that torture could be justified and that there was a wide range of acts that would constitute cruel, inhuman or degrading treatment rather than torture and need not be criminalized – subsequently condemned those who perceived links between what happened in Iraq and the detention and interrogation policies in the Afghanistan and Guantánamo contexts as engaging in "hyperbole and partisan smear". In his memoirs, former Deputy Assistant Attorney General John Yoo wrote:

"Critics tell a 'torture narrative', which goes like this: The Bush administration used torture to extract information from al Qaeda leaders, and decided to use the same methods on the detainees at Guantánamo Bay, whom it deprived of Geneva Conventions protections precisely for this purpose. Harsh interrogation techniques became part of military culture and 'migrated' to Iraq, where they produced the horrible abuses at Abu Ghraib... Believers of the narrative refuse to trust a word of the bipartisan investigations that have demolished the link between the decisions about Guantánamo Bay and Abu Ghraib, or between decisions in Washington and the prison abuses".⁴⁹

The 2008 report on detainee abuse compiled by the Senate Armed Services Committee was released two years after publication of John Yoo's version of events and far from demolishing the link, the SASC added further compelling evidence to the "torture narrative". Indeed the SASC found that in February 2003, the month before the invasion of Iraq, the Special Mission Unit Task Force (SMU TF) designated for operations in Iraq obtained a copy of the interrogation standard operating procedure (SOP) then being used in Afghanistan;

- ▣ the Afghanistan SOP drew upon discussions with personnel at Guantánamo during a visit there in October 2002 by the SMU TF team deployed to Afghanistan. After that trip, new interrogation techniques were proposed for use in Afghanistan, including strip searches for "degradation", hooding for "sensory deprivation", "sensory overload" through the use of lights, darkness, noise and dogs, and use of "cold, heat, wet, discomfort, etc".
- ▣ On 10 January 2003, an interrogation SOP for SMU interrogators in Afghanistan was approved, and included stress positions, isolation, and sleep deprivation, techniques which had been approved for use by Secretary Rumsfeld for use at Guantánamo on 2 December 2002 (sleep deprivation being per se a part of the technique of 20-hour interrogations).
- ▣ In 2006, the Department of Defense Inspector General concluded that the SMU SOP for Afghanistan was "influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002". The SASC pointed to the SMU Legal Advisor's finding that "the fact SECDEF [the Secretary of Defense] approved use of the techniques at GTMO, subject to the same laws, provides an analogy and basis for use of these techniques in accordance with international and US law".

- ☐ In February 2003, the SMU TF on Iraq adopted verbatim the Afghanistan interrogation SOP – which included stress positions, sleep deprivation, use of dogs – and was used by SMU interrogators from the beginning of the military intervention in Iraq until later in 2003.
- ☐ In July 2003, the SMU TF in Iraq drafted another policy which included techniques such as stress positions, use of dogs, 20-hour interrogations, isolation, yelling, loud music, and light control.
- ☐ On 26 March 2004, the SMU TF implemented a single interrogation policy to cover its operations in both Afghanistan and Iraq. Among the techniques listed in this SOP were “sleep adjustment/management”, “mild physical contact”, isolation, sensory overload, sensory deprivation, dietary manipulation, and the use of muzzled dogs.

Such non-Army Field Manual interrogation techniques were suspended by the Commander of Central Command, General John Abizaid, on 6 May 2004. On 27 May 2004, the day before CBS News broadcast the pictures from Abu Ghraib, there was a request to US Central Command for approval of a number of non-Army Field Manual techniques. On 4 June 2004, a week after the Abu Ghraib broadcast, General Abizaid approved the use of “sleep management”, “environmental manipulation”, “separation” (isolation), and “change of scenery” as techniques for the SMU TF.⁵⁰

Back in Washington DC, the 2009 report of a review conducted by the Office of Professional Responsibility (OPR) at the Department of Justice concluded that in particular in relation to the two interrogation memorandums cited above, Deputy Assistant Attorney General John Yoo had “put his desire to accommodate the client above his obligation to provide thorough, objective, and candid legal advice” and that in so doing he committed “intentional professional misconduct”.⁵¹ The aim of the client (the administration), according to former Assistant Attorney General Jack Goldsmith, head of the OLC in 2003 and 2004, was to “go right to the edge of what the torture law prohibited, to exploit every conceivable loophole”.⁵²

Numerous administration lawyers were involved in producing memorandums on interrogations and detentions over the years. In addition to its findings of misconduct, the OPR pointed to evidence of substantial White House pressure being placed on OLC lawyers to mould the law to the administration’s policy preferences. The OPR concluded, for example, that the OLC had produced three memos in 2005 under pressure from the White House and with the “goal of allowing the CIA program to continue”.

The proximity of the White House to the interrogation issue was noted by the OPR in relation to two OLC memorandums dated 1 August 2002 and provided to the CIA – the one already noted above and another that authorized 10 “enhanced interrogation techniques”, including water-boarding, for use against a specific detainee being subjected to enforced disappearance at an undisclosed location.⁵³ On 31 July 2002, John Yoo emailed the Attorney-Adviser who was assisting him on the memos to tell her that he, Yoo, would be leaving for the White House at 11.30am that morning and asked her to provide him with “a print out of the classified [10-technique] opinion... with a copy to take to the White House”. At 12.12pm, the Attorney-Adviser sent Deputy Assistant Attorney General Patrick Philbin an email message to inform him that Yoo “wanted me to let you know that the White House wants both memos signed and out by [close of business] tomorrow”.⁵⁴ The 10-technique memo was faxed to the CIA at 10.30pm on 1 August 2002.

In an interview with the OPR on 24 February 2009, former Deputy Attorney General James Comey claimed that there had been substantial pressure from the White House, particularly Vice President Cheney and his staff, to produce legal opinions in support of the CIA’s secret interrogation and detention program.⁵⁵ Former Deputy Assistant Attorney General Philbin told the OPR that in November 2004, the Counsel to the Vice President, David Addington,

had suggested that Philbin's career in government would no longer advance because of his support for withdrawal in June 2004 of the 1 August 2002 memorandum written by John Yoo that had been leaked into the public domain after the Abu Ghraib revelations. Philbin further alleged that Addington accused him of having violated his oath to defend the US Constitution when he had supported withdrawal of the memo, a memo that among other things concluded that "under the current circumstances, necessity or self-defense may justify" interrogation techniques amounting to torture.⁵⁶

At a hearing before the House Judiciary Committee on 17 June 2008, David Addington responded to questions about Deputy Assistant Attorney General John Yoo's inclusion in that same August 2002 memorandum of broad notions of presidential power to order torture and of possible defences against criminal liability for any interrogator accused of torture. Addington said that he had told Yoo at the time "Good, I'm glad you're addressing those issues". A response consistent with international law would have been to point out the USA's absolute obligation to prevent torture and other cruel, inhuman or degrading treatment. Addington also told the Committee that "In defense of Mr Yoo, I would simply like to point out that is what his client asked him to do".

Even as "senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees", as the SASC put it in its 2008 report, the USA was portraying itself as leading the global struggle against torture and for accountability. Two months after the broadcast of the Abu Ghraib photos, for example, President Bush issued a proclamation against torture:

"The American people were horrified by the abuse of detainees at Abu Ghraib prison in Iraq. These acts were wrong. They were inconsistent with our policies and our values as a Nation. I have directed a full accounting for the abuse of the Abu Ghraib detainees, and investigations are underway to review detention operations in Iraq and elsewhere... [W]e will not compromise the rule of law or the values and principles that make us strong. Torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere."⁵⁷

Less than a month after President Bush made this public statement, Attorney General John Ashcroft wrote to the Acting Director of the CIA, John McLaughlin, advising that in the "contemplated interrogation" of a named detainee held outside the USA, the use of nine "enhanced interrogation techniques" would not violate the US Constitution or any "treaty obligation of the United States, including Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment".⁵⁸ The nine techniques were:

- (1) "Attention grasp": the detainee is grabbed with both hands "one hand on each side of the collar opening, in a controlled and quick motion", and pulled toward the interrogator;
- (2) "Walling": a flexible wall is constructed against which the detainee is pushed, who is protected from whiplash via a rolled hood or towel around his neck;
- (3) "Facial hold": the interrogator holds the detainee's head immobile;
- (4) "Facial slap": the interrogator slaps the detainee's face, with the aim of inducing shock, surprise, and/or humiliation;
- (5) "Cramped confinement": the detainee is placed in a confined space, usually dark. Confinement in a container in which the detainee is able to stand can last up to 18 hours; in a space in which the detainee cannot stand for up to two hours;
- (6) "Wall standing": in order to induce muscle fatigue, the detainee is forced to stand about four to five feet from a wall, with his arms stretched out in front of him, touching

the wall with his fingers supporting his whole body weight. He may not reposition his hands or feet;

(7) "Stress positions": a variety of stress positions to produce "physical discomfort";

(8) Sleep deprivation (for up to 11 days);

(9) Exploitation of insect phobia.⁵⁹

The name of the detainee whose interrogation was "contemplated" has been redacted from the public record, but it may have been Hassan Ghul, a Pakistani national taken into custody in Iraq five months earlier and taken out of the country, possibly around the time that President Bush was making his proclamation against torture (see Section 7 below).

3. 'PART OF THE PROCESS'

Several military intelligence officers confirmed to the ICRC that it was part of the military intelligence process to hold a person deprived of his liberty naked in a completely dark and empty cell for a prolonged period to use inhumane and degrading treatment, including physical and psychological coercion, against persons deprived of their liberty to secure their cooperation

ICRC Report, February 2004

In his memoirs, former Secretary of Defense Rumsfeld recalled his offer of resignation (and the refusal of President Bush to accept it) in the wake of the Abu Ghraib revelations. On the chain of command, the former Secretary of Defense wrote:

"The operational chain of command started with the Commander in Chief [the President] and ran through me to the CENTCOM [US Central Command] combatant commander to the US commander in Iraq down to military officials at Abu Ghraib prison. The administrative chain of command started with me and ran through the secretary and chief of staff of the Army."⁶⁰

In these memoirs, Donald Rumsfeld confirmed that in late 2002, he had authorized "counter-resistance" techniques for use by military interrogators at Guantánamo, although, in a claim reflecting a distorted perspective, he said that "I understood that the techniques I authorized were for use with only one key individual", Mohamed al-Qahtani, as if authorizing torture or other ill-treatment for even one person was acceptable and lawful. He made this claim despite the fact that the memorandum he signed expressly stated that the techniques were for use "in the interrogation of detainees" (plural) and "at the discretion" of the military authorities (moreover, the request for his approval from the military expressly referenced "some detainees" having resisted "our current interrogation methods"). Rumsfeld also confirmed in his memoirs (in a footnote) that he had approved "interrogation techniques beyond the traditional Army Field Manual" in August 2003 in the case of Mohamedou Ould Slahi, a Mauritanian national held at Guantánamo. With echoes of what occurred in Iraq, the ICRC was kept from these two detainees during the periods of these "special interrogations".

The convening authority for military commissions in 2008 refused to forward charges against Mohamed al-Qahtani on for trial because "we tortured" him.⁶¹ In the case of Mohamedou Ould Slahi, a military prosecutor assigned to the case withdrew from it because he reached the conclusion that "what had been done to Slahi amounted to torture."⁶²

A military investigation into abuses at Guantánamo found that on two occasions – both prior to and after Secretary Rumsfeld's authorization on 2 December 2002 – dogs had been used to terrorize Mohamed al-Qahtani. On each occasion, a dog was "brought into the interrogation room and directed to growl, bark, and show his teeth" at the detainee. In an interview he gave to the Department of Army Inspector General (DAIG) on 24 August 2005, one of the lead investigators recalled: "[H]ere's this guy manacled, chained down, dogs brought in, put

his face [sic], told to growl, show teeth, and that kind of stuff. And you can imagine the fear kind of thing. You know at what point... if you had a camera and snapped that picture, you'd been back to Abu Ghraib".

Also reminiscent of Abu Ghraib was the fact that Mohamed al-Qahtani – always in shackles during interrogation – was variously forced to wear a woman's bra and had a thong placed on his head; was tied by a leash and led around the room while being forced to perform a number dog tricks; was forced to dance with a male interrogator while made to wear a towel on his head "like a burka"; was forced to wear a mask made from a box with a "smiley face" on it, dubbed the "happy Mohammed" mask by the interrogators; was subjected to forced standing, forcible shaving of his head and beard during interrogation (and photographing immediately after this), stripping and strip-searching in the presence of women, sexual humiliation, and to sexual insults about his female relatives; had water repeatedly poured over his head; had pictures of "swimsuit models" hung round his neck; was subjected to hooding, loud music for up to hours on end, white noise, sleep deprivation, and to extremes of heat and cold through manipulation of air conditioning. At the outset of his interrogation, the detainee had been moved to a different part of the camp, was led to believe that "he was sent to a hostile country which advocated torture" and that that he "might be killed if he did not cooperate with questioning", according to a psychiatrist involved in the interrogation.⁶³

Below Secretary Rumsfeld in the chain of command on the "special interrogation plan" devised for Mohamed al-Qahtani was the commander of the Guantánamo (GTMO) detentions, Major General Geoffrey Miller. Among other things, the 2008 SASC report recalled the trip to Iraq in September 2003 of Major Miller and that the decision to send him, reportedly to "GTMO-ize" US detention operations in Iraq, was taken at a meeting attended by among others Secretary Rumsfeld.⁶⁴ Among techniques reportedly discussed with US authorities in Iraq during the visit were stress positions, sleep "management", 20-hour interrogations, use of dogs (with emphasis on the notion that the detainees in question were "scared to death of dogs"), loud music and light control, isolation and nudity. Subsequent to General Miller's trip, six Guantánamo personnel were sent to Abu Ghraib to assist in implementing his recommendations, a central one of which was that the US authorities in Iraq should "[d]edicate and train a detention guard force subordinate to [military intelligence] that sets the conditions for the successful interrogation and exploitation of the internees/detainees".

Within a week of the trip, the commander of US forces in Iraq, Lieutenant General Ricardo Sanchez, issued an interrogation policy that included the use of dogs, stress positions, sleep management, loud music, and light control. The 14 September 2003 policy "drew heavily" on Secretary Rumsfeld's "guidance" for interrogators at Guantánamo which he had signed on 16 April 2003 (see Section 9 below). The policy went into effect immediately at Abu Ghraib.⁶⁵ According to the Fay investigation, military intelligence interrogators "started directing nakedness at Abu Ghraib as early as 16 September 2003 to humiliate and break down detainees", and military police guards "would also sometimes discipline detainees by taking away clothing and putting detainees in cells naked." The use of isolation at Abu Ghraib, meanwhile, "was often done as punishment, either for a disciplinary infraction or for failure to cooperate with an interrogation". The Fay investigation pointed to "routine and repetitive use of total isolation and light deprivation" and "documentation of this technique in the interrogation reports implies those employing it thought it was authorized."

Soon after Major General Miller's mission to Iraq, the ICRC found a regime in Abu Ghraib in which some detainees were being made "to earn" their right to humane treatment. The organization reported that during a visit to the prison in mid-October 2003 it witnessed the US practice of keeping detainees "completely naked in totally empty concrete cells and in total darkness". The ICRC was told by a military intelligence officer that this was "part of the process" – a process which the ICRC said "appeared to be a give-and-take policy whereby persons deprived of their liberty were 'drip-fed' with new items (clothing, bedding, hygiene

articles, lit cell, etc.) in exchange for their 'co-operation'." The ICRC's confidential report to the US authorities was dated February 2004. The following month, Major General Miller was appointed as Deputy Commander of Detainee Operations in Iraq.

Major General Miller stated that "the basics of the Geneva Convention – shelter, medical care, food – are never used as a manipulative tool."⁶⁶ Yet, the 12 October 2003 policy signed by Lieutenant General Sanchez, authorized interrogators to assume control over the "lighting, heating and configuration of the interrogation room, as well as the food, clothing, and shelter given to the security detainee". The military investigation known as the Fay report noted that abuses such as "exposure to cold and heat or denial of food and water", including "detainees being left naked in their cells during severe cold weather without blankets", occurred at Abu Ghraib. It found that some of these abuses were directed by military intelligence and some were committed solely by military police guards.⁶⁷

In its February 2004 report, leaked after the Abu Ghraib photographs were broadcast, the ICRC documented the use by coalition forces in Iraq of hooding, cruel use of handcuffs, beatings, death threats, threats against family members, forced nudity, prolonged isolation in pitch black cells, humiliation, stress positions, use of loud music, exposure to extreme temperatures. Such methods, the ICRC reported, were being used "by military intelligence in a systematic way to gain confessions or extract information or other forms of cooperation" in the cases of those detainees deemed to have "intelligence" value. In some cases, the treatment was "tantamount to torture", according to the ICRC.

The USA's concept of "high-value detainees" was employed by the CIA in its secret detention programme authorized by President Bush, but was also used by the military in Iraq and elsewhere. To be labelled "high-value" meant to be at high risk of torture or other ill-treatment and enforced disappearance as US forces pursued intelligence on al-Qa'ida or others, including insurgents or members of the deposed government in Iraq. The ICRC drew particular attention to the cases of over 100 "high value detainees" in a facility at Baghdad International Airport, where they had by then already been held for months in "strict solitary confinement" for 23 hours a day in "small concrete cells devoid of light". The ICRC told the USA that these conditions of detention violated the Third and Fourth Geneva Conventions.

International humanitarian and human rights law also prohibit the taking of hostages and arbitrary detentions.⁶⁸ Hostage-taking is also a grave breach of the Geneva Conventions and a crime under international law.⁶⁹ While the ICRC's report documented that spouses and other family members of the high value detainees were detained in the international law-violating conditions at the airport facility, it also revealed that seven months earlier the organization had raised with the US authorities allegations that interrogators at the military intelligence section of Camp Cropper – the predecessor facility to the high-value detainee airport facility – were threatening detainees that failure to cooperate would lead to the arrest of family members, and also that family members (in particular wives and daughters) were being threatened in this context.

Indeed, there is evidence that some relatives were detained by US forces in an effort to coerce the actual target for detention to surrender. This tactic – a violation of international law for which there appears to have been no criminal accountability – was alleged in the testimony of a US army Staff Sergeant who in November 2003 received a letter of reprimand for failing to "properly supervise detainee interrogation operations" at a US detention facility in Tikrit, in which detainees had been abused.⁷⁰ In rebutting the reprimand, the Staff Sergeant suggested that at least one of the soldiers in question had committed abuses believing that such actions would be approved of by those higher up the chain of command:

"I firmly believe that [redacted] took the actions he did, partially, due to his perception of the command climate of the division as a whole. Comments made by senior leaders regarding detainees such as 'They are not EPWs [enemy prisoners of

war]. They are terrorists and will be treated as such' have caused a great deal of confusion as to the status of the detainees. Additionally, personnel at the [Interrogation Control Element] regularly see detainees who are, in essence, hostages. They are normally arrested by Coalition Forces because they are family members of individuals who have been targeted by a brigade based on accusations that may or may not be true, to be released, supposedly, when and if the targeted individual surrenders himself... I know that [redacted] has himself witnessed senior leaders at briefings, reporting that they have taken such detainees, with the command giving their tacit approval. In hindsight, it seems clear that, considering the seeming approval of these and other tactics by the senior command, it is a short jump of the imagination that allows actions such as those committed by [redacted], to become not only tolerated, but encouraged. This situation is made worse with messages from higher echelons soliciting lists of alternative interrogation techniques and the usage of phrases such as '...the gloves are coming off'.⁷¹

An internal May 2004 report from the US Army's Center for Lessons Learned noted that

"It is a practice in some US units to detain family members of anti-Coalition suspects in an effort to induce the suspects to turn themselves in, in exchange for the release of their family members. In at least one such example, a note to that effect was left by American forces. Whereas this might have the immediate desired effects, the detention of women and children without due process contributes to a lasting negative image of the US military in the eyes of the Iraqis and could thus severely undermine overall US goals in the region"⁷²

The Center for Lessons Learned failed to point out that not only might such activities contribute to the "lasting negative image of the US military", but constituted crimes under international law that require investigation, and where there is sufficient evidence, prosecution. Another such incident occurred that same month. In a June 2004 memorandum, an Intelligence Officer with the Defense Intelligence Agency reported on alleged law of war violations by personnel with Task Force 6-26 (see Section 2 above). In one of the instances, the officer stated:

"On 9 May 2004, TF 6-26 personnel detained the wife of a suspected Iraqi terrorist, in Tarmiya, Iraq. The 28-year-old woman had three young children at the house, one being as young as six months and still nursing. Her husband was the primary target of the raid... During the pre-operation brief it was recommended by TF personnel that if the wife were present, she be detained and held in order to leverage the primary target's surrender. I objected to the detainment of the young mother to the raid team leader... Despite my protest, the raid team leader detained her anyway".⁷³

A year later, on 2 April 2005, two Iraqi women were allegedly taken hostage by US soldiers who were looking for their male relatives. The two women were held for six days without charge in a US detention facility after being seized at their home in Baghdad. A note allegedly left on the gate of their home by the soldiers threatened that the women would remain in detention unless a male relative gave himself up. Although military personnel claimed that the women were detained as suspected insurgents in their own right, after her release one of the women was quoted as saying that she had been told that she would be detained until her sons gave themselves up.⁷⁴

The Abu Ghraib photographs provided a snapshot of human rights violations and war crimes that occurred at US hands in Iraq. There were abuses before and after the torture and other ill-treatment recorded in those photos, and beyond Abu Ghraib.⁷⁵ The Bush administration sought to tell a different story.

4. 'A SMALL GROUP OF DISTURBED INDIVIDUALS'

The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees

US Senate Armed Services Committee, 2008

Nine months before it produced its February 2004 report that would subsequently be among various documents leaked in the wake of the Abu Ghraib revelations, the ICRC had sent the US authorities a memorandum based on "over 200 allegations of ill-treatment of prisoners of war during capture and interrogation", and two months after that, in July 2003, it had sent another paper detailing "approximately 50 allegations of ill-treatment in the military intelligence section of Camp Cropper at Baghdad International Airport", including threats, stress positions, physical assaults, prolonged exposure to the sun, isolation in dark cells, hooding, and sleep deprivation.

Although the US authorities had been sent these confidential ICRC documents and the organization's February 2004 report documenting torture or other ill-treatment across a range of US facilities in Iraq, not just Abu Ghraib prison, as well as receiving allegations of abuses from human rights organizations, the Bush administration responded to the Abu Ghraib photographs with a "few bad apples" theory for public consumption.⁷⁶ Depicted in the photos, the official version went, was the action of a handful of rogue soldiers displaying "un-American" values who would be punished for their aberrant conduct. This has remained the dominant narrative of such officials after leaving office.

In his memoirs, former President Bush wrote that what had happened at Abu Ghraib "was not what our military or our country stood for. While the perpetrators were court-martialled, America's reputation took a severe hit".⁷⁷ Former Vice President Dick Cheney wrote that what was depicted in the photos was "cruel and disgraceful and certainly not reflective of US policy".⁷⁸ In her memoirs, former National Security Advisor Condoleezza Rice wrote that the abuses were "committed by a small number of personnel acting in defiance of their orders" and what had been done against detainees at Abu Ghraib was "nothing like" the "enhanced techniques" authorized by the Department of Defense.⁷⁹ In his memoirs published seven years after he had told the Senate Armed Services Committee that he took "full responsibility" for what had happened at Abu Ghraib, Donald Rumsfeld maintained that "the crimes had nothing whatsoever to do with interrogation or intelligence gathering" but were the actions of "a small group of disturbed individuals".⁸⁰

Yet consider what the Fay investigation said about one of the principle aspects of what happened at Abu Ghraib, the use of nudity (which the investigation noted Secretary Rumsfeld had authorized as a "counter-resistance" technique at Guantánamo):

"Removal of clothing was not a technique developed at Abu Ghraib, but rather a technique which was imported and can be traced through Afghanistan and GTMO [Guantánamo]...The removal of clothing for both MI [military intelligence] and MP [military police – guards] objectives was authorized, approved, and employed in Afghanistan and GTMO... As interrogation operations in Iraq began to take form, it was often the same personnel who had operated and deployed in other theaters and in support of GWOT ["global war on terror"], who were called upon to establish and conduct interrogation operations in Abu Ghraib. The lines of authority and the prior legal opinions blurred. Soldiers simply carried forward the use of nudity into the Iraqi theater of operations."

The Bush administration's "few bad apples" theory about Abu Ghraib was expressly refuted by SASC in its 2008 report. The Committee concluded that

“the abuse of detainees in US custody cannot simply be attributed to the actions of ‘a few bad apples’ acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees”.

A review by the Senate Select Committee on Intelligence of the CIA's detention and interrogation practices has also recently been completed although the report not yet been released. In December 2011, the Committee's Chairperson, Senator Dianne Feinstein, said that

“coercive and abusive treatment of detainees in US custody went beyond a few isolated incidents at Abu Ghraib. Moreover, the abuse stemmed not from the isolated acts of a few bad apples but from fact that the line was blurred between what is permissible and impermissible conduct, putting US personnel in an untenable position with their superiors and the law.”⁸¹

To the extent that there has been criminal accountability for what happened at Abu Ghraib and in other facilities, it has been largely kept to low-ranking individuals. In the case of Abu Ghraib, a US military investigation in 2004 had pointed to 54 individuals – intelligence personnel, guards, medical soldiers and civilian contractors as having “some degree of responsibility or complicity in the abuses” that occurred at the prison.⁸² In the end, between 2004 and 2006, 11 low-ranking soldiers were convicted in courts-martial for these abuses, most of them receiving relatively minor sentences. All have now been released from prison. The highest-ranking officer to have charges brought against him, a Lieutenant-Colonel, was acquitted in 2007 of all charges relating to detainee abuse. No private contractors have been charged and brought to trial.

The three branches of government have effectively collaborated to keep accountability and remedy at a minimum. Indeed, the low-level accountability that has occurred has itself been cited in decisions to block further redress. For example, in its 2012 ruling dismissing a lawsuit against Donald Rumsfeld brought by two US citizens who alleged they were unlawfully detained and tortured in US military custody in Iraq in 2006, the US Court of Appeals for the Seventh Circuit noted that “abusive interrogation in Iraq and Afghanistan has led to courts-martial.”⁸³ In successfully arguing to the US Supreme Court not to review the lower courts' dismissal of lawsuits brought against military contractors by Iraqi nationals held in US military custody at Abu Ghraib and alleging torture and other ill-treatment, the Obama administration stated that “the United States Government unequivocally opposes torture and has repudiated it in the strongest possible terms”. The administration noted that “federal law makes it a criminal offense to engage in, attempt to commit, or conspire to commit torture outside the United States” and that “such conduct during an armed conflict is a war crime”.

This line about repudiating torture has been repeated in a number of Department of Justice briefs filed under the Obama administration in cases seeking to have courts block remedy.⁸⁴ The US government does not just have the duty to “repudiate” torture and other human rights violations, however, but a legal obligation to ensure that anyone subjected to such abuse has access to effective remedy and that those responsible are brought to justice.⁸⁵

5. 'IF THE DETAINEE DIES YOU'RE DOING IT WRONG'

The Attorney General announced today the closure of the criminal investigations into the death of two individuals while in United States custody at overseas locations
US Department of Justice, 30 August 2012

Many detainees died in US custody in Iraq, and again there has been less than full accountability. By early 2006, according to an analysis by Human Rights First, there had

been at least 95 deaths in US custody in Iraq and Afghanistan, 86 of them in Iraq. The organization concluded that a dozen of the deaths may have resulted from torture or other ill-treatment and found two distinct patterns from available materials: "(1) because of investigative and evidentiary failures, accountability for wrongdoing has been limited at best, and almost non-existent for command; and (2) commanders have played a key role in undermining chances for full accountability".⁸⁶ Military justice has again been kept largely to low-ranking soldiers, albeit with generally lenient sentences for those convicted, while non-military officials have largely escaped investigation and prosecution.⁸⁷

In its latest report to the UN Human Rights Committee for that body's review of the USA's compliance with its obligations under the International Covenant on Civil and Political Rights, the Obama administration has highlighted the Justice Department's prosecution of David Passaro, a civilian contracted by the CIA who was convicted of assault in the case of Abdul Wali, an Afghan detainee who died in US military custody in Afghanistan in 2003.⁸⁸ Far from demonstrating that the USA has complied with its obligations to ensure accountability, however, the prosecution of David Passaro – who was released in 2011 after serving just over four years in prison – remains the exception to the more general rule of impunity for CIA personnel or contractors, including in Iraq, despite the agency's undoubted involvement in crimes under international law such as enforced disappearance and torture.

It was a military investigation initiated after the Abu Ghraib photos came to light which concluded that "The CIA conducted unilateral and joint interrogation operations at Abu Ghraib. The CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib... local CIA officers convinced military leaders that they should be allowed to operate outside the established local rules and procedures."⁸⁹

Among the Abu Ghraib pictures were several that showed US soldiers smiling and giving the "thumbs up" over the corpse of Manadel al-Jamadi. This Iraqi national died in Abu Ghraib prison on 4 November 2003. He was a CIA "ghost detainee", who had just been brought into the prison by US Navy Seals and the CIA but kept off the prison register by the CIA. According to a guard interviewed by military investigators, the detainee was still in CIA custody when he died – he "did not have an ISN [Internment Serial Number], so he was not one of ours yet". At that time, the guard added, the CIA "was a ghost organization".

According to the military investigation, Manadel al-Jamadi had been arrested at his home in Baghdad by members of Navy Seals Team Seven (ST-7), and initially taken to Forward Operating Base St Michael where he was "repeatedly kicked punched and struck with weapons by ST-7 members". Manadel al-Jamadi was taken to a facility at Baghdad International Airport and after a period hooded and made to kneel in the "parking lot" was interrogated by the members of the CIA. His trousers were around his ankles during this interrogation, and the detainee had no underwear. He had water poured over him at this location, and the military investigation was told that this would have been conducted "probably at the direction of the CIA", and "a ST-7 member would have doused him with water if so directed by the CIA". He was then transported to Abu Ghraib, where "during an interrogation at the prison conducted by CIA personnel, Mr al-Jamadi died".

When Manadel al-Jamadi was brought into the Abu Ghraib prison, he was still naked from the waist down, his legs were shackled and he was hooded with a green plastic sack. His hands were cuffed behind his back with plastic flexi-cuffs secured so tight that a guard would later reportedly have "trouble cutting them off". Manadel al-Jamadi was initially put in a holding cell, where the guards reported hearing the CIA interrogator and interpreter "yelling" at the detainee. One guard reported that he saw the detainee "in the corner of the cell in a seated position like a scared child with the translator and interrogator leaning over him yelling at him" The CIA personnel then ordered the guards to take the detainee to "tier one" in the prison. Manadel al-Jamadi was taken to a shower room for interrogation, and on the orders of the CIA interrogator, who "did not want the prisoner to sit down", was secured to the window

bars with "leg irons". The CIA personnel then resumed the interrogation.

Later a guard was called down by the CIA and found Manadel al-Jamadi "slouched in the corner on his knees", still shackled to the window, with no pulse. Removal of the hood revealed the detainee had a very swollen eye, and when his head tipped forward, "a large amount" of blood poured out. A guard told military investigators that both of the CIA personnel "appeared to be excited about what to do", and that the "short fat" CIA "guy" said, "No one's ever died on me before when I interrogated them". At some point, military personnel posed for photographs over the naked dead body. Manadel al-Jamadi's body was removed from prison on a stretcher with an intravenous line taped to his arm to give the impression that he was still alive. Military investigators were told that he had been carried out of the prison in this manner to avoid "unrest or a riot" by other detainees if they saw him being taken out in a body bag.⁹⁰ The cause of death was "homicide", according to the autopsy report, which concluded that the victim's

"external injuries are consistent with injuries sustained during apprehension. Ligation injuries are present on the wrists and ankles. Fractures of the ribs and a contusion of the left lung imply significant blunt force injuries of the thorax and likely resulted in impaired respiration. According to investigative agents, interviews taken from individuals present at the prison during the interrogation indicate that a hood made of synthetic material was placed over the head and neck of the detainee. This likely resulted in further compromise of effective respiration.... The cause of death is blunt force injuries of the torso complicated by compromised respiration."⁹¹

No one has been found criminally responsible for the killing of Manadel al-Jamadi. Eight Navy SEALs and a sailor were given administrative punishments for assaulting this and other detainees. The only person brought to trial by court-martial, a Lieutenant accused of hitting Manadel al-Jamadi and of failing to restrain the men in his unit, was acquitted of all charges.⁹² In 2009, the Office of the Inspector General at the US Department of Justice noted that it was "not aware of any charges or any other discipline having been brought against any CIA agent involved in the interrogation of this detainee".⁹³

In 2011, the US Attorney General announced that that a preliminary review then being conducted into some interrogations of some detainees by the CIA was at an end, and that a full criminal investigation was not warranted, except into the cases of the deaths in custody of two individuals.⁹⁴ One was of Gul Rahman, an Afghan national taken into custody in Pakistan and who died in a secret CIA facility north of Kabul in Afghanistan in November 2002. The other was of Manadel al-Jamadi.⁹⁵ On 30 August 2012, however, the US Attorney General announced that there would be no criminal charges brought against CIA personnel in relation to these two deaths. The Attorney General said that "Based on the fully developed factual record concerning the two deaths, the Department has declined prosecution because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt." He added that "Our inquiry was limited to a determination of whether prosecutable offenses were committed and was not intended to, and does not resolve, broader questions regarding the propriety of the examined conduct."⁹⁶

In May 2004, the CIA Office of Inspector General was said to have commenced "a criminal investigation of allegations of impropriety in Iraq", part of which involved "inquiring into the conduct of CIA components and personnel".⁹⁷ Seven and a half years later, in October 2011, a US federal judge in New York overseeing Freedom of Information Act litigation relating to CIA detentions noted that "the CIA did not provide this court with any significant details about the nature of that investigation – in fact, the CIA had made only vague representations..."⁹⁸ Amnesty International does not know what the scope of this investigation was or its findings, and whether it addressed CIA involvement in other deaths of detainees.⁹⁹ It seems that the New York Times was right when it predicted in 2005 that the CIA looked set to "avoid charges in most prisoner deaths".¹⁰⁰ The agency to date has also

avoided charges in relation to the crimes under international law of torture, enforced disappearance, and destruction of evidence of such crimes.

The United Nations Human Rights Committee has underlined that “a death of any type a death of any type in custody should be regarded as prima facie a summary or arbitrary execution and there should be a thorough, prompt and impartial investigation to confirm or rebut the presumption.”¹⁰¹ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also stated that “when an individual dies in State custody, there is a presumption of State responsibility. The obligation of the State is not only to prohibit and prosecute killings by guards or other officials, but also to prevent deaths and to respond effectively to the causes of the deaths.”¹⁰² Further that “one consequence of this presumption is that the State must affirmatively provide evidence that it lacks responsibility to avoid that inference.” It is not clear that the CIA investigations were ever thorough enough, or had the requisite independence, or even offered affirmative evidence to rebut the presumption that the State caused the death of the individual.

In any event, such investigations were shrouded in secrecy in a manner that has blocked the alleged victims' right to the truth.¹⁰³ Evidence that would tend to prove allegations of human rights violations such as torture or other cruel, inhuman or degrading treatment, enforced disappearance, or extrajudicial executions or other unlawful killings, should never be capable of being kept secret from a person who alleges he or she was a victim of the human rights violations (or family members claiming on behalf of an alleged victim).

The question of deaths in custody brings to mind a comment made by a senior CIA lawyer at a meeting in October 2002 in Guantánamo, at which the participants discuss interrogation techniques and strategy. Jonathan Fredman, who was the chief counsel to the CIA's Counterterrorist Center, the part of the CIA which was running the agency's secret detention program for “high value” detainees, suggested to the other, mainly military participants, a test for interrogators: “if the detainee dies you're doing it wrong”.¹⁰⁴ His test echoed a notion formulated in the OLC memorandum to the CIA a few months earlier, and dated 1 August 2002. In this legal opinion, the OLC advised that for conduct to constitute torture and violate US law, “the victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result”.¹⁰⁵

This memorandum was eventually withdrawn after it was leaked in the aftermath of the Abu Ghraib revelations. In his memoirs, its primary author, former Deputy Assistant Attorney General John Yoo, asserted that the decision to withdraw the memorandum was “an effort to satisfy the administration's critics, who were having a field day attributing the Abu Ghraib photos to the 2002 legal memos”.¹⁰⁶ Amnesty International would agree that the withdrawal of the memo was ultimately cosmetic, given that for years after the Abu Ghraib scandal, the OLC would secretly continue to approve detention conditions and “enhanced” interrogation techniques that violated the international prohibition of torture and other ill-treatment for use by the CIA against detainees being subjected to enforced disappearance in its secret detention programme.

The Yoo line about torture had gone beyond the August 2002 memorandum to the CIA. John Yoo had included it in the 14 March 2003 memorandum to the Pentagon advising on interrogations by the military. To constitute torture, Yoo wrote, the victim's pain must rise to “the level that would ordinarily be associated with a physical condition or injury sufficiently serious that it would result in death, organ failure, or serious impairment of bodily functions”.¹⁰⁷

6. 'NOTHING TO DO WITH THE INTERROGATION PROGRAM RUN BY THE CIA'

We are aware of the issue of unregistered detainees, but the Panel did not have sufficient access to CIA information to make any determinations in this regard
The 'Schlesinger Report', August 2004¹⁰⁸

Yet another set of memoirs by a former member of the Bush administration was published in 2012. This time it was José Rodríguez who was putting out his version of history. From late 2005, he became head of the CIA's newly-established National Clandestine Service and before that, from spring 2002, he was director of the Counterterrorist Center, the branch of the CIA delegated by its then Director George Tenet to run this programme.¹⁰⁹ In his memoirs, José Rodríguez asserts that "I was responsible for helping develop and implement the Agency's techniques for capturing the world's most dangerous terrorists and collecting intelligence from them, including the use of highly controversial 'enhanced interrogation techniques'."¹¹⁰

In his memoirs, Rodríguez confirmed what had already been revealed during litigation under the Freedom of Information Act, namely that it was he who approved the destruction in November 2005 of videotapes of CIA interrogations, including recordings of "waterboarding".¹¹¹ The destruction of the tapes may have concealed crimes by state agents. Concealing evidence of a crime may constitute criminal complicity. Complicity in torture is expressly recognised as a crime under international law. In 2010, however, the US Department of Justice announced that no-one would be prosecuted for the destruction of the tapes.¹¹² However, Rodríguez's own admissions of his role in a programme in which detainees were subjected to enforced disappearance and interrogation techniques and conditions of detention that violated the prohibition of torture and other ill-treatment, and his admission that he ordered the destruction of the interrogation tapes, warrant the opening by the US authorities of a criminal investigation into his involvement.

In his memoirs, José Rodríguez linked the decision to destroy the CIA tapes to the release of the Abu Ghraib photographs. Broadcast of those photos, he said, firmed up the view that "getting rid of the [CIA interrogation] tapes was vitally important". What would happen, he asked, "if a photo [sic] of a senior al-Qa'ida leader being waterboarded by CIA officers were to get out?" The abuses at Abu Ghraib, José Rodríguez wrote, "had absolutely nothing to do with the interrogation program run by the CIA". By this, he meant the CIA's programme of secret detention of "high value detainees" operated outside the USA under the authorization of President Bush. Given what happened to detainees like Manadel al-Jamadi and what was found by the Fay investigation, Rodríguez could not have said that the CIA per se had nothing to do with the Abu Ghraib abuses, and he avoids mention of that case.

Reading between the redactions, a part of the SASC report which briefly addresses "Task Force participation in OGA interrogations"¹¹³ appears to point to US military involvement in or knowledge of a CIA secret detention facility in Afghanistan, possibly the facility known as the "Salt Pit" north of Kabul (where Gul Rahman (see Section 5) died on 20 November 2002).¹¹⁴ In a 1 November 2002 memorandum, a military lawyer for the Special Mission Unit Task Force deployed to Afghanistan said that an observer might conclude that interrogation techniques used in the facility constituted torture, that one of the techniques in particular could "rise to the level of torture" depending on how it was applied, and that in any event the techniques "may rise to the level of cruel, inhuman or degrading treatment proscribed by international law". The actual techniques were redacted from the version of the memo shared with the Senate Armed Services Committee. The memo apparently assessed the legal risk that SMU TF personnel might face if they participated in interrogations at "a non-DoD [Department of Defense] facility", "particularly if there is media scrutiny".¹¹⁵

Former Deputy Assistant Attorney General John Yoo told the Office of Professional

Responsibility that Department of Defense personnel were not authorized to know anything about the CIA's secret detention and interrogation programme, and that the existence of the legal advice memorandum he had authored had to be kept secret from such personnel. The OPR found evidence that John Yoo may have given the opinion, and an accompanying memo approving CIA use of 10 "enhanced interrogation techniques", to the Pentagon on 2 August 2002. In addition, the OPR pointed to evidence that the Department of Defense General Counsel Jim Haynes, and Secretary Rumsfeld, were briefed on the CIA programme on 16 January 2003.¹¹⁶ As noted above, the 14 March 2003 memorandum on military interrogations incorporated into its text most of the 1 August 2002 memorandum to the CIA.

The claim by José Rodríguez that the abuses in Abu Ghraib had nothing to do with the CIA "high-value" detainee programme in any event does not bear scrutiny. In reaching its conclusion that Secretary Rumsfeld's authorization of "counter-resistance" techniques for use at Guantánamo contributed to subsequent abuse of detainees in Iraq, including at Abu Ghraib, the SASC released numerous documents into the public realm. One such document consisted of the minutes of the meeting held at Guantánamo on 2 October 2002 mentioned above. The links between what the CIA was up to, and had White House and Department of Justice approval for, and to what the military at Guantánamo would soon be given Secretary of Defense approval for, are laid bare in this and other documents.

As noted above, Jonathan Fredman, chief council to the CIA's Counterterrorist Center headed by José Rodríguez, was one of the participants at the meeting. He advised the other participants – who were mainly military personnel – that the Department of Justice had provided "much guidance" on the interrogation issue. He asserted that the USA's anti-torture statute was "written vaguely", and also pointed to the fact that when the USA had ratified the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment it had filed a reservation to Article 16's prohibition on cruel, inhuman or degrading treatment to the effect that it was only bound by existing US constitutional limits, which "gives us more license to use controversial techniques". He pointed to "water-boarding", and pointed out that it was also "effective" to "identify phobias and use them". He agreed that the military could see a CIA request to the Department of Justice to use "advanced aggressive techniques". The meeting also heard that sleep deprivation was being used in Afghanistan and was available by approval, and that the ICRC "is a serious concern" and should not be "exposed" to "any controversial techniques. Fredman recalled that "in the past when the ICRC has made a big deal about certain detainees, the DoD [Department of Defense] has 'moved' them away from the attention of the ICRC".¹¹⁷ By this time, the CIA had also been keeping detainees in undisclosed locations, away from the ICRC, for months.

Nine days after this Guantánamo meeting, one of its participants, a military lawyer, completed a legal memorandum on proposed "counter-resistance" techniques for use at the naval base, including stress positions, exploitation of phobias, water-boarding, sleep disruption, sensory deprivation, hooding, and isolation. The memo noted the USA's Article 16 reservation and recommended approval of the proposed methods. The memo formed the basis for Secretary Rumsfeld's approval on 2 December 2002 of some of these techniques. Six years later, at a hearing of the Senate Armed Services Committee, having heard testimony from this lawyer and others, the Chairperson of the Committee, Senator Carl Levin, said:

"The abuses of detainees at Abu Ghraib, as we've learned from these hearings, was not simply the result of a few soldiers acting on their own... Techniques...such as stripping detainees of their clothes, placing them in stress positions, use of dogs, appeared in Iraq only after they had been approved for use in Afghanistan and at GTMO. Secretary Rumsfeld's December 2002 authorization and subsequent interrogation policies, plans, and techniques approved by senior military and civilian officials... conveyed a very clear message to the troops, that physical pressure and degradation were appropriate treatment for detainees in US military custody."¹¹⁸

7. 'AT LEAST *PRIMA FACIE*, A BREACH OF ARTICLE 49'

This letter confirms our previous oral advice, based on the information you have provided, that [redacted] is not a 'protected person' and that his [redacted] would not violate the Geneva Convention

Letter from head of OLC to General Counsel of CIA, 23 June 2004¹¹⁹

As already noted, US forces in Iraq hid certain detainees from the ICRC by holding them in secret, keeping them off prison registers. In US military parlance, such detainees were held as "ghost" detainees. In 2004, General Paul Kern, who oversaw a military investigation (the Fay investigation) after the Abu Ghraib revelations, said that the number of "ghost detainees" was "in the dozens, to perhaps up to 100".¹²⁰ In response to litigation brought under the Freedom of Information Act, the CIA stated in 2005 that it had located 72 documents "responsive" to the case of the Iraqi national kept off prison registers at the request of the CIA Director, but had determined that the documents "must be withheld in their entirety" from public disclosure.¹²¹

In international legal terminology, this practice amounts to enforced disappearance. Enforced disappearance, like torture, is a crime under international law.¹²² No one has been brought to justice for this crime, and certainly not the high-level officials who authorized it.

In November 2003, Secretary of Defense Rumsfeld, acting on the request of the CIA Director George Tenet, ordered military officials in Iraq to keep a particular detainee off any prison register.¹²³ In June 2004, after seven months, the unidentified detainee had still not been registered with the ICRC. Secretary Rumsfeld was not questioned by the Fay investigation about this case, which concerned a detainee sometimes known as Triple-X, and reportedly held at Camp Cropper.¹²⁴ It was also reported at this time that in 2003 a Syrian national taken into custody in Iraq was transferred out of the country and held on a US Navy ship before being returned to Abu Ghraib in late 2003.¹²⁵

CIA Director Tenet was familiar with the use of secret detention by the time he collaborated with Secretary Rumsfeld in Iraq. It was Tenet who had sought and obtained presidential authorization on 17 September 2001 for CIA detention authority, the basis on which the CIA's secret detention programme operated. George Tenet did not mention the Iraq case in his own memoirs, but he did say that the CIA "got into holding and interrogating high-value detainees – 'HVDs', as we called them – in a serious way" from April 2002.¹²⁶ The USA's global use of secret detention and rendition under the Bush administration would come to involve Iraq also, whether as location for secret detention, or as the originating location for detentions of individuals who were then transferred out of Iraq, or as a stopover point for onward rendition flights.

A number of possible CIA rendition flights stopped in Iraq.¹²⁷ One known stopover in Baghdad occurred in January 2004 and involved a plane carrying German national Khaled El-Masri from Skopje in Macedonia to Kabul in Afghanistan. In December 2012, the European Court of Human Rights found that El-Masri was subjected to "an extra-judicial transfer...for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or other cruel, inhuman or degrading treatment" and that by the time he was put on the plane in Skopje, he had been subjected to torture by the CIA at that airport. In other words, a CIA plane with a torture victim on board landed at Baghdad airport, during the US occupation of Iraq, before it carried on to Kabul to take its passenger from enforced disappearance in Macedonia to enforced disappearance in Afghanistan. No US official has been brought to account for the crimes under international law committed in this case.

Neither has there been any accountability for the crimes under international law alleged in the case of Khaled al-Maqtari, a Yemeni man who was taken into US military custody in Iraq in January 2004. He was initially held in a military camp outside Fallujah before being

transferred to the Abu Ghraib prison. He has alleged that in the context of interrogations there guards and interrogators subjected him to beatings, loud music, hooding, forced nudity, cold temperatures and water dousing, suspension by a chain, sleep deprivation, cruel use of handcuffs and shackling, intimidation by dogs, and threats of rape. After about nine days, he was handed over to a CIA rendition team and flown out on 21 January 2004 to enforced disappearance in US custody in a secret facility in Afghanistan, and then in April 2004 transferred onwards to a CIA 'black site'. He was eventually repatriated to Yemen in early September 2006 before being released from Yemeni custody in May 2007, more than three years after first being taken into detention in Iraq.¹²⁸

In addition to evidence that Khaled al-Maqtari was subjected to the crimes under international law of torture and enforced disappearance, his transfer out of Iraq – as well as his treatment in custody in Iraq – may have amounted to war crimes. At the time of Khaled al-Maqtari's detention, US forces in Iraq were bound by the Fourth Geneva Convention, article 49 of which prohibits the transfer of protected persons, including insurgents who are not part of the military, from the occupied territory. Unlawful deportation or transfer or unlawful confinement, as well as torture and other ill-treatment, in violation of the Geneva Conventions, are war crimes, and prosecutable as such under US and international law.

A previously Top Secret OLC memorandum, undated but released in 2009 under Freedom of Information Act litigation, refers to the "Department of Defense's proposed policy" on detention operations and notes the following in relation to the ending of the occupation of Iraq on 28 June 2004:

"If GC's [Geneva Conventions] restrictions for occupied territory still applied in Iraq, they would prohibit some conduct authorized under the proposed policy, such as forcible transfers or deportations of protected persons from Iraq."¹²⁹

Pakistani national Hassan Ghul is another individual believed to have been secretly transferred out of Iraq and into the secret detention and interrogation programme being operated by the CIA under presidential authority. Three days after Hassan Ghul was taken into detention in January 2004, President Bush had asserted:

"Hassan Ghul was a – reported directly to Khalid Sheikh Mohammed, who was the mastermind of the September the 11th attacks. He was a killer. He was moving money and messages around South Asia and the Middle East to other Al Qaida leaders. He was a part of this network of haters that we're dismantling. Our intelligence officers did a good job. He was captured in Iraq, where he was helping Al Qaida to put pressure on our troops. There is one less enemy we have to worry about with the capture of Hassan Ghul. Our people are doing great work."¹³⁰

It is not clear precisely when Hassan Ghul was transferred out of Iraq. It seems that he may have been kept in that country while the administration obtained legal clearance from the US Department of Justice to transfer him out. Article 49 of the Fourth Geneva Convention prohibits the transfer from occupied territory of "protected persons". On 18 March 2004, a memorandum written by Assistant Attorney General Jack Goldsmith at the OLC, advised the White House that an al-Qa'ida operative captured in occupied Iraq who was not an Iraqi national or a permanent resident of Iraq did not qualify for "protected person" status under the Fourth Geneva Convention.¹³¹

Goldsmith then drafted another memorandum to White House Counsel Alberto Gonzales and circulated it to the head lawyers at the CIA, the Departments of State and Defense, and the National Security Council. This draft, dated 19 March 2004, "elaborates on interim guidance provided in October 2003 concerning the permissibility under [article 49 of the Fourth Geneva Convention] of relocating certain 'protected persons' detained in occupied territory to places outside that country." The draft concluded that the USA could, "consistent with article 49", (1) remove from Iraq under local immigration law "protected persons" who were

“illegal aliens”; and (2) “relocate ‘protected persons’ (whether illegal aliens or not) from Iraq to another country to facilitate interrogation, for a brief but not indefinite period, to facilitate interrogation”, as long as the individual concerned had not been “accused of offences” within the meaning of article 76 of the Convention.

In his memoirs, Jack Goldsmith wrote that he never finalized the 19 March 2004 memorandum and that “it never became operational, and it was never relied on to take anyone outside of Iraq”. He further stated that “I do not know whether the request for legal advice about relocating Iraq prisoners outside Iraq for questioning was associated with a broader rendition program. But I do know that the draft opinion could not have been relied upon to abuse anyone, not only because it was never finalized, but more importantly because it stated that the suspect’s Geneva Convention protections must travel with him outside Iraq.”¹³² He recalled in his memoirs the pressure put on him from the Vice President’s office on the question of whether the Fourth Geneva Convention protected Iraqi “terrorists” in Iraq, alleging that Vice President Cheney’s Counsel, David Addington, became very angry at Goldsmith’s conclusion that it did: “David Addington was just plain mad. ‘The President has already decided that terrorists do not receive Geneva Convention protections’, he barked. ‘You cannot question his decision’.”¹³³

In another case of a Pakistan national who was transferred out of Iraq in 2004 – in his case taken to US military custody in Bagram airbase in Afghanistan (where he remained in 2013) – the United Kingdom Supreme Court found in 2012 that that detainee’s transfer was “at least prima facie, a breach of Article 49” (see below). And indeed, the draft Goldsmith memorandum had warned that violations of article 49 could constitute “grave breaches” of the Convention and thus amount to “war crimes” under US federal law. It advised that “any contemplated relocations of ‘protected persons’ from Iraq to facilitate interrogation be carefully evaluated for compliance with Article 49 on a case-by-case basis”.¹³⁴ In two letters on 23 June 2004, five days before the formal end of the occupation of Iraq, Assistant Attorney General Goldsmith advised the CIA that the transfer of two individuals would not violate the Fourth Geneva Convention.¹³⁵ Their names have been redacted, and it has not been confirmed whether one of them was Hassan Ghul.

During July, August and September 2004, a series of documents exchanged hands between CIA and OLC officials discussing “enhanced interrogation techniques”, and this flurry of activity seems to have been generated at least in part in relation to the interrogation of Hassan Ghul (whose name was accidentally left un-redacted on one of the documents). On 6 August 2004, for example, the OLC advised the CIA that “although it is a close and difficult question”, the CIA’s use of waterboarding against the detainee, believed to be Hassan Ghul, would not violate any US statute, the US Constitution, or “any treaty obligation of the United States.”¹³⁶ In the end, it seems that the CIA did not use water-boarding against Hassan Ghul, possibly for medical reasons, but the fact that it was still considered lawful speaks volumes. A letter date 26 August 2004 to the CIA confirmed the OLC’s advice that CIA interrogators could use dietary manipulation, nudity, water dousing and abdominal slaps in the “ongoing interrogation” of a “high value” detainee, thought to be Hassan Ghul, without violating any US law, the US Constitution, or any US treaty obligation.¹³⁷ In another letter dated 20 September 2004, the OLC advised the CIA that the use of 12 “enhanced” interrogation techniques on this particular detainee “outside territory subject to United States jurisdiction” would not violate any US law, the US Constitution, or any US treaty obligation.¹³⁸ Again, the detainee in question is believed to have been Hassan Ghul.

Without full disclosure about the CIA programmes of rendition, detention and interrogation, the public remains in the dark about such detainees and their treatment. Hassan Ghul was not one of the 14 detainees transferred from secret detention in the CIA programme to military custody at Guantánamo on 4 September 2006, two days before President Bush for the first time publicly acknowledged the existence of the CIA program operated under his

authority. He is reported to have been transferred to Pakistan sometime after the US Supreme Court ruled in *Hamdan v. Rumsfeld* in June 2006 that Common Article 3 applied to the detentions and before President Bush's 6 September 2006 speech.

Where detainees like Hassan Ghul and others transferred out of Iraq (see below) were held by the CIA, and how they were treated are presumably contained in a still classified report produced by the US Senate Select Committee on Intelligence. On 13 December 2012, the Committee voted to approve this report of its review into the CIA's secret detention and interrogation programme. The Chairperson, Senator Dianne Feinstein said that the report is more than 6,000 pages long, with 35,000 footnotes, and that it "uncovers startling details" of the CIA programme – and is "a comprehensive review of the CIA's detention program that includes details of each detainee in CIA custody, the conditions under which they were detained, how they were interrogated, the intelligence they actually provided and the accuracy—or inaccuracy—of CIA descriptions about the program to the White House, Department of Justice, Congress and others." She added that a majority of the Committee agreed that "the creation of long-term, clandestine 'black sites' and the use of so-called 'enhanced-interrogation techniques' were terrible mistakes."¹³⁹ Not only were they mistakes, however, but crimes were committed. The report should be published in the name of the right to truth, and as a step towards filling the accountability and remedy gap.

Khaled al-Maqtari and Hassan Ghul were not the only detainees to have been transferred out of Iraq by US forces. For example, Pakistani nationals Yunus Rahmatullah and Amanatullah Ali were taken into custody by UK forces in or near Baghdad in February 2004 and handed over to US forces. Both men were subsequently transferred to the US detention centre Bagram air base in Afghanistan, where both remained in February 2013 without charge or trial in US military custody, nine years after they were first taken into detention.

A case was brought against the UK government. In a ruling in October 2012, the UK Supreme Court found that "the, presumably forcible, transfer of Mr Rahmatullah from Iraq to Afghanistan is, at least prima facie, a breach of Article 49" of the Fourth Geneva Convention. The absence not only of accountability for such violations, but also of judicial remedy for such individuals, continues. A habeas corpus petition was filed in US federal court in 2010 on behalf of Amanatullah Ali, who by then had been held in US custody for more than six years without charge or access to a lawyer or any court. The Obama administration argued that the District Court did not have jurisdiction to consider such a petition. On 15 November 2012, the Court granted the administration's motion to dismiss the petition.¹⁴⁰

8. 'THE PETITION SHOULD BE DENIED'

A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations
UN Committee against Torture¹⁴¹

Meanwhile, those pursuing a judicial remedy for the human rights violations they say they faced in US custody, including at Abu Ghraib, have faced systemic obstacles – under both the Bush and Obama administrations.

The right to an effective remedy is recognized in all major international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in 1992. Under Article 2.3 of the ICCPR, any person whose rights under the ICCPR have been violated "shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". International law requires that remedies not only be available in theory, but accessible and effective in practice.¹⁴² The right to an effective remedy can never be derogated from. Even in a state of emergency, "the state party must comply with the fundamental obligation, under article 2,

paragraph 3, of the Covenant to provide a remedy that is effective."¹⁴³ Victims are entitled to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.¹⁴⁴ Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴⁵ Further, under article 9.5 of the ICCPR, anyone who has been subjected to unlawful detention must be provided with "an enforceable right to compensation".

The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) also specifically obliges the USA to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible."¹⁴⁶

In 2007, a US federal court judge dismissed lawsuits against former Secretary Rumsfeld; former Commander of the 105th Military Intelligence Brigade Colonel Thomas Pappas; former Commander of the Coalition Joint Task Force-7, Lieutenant General Ricardo Sanchez; and Colonel Janis Karpinski, former Commander of the 800th Military Police Brigade; brought by former detainees, including five Iraqi nationals held by the US military in Iraq, including at Abu Ghraib prison, at various times in 2003 and 2004. The Iraqi plaintiffs, one of whom was under 18 years old at the time he was detained, alleged a range of torture and other ill-treatment, including beatings, stabbing, forced nudity, hooding, confinement in a box, prolonged sleep deprivation, deprivation of adequate food and water, mock execution, death threats, sexual assault, sexual humiliation, threat of rape, exposure to extreme temperatures, denial of necessary medical care, intentional exposure to infection, threats of transfer to Guantánamo, cruel use of restraints, racial abuse, humiliation through being photographed while naked, and solitary confinement.¹⁴⁷ Aside from any specific involvement in authorizing certain detention conditions and interrogation techniques, the plaintiffs argued that officials such as Secretary Rumsfeld knew or should have known about alleged abuses occurring on their watch as organizations including Amnesty International and the ICRC had told them.¹⁴⁸

The judge described the torture allegations as "horrifying", but concluded that the US Constitution's "reach is not so expansive that it encompasses these non-resident aliens who were injured extraterritorially while detained by the military in foreign countries where the United States is engaged in wars". To allow the lawsuit to proceed would "place the Court in the position of inquiring into the propriety of specific interrogation techniques and detention practices employed by the military when prosecuting wars". It should be left to Congress, he ruled, to determine "whether a damages remedy should be available under the circumstances presented here".¹⁴⁹ In June 2011, the US Court of Appeals affirmed his ruling.¹⁵⁰ This is what the Obama administration, joining Donald Rumsfeld and the other defendants, had urged: "in this sensitive context, where the claims involve detention in a foreign war zone and an explicit challenged to alleged detention policies issued by the Secretary of Defense and military commanders", authorization of a remedy "must come from Congress", not the judiciary.¹⁵¹ Meanwhile, to this day, Congress has failed to bring the USA into line with its obligations on remedy and accountability. All of the branches of government are in the wrong here. To block a victim's right to a remedy and protection under international human rights law flies in the face of international legal consensus on this issue. The UN Human Rights Committee, in line with international jurisprudence, has held that the state must respect and ensure the rights, including the right to remedy, of "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."¹⁵²

A number of Iraqi nationals have brought lawsuits against private US companies who supplied the US military with interrogators and interpreters in Iraq. In 2009, a federal judge denied a motion to dismiss on all grounds a lawsuit brought against CACI International and its subsidiary CACI Premier Technology, which provided contractor interrogators to the US military in Iraq.¹⁵³ The lawsuit was brought by four Iraqi nationals alleging that CACI

interrogators tortured them in Abu Ghraib prison in 2003 and 2004. The abuses alleged include electric shocks, beatings, deprivation of food, sleep deprivation, intimidation by dogs, sensory deprivation, subjection to extreme temperatures, forced nudity, death threats, forced shaving, stress positions, sexual humiliation, electro-shocks by taser, hanging, mock execution, being hidden from the ICRC, hooding, and prolonged solitary confinement.

In 2010, a federal judge allowed a lawsuit to proceed against L-3 Services, a Delaware company headquartered in Virginia which provided civilian Arabic translators for the US military in Iraq. The lawsuit was brought by 72 Iraqi nationals alleging that they were subjected to war crimes and to torture and other ill-treatment by L-3 employees while in US custody in Abu Ghraib and other facilities in Iraq between 2003 and 2008. The alleged abuses included beatings, hangings, electric shocks, mock executions, threats of death and rape, intimidation by dogs, sleep deprivation, forced nudity, dousing with cold water, stress positions, sexual assault, confinement in small spaces, sensory deprivation, and to being held as "ghost" detainees. The judge noted that the allegations described acts that "may justify a finding of torture", and "may also justify a claim which falls into the broader category of wrongful behaviour classified as cruel, inhuman, and degrading treatment".¹⁵⁴

In September 2011, in two separate decisions, the US Court of Appeals for the Fourth Circuit reversed the above rulings and blocked the lawsuits against CACI International and L-3 Services.¹⁵⁵ However, in May 2012, the full Fourth Circuit court held that it lacked jurisdiction at that stage to consider the appeals against the District Court rulings allowing the lawsuits to proceed. In early October 2012, with the case against it remanded to the District Court for a civil jury trial, Engility Holdings (previously L-3 Services) and more than 70 Iraqi plaintiffs in the case agreed to a settlement of US\$5.28 million for the former detainees. In the CACI case, involving the four Iraqis who allege they were tortured in US custody in Abu Ghraib, a second amended complaint was filed in US District Court on 26 December 2012 seeking a civil jury trial on the merits and remedies including compensation and punitive damages. At a hearing on 8 March 2012, the judge granted a motion to remove the parent company, CACI International, from the lawsuit, leaving the subsidiary, CACI Premier Technology, as the only defendant.

In October 2010, the US Supreme Court asked the Obama administration for its views on whether the Court should review the 2009 decision of the US Court of Appeals for the DC Circuit blocking the lawsuits brought by Iraqi nationals against Titan Corporation and CACI International alleging abuse by the interpreters and interrogators supplied to the US military in Iraq by those companies. In that decision, one of the three judges had dissented, arguing that the claims should be allowed to proceed against both companies: "The plaintiffs in these cases allege that they were beaten, electrocuted, raped, subject to attacks by dogs, and otherwise abused by private contractors working as interpreters and interrogators at Abu Ghraib prison... No act of Congress and no judicial precedent bars the plaintiffs from suing the private contractors – who were neither soldiers nor civilian government employees."¹⁵⁶

In May 2011, the administration filed its brief, urging the Supreme Court not to take the case, but to leave the Court of Appeals ruling in place, therefore leaving the plaintiffs without the judicial remedy they sought. Among other things, it wrote:

"The United States has at its disposal a variety of tools, enhanced in the wake of events at Abu Ghraib, to punish the perpetrators of acts of torture, to prevent acts of abuse and mistreatment, and to compensate individuals who were subjected to abusive treatment while detained by the United States military... The petition... should be denied".¹⁵⁷

On 27 June 2011, the Court announced that it would not review the Court of Appeals ruling.

9. 'DISTURBING TRENDS IN INTERNATIONAL LAW'

It is only a matter of time before there is an attempted prosecution of a US official. There may be a sense that these issues should be shelved during the Iraq matter. On the contrary, the prospect of controversial war should alert us to what all US officials may face

Secretary of Defense Donald Rumsfeld, April 2003

While the Obama administration has sought to block judicial remedy for former detainees alleging human rights violations in the Iraq and counter-terrorism context, officials in the Bush administration had sought to build in immunity for interrogators and others involved with detainees from the outset of what it called the "war on terror". Members of that administration were concerned about international justice and the "threat" that it could pose to US personnel. Secretary Rumsfeld was among those most concerned, and became more so in relation to Iraq.

In May 2002, the administration informed the UN Secretary General that the USA would not be ratifying the Rome Statute of the International Criminal Court (ICC), and that the US government considered that it therefore had "no legal obligations" arising from the Clinton administration's signature to the treaty made on 31 December 2000. Secretary Rumsfeld issued a statement asserting that the ICC's "flaws... are particularly troubling in the midst of a difficult, dangerous war on terrorism. There is the risk that the ICC could attempt to assert jurisdiction over US service members, as well as civilians, involved in counter-terrorist and other military operations – something we cannot allow."¹⁵⁸ In his memoirs, Donald Rumsfeld recalled that what made the ICC so "objectionable was that it would create offices for prosecutors who were effectively unaccountable...who could prosecute Americans without respecting their rights under the US Constitution... I pushed for the US government to 'unsign' the treaty."¹⁵⁹

In July 2002, Congress passed the American Service-Members Protection Act (APSA), which authorized the use of military force to free any US citizen or citizen of a US-allied country being held by the court. Among other things the law states: "Members of the Armed Forces of the United States should be free from the risk of prosecution by the International Criminal Court, especially when they are stationed or deployed around the world to protect the vital national interests of the United States... No less than members of the Armed Forces of the United States, senior officials of the United States Government should be free from the risk of prosecution by the International Criminal Court, especially with respect to official actions taken by them to protect the national interests of the United States." President Bush signed the APSA into law on 2 August 2002. That same month, Secretary Rumsfeld urged the administration to address "several disturbing trends in international law, including the ICC, [and] universal jurisdiction prosecutions".¹⁶⁰

Meanwhile the USA had embarked on a global campaign aimed at persuading other governments to enter into impunity agreements with a view to preventing US nationals accused of genocide, crimes against humanity or war crimes from being surrendered to the ICC. In the context of this campaign, the USA expressed its intention to investigate and prosecute such crimes only "where appropriate", apparently indicating a US position that the decision to investigate and prosecute was a matter of discretion rather than of law.¹⁶¹

In March 2003, Jack Goldsmith, then Special Counsel to the US Department of Defense (before moving later in the year to the post of Assistant Attorney General at the OLC), produced a proposal for countering the "threat" posed to "USG [US Government] interests" by the ICC and universal jurisdiction over US personnel, an issue made "especially urgent because of the unusual challenges we face in the war on terrorism". The paper proposed, among other things, a re-invigoration of the USA's anti-ICC strategy to "try to de-legitimize ICC", to "aggressively...clarify illegality of ICC jurisdiction over USG officials", and to "enact

legislation beyond APSA that severely sanctions any nation that sends a present or former US official to the ICC". The paper proposed that the US government should get "firm assurances from European allies of non-prosecution", adopt a "broad public strategy to make clear that USG has opted out of norms limiting the scope of official immunity", consider legislation "that maintains 'current' official status for political leaders after they leave office", and "enact legislation cutting off assistance to any nation that pursues charges against USG official for conduct arising out of Iraq war and war on terrorism".¹⁶²

In July 2003, the USA announced that it was cutting military aid to 35 countries which had refused to enter impunity agreements in relation to the ICC. In December 2004, Congress approved a provision in a spending bill mandating the withholding of certain economic assistance to governments that refused to grant immunity for US nationals before the ICC.

On 15 January 2003, Secretary Rumsfeld had rescinded his blanket 2 December 2002 authorization of "counter-resistance" techniques, saying that any use of the techniques should be approved by him on a case-by-case basis. He set up a working group within the Department of Defense, "to assess the legal, policy, and operational issues relating to the interrogations of detainees held by the US Armed Forces in the war on terrorism". The Working Group issued its report on 4 April 2003, and it was classified as secret for 10 years by Secretary Rumsfeld. The Bush administration released it after the Abu Ghraib revelations and after an earlier draft of the report was leaked.

The Working Group report listed 35 interrogation techniques, 16 of which went beyond standard techniques listed in the Army Field Manual. These were hooding; mild physical contact; dietary manipulation; environmental manipulation (e.g. adjusting temperature); sleep adjustment; false flag (convincing the detainee that interrogators are from a country other than the USA); threats to transfer to a third country (where subject would be likely to fear torture or death); isolation; use of prolonged interrogations (e.g. 20 hours in a single day); forced grooming; prolonged standing; sleep deprivation; physical training; face or stomach slap; removal of clothing; exploitation of phobias (such as use of dogs).

The Pentagon's Working Group report also contained a section on the ICC, which it noted the USA had "made clear it opposes and to which it has no intention of becoming a party". The report noted that it was "currently negotiating" agreements with "as many countries as possible" to prevent US personnel being handed over to the ICC. States with which no such agreements were reached and which "perceive certain interrogation techniques to constitute torture or inhuman treatment", the report warned, "may attempt to use the Rome Statute to prosecute individuals found in their territory responsible for such interrogations". It noted that "Article 25(3) of the Rome Statute provides individual criminal responsibility for a person who, inter alia, 'orders, solicits, or induces' or otherwise facilitates through aiding, abetting, or assisting in the commission of a crime." The USA, the report concluded, would reject "as illegitimate" any such attempt.

On 9 April 2003, less than a week after the classified Working Group report was issued, Secretary Rumsfeld signed off on the anti-ICC proposal drafted by Jack Goldsmith and it was transmitted with an accompanying memorandum to officials on the National Security Council warning that "universal jurisdiction prosecutions are expanding in Europe and elsewhere. It is only a matter of time before there is an attempted prosecution of a US official. There may be a sense that these issues should be shelved during the Iraq matter. On the contrary, the prospect of controversial war should alert us to what all US officials may face."

On 16 April 2003, Secretary Rumsfeld authorized 24 of the techniques in the Working Group report for use at Guantánamo – the 19 standard techniques plus dietary manipulation, environmental manipulation, sleep adjustment, false flag, and isolation. Additional techniques were not ruled out, but would have to be requested on a case-by-case basis. Attached to his memorandum were guidelines which included, among other things the

following: "it is important that interrogators be provided reasonable latitude to vary techniques depending on the detainee's culture...", a dangerous instruction if any religious intolerance, racism, or xenophobia was present within the military, as the ICRC February 2004 report on abuses in Iraq would later point to.

As noted above, in 2008, the SASC found that General Sanchez's 14 September 2003 authorization of techniques for use in Iraq "drew heavily" on Secretary Rumsfeld April 2003 authorization. It included all the techniques authorized by Secretary Rumsfeld, plus others including the use of dogs, stress position, sleep management, light control and loud music. It went immediately into effect at Abu Ghraib.

10. 'JUDGE US BY OUR ACTIONS'

Mr Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with the wrongdoing
US Secretary of Defense, Senate Armed Services Committee Hearing, 7 May 2004

Three days after the invasion of Iraq, President George W. Bush told reporters that he expected any US personnel captured by the Iraqis to be treated humanely, "just like we're treating the prisoners that we have captured humanely. If not, the people who mistreat the prisoners will be treated as war criminals."¹⁶³

A year earlier, President Bush had signed a memorandum to senior US government officials in his role as "Commander-in-Chief and Chief Executive of the United States" in which he had asserted that "our values as a Nation... call for us to treat detainees humanely, *including those who are not legally entitled to such treatment*".¹⁶⁴ No such detainee exists. Under international law, humane treatment is an absolute legal requirement, not a policy choice.

On 1 May 2003, from the deck of an aircraft carrier, President Bush declared "major combat operations in Iraq" over. The "battle of Iraq", he said "is one victory in a war on terror that began on September the 11th, 2001". That same month, the ICRC sent the US military authorities a memorandum based on over 200 allegations from Iraq of "ill-treatment of prisoners of war during capture and interrogation...The allegations were consistent with marks on bodies observed by the medical delegate".¹⁶⁵ Eight days after President Bush's 1 May 2003 speech made under a "mission accomplished" banner, a 39-year-old Iraqi man, Khreisan Khalis Aballey, was released from US military custody in Iraq. During his 10 days in detention, he said that he had been subjected among other things to prolonged forced standing and kneeling, hooding, and sleep deprivation. Amnesty International raised his and other allegations with the US authorities in July 2003. It never received a response.¹⁶⁶

The torture and other ill-treatment that would be recorded in photographs taken by US soldiers in Abu Ghraib prison in Iraq and later broadcast on US television were yet to occur.

Later in 2003, during the period that the photos were being taken, Secretary Rumsfeld and CIA Director Tenet collaborated in ordering military officials in Iraq to keep a particular detainee off any prison register, in an apparent case of a "ghost detainee", one of many such detainees held in Iraq. That same month, a "ghost detainee" in CIA custody in Abu Ghraib died during a period of interrogation, with US soldiers subsequently recorded in photographs grinning and giving the thumbs-up over his body. Nearly a decade later no-one from the CIA has been charged in relation to this death.

In a letter sent 10 days after broadcast of the photographs, Amnesty International reminded President Bush that "during the past two years, consistent allegations of brutality and cruelty by US agents against detainees, including in Iraq and Afghanistan, have been presented by Amnesty International and others at the highest levels of the US Government, including the White House, the Department of Defense, and the Department of State."¹⁶⁷ The letter included allegations made by a detainee in Yemen, with whom Amnesty International had

spoken on 13 April 2004 after his release from Guantánamo. Walid al-Qadasi recalled his time in 2002 in a secret detention facility in Kabul, interrogated by US agents. He said that the first night of interrogation had been coined by the detainees as "the black night". He told Amnesty International that: "They cut our clothes with scissors, left us naked and took photos of us, before they gave us Afghan clothes to wear. They then handcuffed our hands behind our backs, blindfolded us and started interrogating us...They threatened me with death, accusing me of belonging to al-Qa'ida. They put us in an underground cell measuring approximately two metres by three metres. There were ten of us in the cell. We spent three months in the cell..."¹⁶⁸

Among his allegations, Walid al-Qadasi said that the detainees had been subjected to sleep deprivation. As already noted, among the documents made public in 2008 by the Senate Armed Services Committee were the minutes of a 2 October 2002 meeting at Guantánamo. Among the topics discussed at that meeting was sleep deprivation. A military lawyer had told the participants that sleep deprivation could be authorized and noted that there were "many reports from Bagram about sleep deprivation being used" but that "officially it is not happening". In a memorandum finalized nine days after that meeting, recommending approval of various "counter-resistance" techniques, she wrote that sleep deprivation in the form of 20-hour interrogations was "legally permissible so long as there is an important governmental objective".¹⁶⁹ On 2 December 2002, Secretary Rumsfeld authorized that and other techniques for use at Guantánamo.

That the USA's "war on terror" approach to detentions and interrogations came to Iraq, as the Senate Armed Services Committee found, was illustrated in a number of ways, including the use of secret detention, secret detainee transfers, and interrogation techniques and conditions of detention designed to isolate, humiliate, degrade, and wear down detainees deemed resistant to standard interrogation. In May 2004, for example, four months after the US authorities had come into possession of the Abu Ghraib photos and five days before they were broadcast on CBS News, the SMU TF Commander in Iraq sent a message to another Commander relaying that the detainees held by his Task Force were "hardened" and "trained to resist interrogation". He added that for these detainees:

"Sleep management, environmental manipulation (light and noise), extended interrogations, varying comfort positions and the use of hoods to induce a psychological sense of isolation and dependence on the interrogators are particularly useful".¹⁷⁰

Cutting through the euphemisms, such an approach clearly echoed the "counter-resistance" techniques that had earlier been authorized by the Secretary of Defense for use at Guantánamo.

In late June 2003, a matter of weeks after he had personally approved CIA Director Tenet's request that CIA personnel be authorized to use "water-boarding" against a detainee held in the first month of what would become three and a half years of enforced disappearance at (still) undisclosed locations,¹⁷¹ President Bush issued a proclamation:

"Notorious human rights abusers ...have long sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors. Until recently, Saddam Hussein used similar means to hide the crimes of his regime...."

The United States is committed to the worldwide elimination of torture, and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment. I call on all nations to speak out against torture in all its forms and to make ending torture an essential part of their diplomacy."

Every year, the US Department of State publishes its assessment of the human rights records of other countries. The entry on human rights in Iraq in 2003 covers only up to the fall of the government of Saddam Hussein on 9 April 2003. The next report published in February 2005, picks up only from 28 June 2004 when the Interim Iraqi Government took office. The gap in reporting from 10 April 2003 to 27 June 2004 covers a period when US forces were responsible for widespread abuses against detainees in Iraq, including the torture and other ill-treatment revealed in the Abu Ghraib photographs. The report covering 2003 describes Abu Ghraib as one of the prisons "infamous for routine mistreatment of detainees and prisoners" under Saddam Hussein. When the report was published in February 2004, the photographs of US soldiers torturing and ill-treating detainees in Abu Ghraib had not been leaked, although the US authorities already had them in their possession.

While this gap in reporting can be explained by the fact that the USA never reports on its own conduct in these State Department assessments, without the accountability gap being filled, the charge of US double standards is likely to stick. It might be recalled that in the immediate aftermath of the Abu Ghraib revelations, the Deputy Commander of US Central Command told the Senate Armed Services Committee that the actions of the wrongdoers captured in the photographs "gives weight to the charge of American hypocrisy".¹⁷²

In 2006, the Bush administration told the UN Committee against Torture that the Department of Justice can "prosecute any person who, outside of the United States, commits or attempts to commit the crime of torture".¹⁷³ Similarly, in 2011, the Obama administration told the UN Human Rights Council that the USA was all for "prohibition and vigorous investigation and prosecution of any serious violations of international law", and that "We investigate allegations of torture, and prosecute where appropriate." It seems that, at least when it comes to investigating, prosecuting and providing reparation for US government involvement in torture, such answers amounted to little more than window dressing, and "gives weight to the charge of American hypocrisy". The Obama administration had promised to end double standards.¹⁷⁴

However, as the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has pointed out: "If faithfully implemented this cluster of rights and duties [guaranteeing the right to truth and the principle of accountability] would by now have ensured accountability not only for those public officials who directly engaged in the secret detention, rendition and torture programme operated by the Bush-era CIA, but also for their superiors, and for any current or former high-ranking officials of State, who planned such strategies or who gave authorisation for subordinate public officials to participate in them."¹⁷⁵ He has also specifically called for accountability for the crimes under international law committed by US officials in Iraq.¹⁷⁶

The human rights violations which the USA stands accused of committing in Iraq are many and varied. And while there has been some accountability for some abuses committed against some detainees in Iraq, the general post-9/11 picture of impunity enjoyed by those high-level US officials who formulated and authorized interrogation and detention policies and practices which violated international law, is also present in the Iraq context.

In an interview a week after the Abu Ghraib photographs were first made public, President Bush asserted, "if there was torture under a dictator, we would never know the truth. In a democracy, you'll know the truth, and justice will be done."¹⁷⁷ The following day, Secretary Rumsfeld told a hearing of the US Senate Armed Services Committee: "Judge us by our actions, watch how Americans, watch how a democracy deals with the wrongdoing". Four years later the Committee found that his authorization of "counter-resistance" techniques for use at Guantánamo had contributed to US detainee abuses in Afghanistan and Iraq.

In 2006, asked about a congressional request to him for documents relevant to detainee abuses, Secretary Rumsfeld said: "I can't imagine, frankly, why the people want to go back

over those things at this stage.”¹⁷⁸ While those implicated in crimes under international law might prefer the question of accountability to go away, an appropriate response can be found in the words of retired US Army Major General Antonio Taguba, who led a 2004 military investigation into detainee abuse at Abu Ghraib. In the preface to a 2008 report on abuse of detainees in US custody in Afghanistan, Guantánamo and Iraq, Major General Taguba wrote:

“After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account. The former detainees in this report, each of whom is fighting a lonely and difficult battle to rebuild his life, require reparations for what they endured, comprehensive psycho-social and medical assistance, and even an official apology from our government. But most of all, these men deserve justice as required under the tenets of international law and the United States Constitution. And so do the American people.”¹⁷⁹

The former Secretary of Defense's assertions that he and his colleagues would “make sure that when wrongdoings or scandal do occur, that they're not covered up, but they're exposed, they're investigated, and the guilty are brought to justice” have proved to be hollow promises. A change in administration has effectively cemented this approach.

As the world has watched, it has seen how the USA has repeatedly failed to “deal with the wrongdoing”, and how today it remains in serious breach of its international obligations on truth, remedy and accountability on the human rights violations that took place at the hands of US personnel in Afghanistan, Iraq, Guantánamo and at undisclosed locations.

ENDNOTES

¹ The administration took the view that such congressional authorization for the use of force against Iraq was “legally unnecessary” on the grounds that “As Chief Executive and Commander in Chief of the Armed Forces of the United States, the President possesses ample authority under the Constitution to direct the use of military force in defense of the national security of the United States”. This Department of Justice opinion also held that the broad Authorization for Use of Military Force (AUMF), passed by Congress on 14 September 2001, could also authorize military action against Iraq if the President decided that “Iraq provided assistance to the perpetrators of the September 11 attacks”. Re: Authorization for Use of Military Force Against Iraq Resolution of 2002. Memorandum for Daniel J. Bryant, Assistant Attorney General, Office of Legislative Affairs, From John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 21 October 2002.

² UN Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004, UN Doc.: CCPR/C/21/Rev.1/Add. 13.

³ See e.g., Decade of Defiance and Deception. White House background paper on Iraq, 12 September 2002, available from Department of State archives, at <http://2001-2009.state.gov/p/nea/rls/13456.htm>. This paper formed the background to President Bush's address on Iraq to the UN General Assembly on 12 September 2002 (e.g. “Last year, the UN Commission on Human Rights found that Iraq continues to commit extremely grave violations of human rights and that the regime's repression is all-pervasive.”). The former President has cited a human rights justification for the intervention in Iraq since leaving office. See for example, George W. Bush, *Decision Points*, Virgin Books (2010), page 248 (“I understood why people might disagree on the threat Saddam Hussein posed to the United States. But I didn't see how anyone could deny that liberating Iraq advanced the cause of human rights”).

⁴ Address to the Nation on Iraq, 17 March 2003.

⁵ "George Tenet asked if he had permission to use enhanced interrogation techniques, including waterboarding, on Khalid Sheikh Mohammed.... 'Damn right,' I said." George W. Bush, *Decision Points*, pages 170-171. This detainee, arrested on 1 March 2003, was subjected to multiple applications of this form of torture, a crime under international law for which there has been no accountability in the USA.

⁶ For example, the Department of Justice advised in 2011 that President Obama had the constitutional authority "to direct the use of military force in Libya because he could reasonably determine that such use of force was in the national interest. Prior congressional approval was not constitutionally required to use military force in the limited operations under consideration." Memorandum for the Attorney General re Authority to use military force in Libya. Caroline D. Krass, Principal Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 April 2011.

⁷ Standards of conduct for interrogation under 18 U.S.C. §§2340-2340A. Memorandum for Alberto R. Gonzales, Counsel to the President, signed by Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 August 2002. See Report of Investigation into the Office of Legal Counsel's memoranda concerning issues relating to the Central Intelligence Agency's use of 'enhanced interrogation techniques' on suspected terrorists. Office of Professional Responsibility, US Department of Justice, 29 July 2009, page 76 (The 14 March 2003 memorandum incorporated the 1 August 2002 memo "virtually in its entirety").

⁸ Re: Military interrogation of alien unlawful combatants held outside the United States. Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from Deputy Assistant Attorney General John Yoo, Office of the Legal Counsel, US Department of Justice, 14 March 2003.

⁹ Preamble, Authorization for Use of Military Force Against Iraq Resolution in 2002. Section 3(b)(2) stated: "acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist [sic] and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001". For his part, President George W. Bush, months before the invasion, said: "Some have argued that confronting the threat from Iraq could detract from the war against terror. To the contrary, confronting the threat posed by Iraq is crucial to winning the war on terror." Address to the Nation on Iraq From Cincinnati, Ohio, 7 October 2002. In response to a reporter's comment that the war in Iraq was "a war that the United States planned and that it went into", the Pentagon's spokesperson said that the comment "reflects an understandable but unfortunate misunderstanding on your part of what the war in Iraq is, which is part of the global war on terror. And that is not a war that we started. It is a war that was begun when we were attacked on 9/11." Lawrence Di Rita, Principal Deputy Assistant Secretary of Defense for Public Affairs, Department of Defense News Briefing, 8 December 2004, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=1978>. See also, for example, President Bush: Remarks to military personnel at Fort Hood, Texas, 12 April 2005 ("The terrorists have made Iraq a central front in the war on terror").

¹⁰ In 2002, President Bush decided that "none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world... I determine that the provisions of Geneva will apply to our present conflict with the Taliban... [C]ommon Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees... Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war... [B]ecause Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war". Memorandum for the Vice President et al. Re: Humane treatment of al Qaeda and Taliban detainees, President George W. Bush, 7 February 2002.

¹¹ Inquiry into the treatment of detainees in US custody. Report of the Committee on Armed Services, United States Senate, 20 November 2008 (hereinafter 'SASC 2008 report').

¹² SASC 2008 report, *op. cit.*, footnote 1219.

¹³ 'Protected person' status in occupied Iraq under the Fourth Geneva Convention. Memorandum opinion for the Counsel to the President, from Assistant Attorney General Jack L. Goldsmith III, Office of Legal Counsel, US Department of Justice, 18 March 2004.

¹⁴ UN Security Council 1546, adopted 8 June 2004 ("by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and... Iraq will reassert its full sovereignty").

¹⁵ According to the ICRC, this practice ended after the organization raised it with the US authorities in July 2003. Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation. February 2004 (hereinafter 'ICRC February 2004 report').

¹⁶ AR 15-6 Investigation of Intelligence Activities at Abu Ghraib. Conducted by Major General George R. Fay and Lieutenant General Anthony R. Jones. Hereinafter 'Fay Report'. page 66

¹⁷ *Al Shimari v. CACI*, Memorandum order, US District Court for the Eastern District of Virginia, 18 March 2009.

¹⁸ Amnesty International calls for a commission of inquiry into 'war on terror' detentions, 18 May 2004, <http://www.amnesty.org/en/library/info/AMR51/087/2004/en>, An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment, 7 May 2004, <http://www.amnesty.org/en/library/info/AMR51/078/2004/en>, and USA: Human dignity denied: Torture and accountability in the 'war on terror', October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>.

¹⁹ "Notwithstanding the isolated pockets of international hyperventilation, we do not treat detainees in any manner other than a manner that is humane." US Secretary of Defense, Department of Defense News Briefing, 8 February 2002, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2624>. See also Secretary Rumsfeld interview with The Sunday Times (UK), 21 March 2002, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3372> ("All the criticism is based on the shrill hyperventilation of a few people who didn't know what they were talking about, hadn't seen the situation, hadn't taken the time to understand the situation...").

²⁰ USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', December 2008, <http://www.amnesty.org/en/library/info/AMR51/151/2008/en>. For some recent revelations, see "Pentagon's link to Iraqi torture centres, Guardian (UK), 6 March 2013, <http://www.guardian.co.uk/world/2013/mar/06/pentagon-iraqi-torture-centres-link>

²¹ Remarks by the President on National Security at the National Archives, Washington, DC, USA, 21 May 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>

²² USA: Chronicle of immunity foretold: Time for change on counter-terrorism violations after another year of blocking truth, remedy and accountability, 13 January 2013, <http://www.amnesty.org/en/library/info/AMR51/003/2013/en> and USA: Truth, remedy and accountability must be addressed in President Obama's second term, 13 January 2011, <http://www.amnesty.org/en/library/info/AMR51/004/2013/en>

²³ *Ibid.* See Action memo, 'Counter-resistance techniques'. Office of the Secretary of Defense, 27 November 2002, signed by Secretary Rumsfeld, 2 December 2002.

²⁴ Inquiry into the treatment of detainees in US custody. Report of the Committee on Armed Services, United States Senate, 20 November 2008. See also USA: Human dignity denied, *op.cit.* This is not to say that everything originated with Secretary Rumsfeld's December 2002 authorization relating to Guantánamo – human rights violations against detainees by US forces were reported from early on in Afghanistan, as Amnesty International and others reported at the time.

²⁵ See for example, USA: Human dignity denied: Torture and accountability in the 'war on terror',

October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>

²⁶ Testimony to the Senate Armed Services Committee, 7 May 2004.

²⁷ Articles 7 and 4 International Covenant on Civil and Political Rights, ratified by the USA on 8 June 1992; articles 2, 3 and 16 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the USA on 21 October 1994; for example Article 17, Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, ratified by the USA on 2 August 1955 (similar provisions in other Geneva Conventions, to which the USA is party); Prosecutor v. Furundzija, Case No. ICTY IT-95-17/1-T, Judgment, P 144, paras 153-156 (Dec. 10, 1998).

²⁸ See USA: Bringing George W. Bush to justice: International obligations of states to which former US President George W. Bush may travel, 30 November 2011, <http://www.amnesty.org/en/library/info/AMR51/097/2011/en>

²⁹ For a report focussed on Iraq 10 years after the US-led invasion, see Iraq: A decade of abuses, March 2013, available at <http://www.amnesty.org/en/library/info/MDE14/001/2013/en>

³⁰ For information on such reservations see for example, USA: Human rights betrayed: 20 years after US ratification of ICCPR, human rights principles sidelined by 'global war' theory, 7 June 2012, <http://www.amnesty.org/en/library/info/AMR51/041/2012/en>. USA: Deadly formula: An international perspective on the 40th anniversary of *Furman v. Georgia*, 28 June 2012, <http://www.amnesty.org/en/library/info/AMR51/050/2012/en>

³¹ UN Doc.: CCPR/C/21/Rev.1/Add. 13, 26 May 2004. Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 18.

³² White House Counsel, Alberto Gonzales, White House press briefing, 22 June 2004.

³³ Indeed, that the US authorities anticipated conduct that would violate the Geneva Conventions in Afghanistan is indicated by the fact that before taking the decision not to apply their protections, President Bush was advised by his White House Counsel and Attorney General that such a decision would make it more difficult for US personnel involved in interrogations to subsequently be tried under the USA's War Crimes Act. Moreover, when the US Supreme Court overturned this presidential decision in 2006 (*Hamdan v. Rumsfeld*), the administration went into a flurry of activity to get the War Crimes Act retroactively amended to limit its scope, and the CIA's secret detention programme re-approved (by passage of the Military Commissions Act of 2006).

³⁴ General Paul Kern, testimony to the Senate Armed Services Committee, 9 September 2004.

³⁵ Fay report, *op. cit.*

³⁶ A review of the FBI's involvement and observations of detainee interrogations in Guantánamo Bay, Afghanistan, and Iraq. Oversight and Review Division, Office of the Inspector General, US Department of Justice (October 2009, revised). pages 236-237. Page 356. (hereinafter, FBI 2009 Report)

³⁷ "The various detention facilities operated by the 800th MP Brigade have routinely held persons brought to them by Other Government Agencies (OGAs) without accounting for them, knowing their identities, or even the reason for their detention. The Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib called these detainees 'ghost detainees'. On at least one occasion, the 320th MP Battalion at Abu Ghraib held a handful of 'ghost detainees' (6-8) for OGAs that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team. This maneuver was deceptive, contrary to Army Doctrine, and in violation of international law". Article 15-6 Investigation of the 800th Military Police Brigade (The Taguba Report). (OGAs usually refer to the CIA).

³⁸ FBI 2009 Report. Pages 137-138.

³⁹ *Ibid.*, pages 252-253.

⁴⁰ *Ibid.* pages 142-143.

⁴¹ *Ibid.* pages 143-144, and 148.

⁴² *Ibid.*, pages xxx, and 328-352,

⁴³ In secret unit's 'Black Room', a grim portrait of US abuse. New York Times, 19 March 2006. See also US Generals in Iraq were told of abuse early, inquiry finds. Washington Post, 1 December 2004.

⁴⁴ Subject: Memorandum for Record: Report of violations of the Geneva Conventions and the International Laws of Land Warfare. 10 June 2004.

http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDIA000172.pdf

⁴⁵ Info memo. For Under Secretary of Defense for Intelligence, from L.E. Jacoby, Vice Admiral, USN. Director, Defense Intelligence Agency, 25 June 2004.

http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDIA000154.pdf

⁴⁶ *Ibid.*

⁴⁷ Department of Defense News Briefing, 8 December 2004, *op. cit.*

⁴⁸ 'No blood, No foul': soldiers' accounts of detainee abuse in Iraq. Human Rights Watch, July 2006.

⁴⁹ John Yoo. War by other means: An insider's account of the war on terror. Atlantic Monthly Press (2006), pages 168-169.

⁵⁰ SASC 2008 report, page 223-224.

⁵¹ Associate Deputy Attorney General David Margolis subsequently decided that he would "not authorize OPR to refer its findings to the state bar disciplinary authorities". Memorandum of decision regarding the objections to the findings of professional misconduct in the Office of Professional Responsibility's report of investigation into the Office of Legal Counsel's memoranda concerning issues relating to the Central Intelligence Agency's use of 'enhanced interrogation techniques' on suspected terrorists. David Margolis, Associate Deputy Attorney General, Office of the Deputy Attorney General, US Department of Justice, 5 January 2010. John Yoo applauded "David Margolis, one of the Justice Department's most distinguished civil servants" for having "finally put an end to the farce", "the witch-hunt", and the "cooked-up ethics investigation" being "waged" by the OPR. David Margolis' decision, Yoo concluded, represented a "victory for the people fighting the war on terror". John Yoo: Finally, an end to Justice Dept. investigation. Philadelphia Inquirer, 28 February 2010, available at <http://www.aei.org/article/101726>.

⁵² Jack Goldsmith, The Terror Presidency: Law and Judgment inside the Bush administration. W.W. Norton and Company (2007), page 146.

⁵³ Interrogation of al Qaeda operative. Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency. From Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 August 2002 (The detainee was Abu Zubaydah, and according to the OPR, the author of the memorandum was John Yoo). <http://www.justice.gov/olc/docs/memo-bybee2002.pdf>

⁵⁴ Investigation into the Office of Legal Counsel's Memoranda concerning issues relating to the Central Intelligence Agency's use of 'enhanced interrogation techniques' on suspected terrorists. Report of the Office of Professional Responsibility, US Department of Justice, 29 July 2009 (hereinafter 'OPR 2009 report'), page 61.

⁵⁵ OPR 2009 report, *op. cit.*, pages 144-145.

⁵⁶ OPR 2009 report, *op. cit.*, page 143.

⁵⁷ Statement on United Nations International Day in Support of Victims of Torture, President George W. Bush, 26 June 2004.

⁵⁸ Letter available at <http://www.justice.gov/olc/docs/memo-mclaughlin2004.pdf>

⁵⁹ The techniques were those listed in a classified 1 August 2002 memorandum written by Deputy Assistant Attorney General John Yoo, minus "water-boarding". Interrogation of al Qaeda operative, *Op. cit.* Written legal approval for water-boarding against this detainee was provided by the OLC on 6 August 2004, <http://www.justice.gov/olc/docs/memo-rizzo2004.pdf>

⁶⁰ Donald Rumsfeld, *Known and Unknown: A memoir*. Sentinel (2011), page 548.

⁶¹ See USA: Where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed, 20 May 2008, <http://www.amnesty.org/en/library/info/AMR51/042/2008/en>; and USA: Torture acknowledged, question of accountability remains, 14 January 2009, <http://www.amnesty.org/en/library/info/AMR51/003/2009/en>

⁶² See, for example, Torture at Guantánamo: Lt. Col. Stuart Couch on His Refusal to Prosecute Abused Prisoner, Democracy Now, 22 February 2013, <http://m.democracynow.org/stories/13478>. See also SASC 2009 report, *op. cit.* notes 1100 and 1101. Also, USA: Rendition - torture - trial? : The case of Guantánamo detainee Mohamedou Ould Slahi, 19 September 2006, <http://www.amnesty.org/en/library/info/AMR51/149/2006/en>

⁶³ SASC 2008 report, page 88.

⁶⁴ As well as Under Secretary of Defense for Intelligence Stephen Cambone. Inquiry into the treatment of detainees in US custody, *op. cit.*, pages 189-190.

⁶⁵ The Sanchez-authorized policy was revised the following month, with certain of the techniques removed as having blanket approval and requiring authorization on a case by case base. See USA: Human dignity denied, *op. cit.*, pages 195 to 206.

⁶⁶ Coalition Provisional Authority briefing, 4 May 2004.

⁶⁷ Fay report, *op. cit.*, pages 70-71.

⁶⁸ Common Article 3 to the Geneva Conventions and Article 9.1 of the International Covenant on Civil and Political Rights.

⁶⁹ *Ibid.* Articles 34 and 147 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, ratified by the USA on 2 August 1955. The US Department of Defense itself stated in 1992 in relation to the Gulf War that "Whatever the purpose, whether for intimidation, concessions, reprisal, or to render areas or legitimate military objects immune from military operations, the taking of hostages is unequivocally and expressly prohibited by Article 34 [of the 1949 Geneva Convention IV] ... The taking of hostages ... constitute Grave Breaches (that is, major violations of the law of war) under Article 147 [of the 1949 Geneva Convention IV]." United States, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, Appendix O, The Role of the Law of War, 10 April 1992, ILM, Vol. 31, 1992, pp. 617-618 and 624.

⁷⁰ Memorandum for Staff Sergeant [redacted], 104th Military Intelligence Battalion, 4th Infantry Division (Mechanized), Tikrit, Iraq. Subject: Written Reprimand. Date: 6 November 2003.

⁷¹ Memorandum for Commander, 104th Military Intelligence Battalion, 4th Infantry Division (Mechanized), Tikrit, Iraq. Subject: Rebuttal of [redacted] to written reprimand. Date: 9 November 2003. The solicitation of "alternative interrogation techniques", referred to by the Staff Sergeant, led to the development and e-mail circulation of "wish lists" of techniques developed by military interrogators in Iraq. One such list included the following: "Open Hand Strikes (face and midsection)(no distance greater than 24 inches)"; "Pressure Point Manipulation"; "Close Quarter Confinement"; "White Noise Exposure"; "Sleep Deprivation"; "Stimulus Deprivation". On this list was also suggested a number of other "coercive techniques that may be employed that cause no permanent harm to the subject. These

techniques, however, often call for medical personnel to be on call for unforeseen complications. They include but are not limited to the following: "Phone Book Strikes" [i.e. hitting with a telephone directory]; "Low Voltage Electrocutation"; "Closed-Fist Strikes"; "Muscle Fatigue Inducement". Alternative Interrogation Techniques (Wish List), 4th Infantry Division [Tikrit, Iraq].

⁷² Operation Iraqi Freedom CAAT II Initial Impressions Report, Center for Army Lessons Learned, Fort Leavenworth, Kansas, May 2004, page 40.

⁷³ Subject: Memorandum for Record: Report of violations of the Geneva Conventions and the International Laws of Land Warfare. 10 June 2004.

http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDIA000172.pdf

⁷⁴ See US accused of seizing Iraqi women to force fugitive relatives to give up. The Guardian (UK), 11 April 2005.

⁷⁵ See, for example, Beyond Abu Ghraib: Detention and torture in Iraq, 6 March 2006, <http://www.amnesty.org/en/library/info/MDE14/001/2006/en>

⁷⁶ Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation. February 2004. Among the Fay investigation's finding was that the ICRC had visited Abu Ghraib three times between 16 September 2003 and 31 January 2004, and had notified the US military authorities of "serious violations of international Humanitarian Law and of the Geneva Conventions". The Fay investigation said that "Neither the leadership, nor CJTF-7 made any attempt to verify the allegations."

⁷⁷ George W. Bush, Decision Points. Virgin Books (2010), pages 88-89.

⁷⁸ Dick Cheney, In My Time: A personal and political memoir, Threshold Editions (2011), page 420.

⁷⁹ Condoleezza Rice. No Higher Honor: A memoir of my years in Washington, Crown Publishers (2011), page 273.

⁸⁰ Donald Rumsfeld, Known and Unknown: A memoir. Sentinel (2011), page 551.

⁸¹ S8130, Congressional Record – Senate, 1 December 2011.

⁸² Fay report, *op. cit.*

⁸³ *Vance v. Rumsfeld*, US Court of Appeals for the Seventh Circuit, 7 November 2012.

⁸⁴ See, USA: 'Congress has made no such decision': Three branches of government, zero remedy for counter-terrorism abuses, 6 February 2012, <http://www.amnesty.org/en/library/info/AMR51/008/2012/en>

⁸⁵ Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 15; Article 12 CAT; Prosecutor v. Furundzija, Case No. ICTY IT-95-17/1-T, Judgment, P 144, paras 155-157 (Dec. 10, 1998).

⁸⁶ Command's responsibility: Detainee deaths in US custody in Iraq and Afghanistan, February 2006, <http://www.humanrightsfirst.org/wp-content/uploads/pdf/06221-etn-hrf-dic-rep-web.pdf>

⁸⁷ See also pages 93-96 of USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>

⁸⁸ Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, December 2011, paragraph 533, <http://www.state.gov/j/drl/rls/179781.htm#art7>. In 2009, the US Court of Appeals for the Fourth Circuit described the death of Abdul Wali thus: "Wali voluntarily surrendered himself for questioning on June 18, 2003. After some initial interviews, American commanders at Asadabad decided to detain

Wali. They imprisoned him in a detention cell, shackling his legs, binding his wrists together, and placing a hood over his head. The military placed him under 24-hour, two-person, armed guard. Sometime on the evening of the next day, June 19, the CIA commander at Asadabad authorized Passaro to interrogate Wali. It is undisputed that for the next two days, Passaro 'interrogated' Wali. This 'interrogation' involved Passaro's brutal attacks on Wali, which included repeatedly throwing Wali to the ground, striking him open handed, hitting him on the arms and legs with a heavy, Maglite-type flashlight measuring over a foot long, and, while wearing combat boots, kicking Wali in the groin with enough force to lift him off the ground. Passaro 'interrogated' Wali in this manner throughout the next day, June 20. And, although Wali's condition greatly deteriorated, Passaro continued the 'interrogation' through the night of June 20. By June 21, Wali had lapsed into delirium, to the point where he twice asked his guards to shoot him and even lunged at a guard as if to take his gun. Later that day, while still in United States custody at Asadabad, Wali collapsed and died."

⁸⁹ Fay report, *op. cit.*

⁹⁰ See also MP Captain Tells of Efforts to Hide Details of Detainee's Death, Washington Post, 25 June 2004.

⁹¹ Final autopsy report, at http://www.thetorturedatabase.org/files/foia_subsite/pdfs/dod003212_0.pdf and other materials at http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDOACID009482.pdf

⁹² CIA is likely to avoid charges in most prisoner deaths. New York Times, 23 October 2005. See also Seal Officer Hears Charges in Court-Martial in Iraqi's Death, New York Times, 25 May 2005.

⁹³ A review of the FBI's involvement and observations of detainee interrogations in Guantánamo Bay, Afghanistan, and Iraq. *op. cit.* (October 2009, revised). Note 173.

⁹⁴ Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees, US Department of Justice 30 June 2011, <http://www.justice.gov/opa/pr/2011/June/11-ag-861.html>. On 2 January 2008, then US Attorney General Michael Mukasey appointed a federal prosecutor to supervise a criminal investigation into the CIA's destruction of videotapes made in 2002 of interrogations conducted against two detainees held in the CIA's secret program. In August 2009, Attorney General Eric Holder expanded the mandate of the investigation to include a "preliminary review" into some aspects of some interrogations of some detainees held in the secret detention program.

⁹⁵ The CIA interrogator in the Manadel al-Jamadi case has been identified as Mark Swanner. See 'A Deadly Interrogation. Can the C.I.A. legally kill a prisoner?', by Jane Mayer November 14, 2005, http://www.newyorker.com/archive/2005/11/14/051114fa_fact. In 2011, Mark Swanner was reported to be a focus of the Justice Department investigation, since shut down. 'Haunted by Homicide: Federal Grand Jury Investigates War Crimes and Torture in Death of 'the Iceman' at Abu Ghraib, Plus Other Alleged CIA Abuses'. Time Magazine, 13 June 2011, <http://nation.time.com/2011/06/13/haunted-by-homicide-federal-grand-jury-investigates-war-crimes-and-torture-in-death-of-the-ice-man-at-abu-ghraib-and-other-alleged-cia-abuses/>

⁹⁶ Statement of Attorney General Eric Holder on closure of investigation into the interrogation of certain detainees, US Department of Justice, Office of Public Affairs, 30 August 2012, <http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html>

⁹⁷ *ACLU et al, v. Department of Defense et al*, Declaration of Mona B. Alderson, Assistant Inspector General for Investigations, Central Intelligence Agency, In the US District Court for the Southern District of New York, 11 November 2004.

⁹⁸ *ACLU et al v. Department of Defense, et al*. Opinion and order denying motion to hold defendant Central Intelligence Agency in civil contempt. US District Court for the Southern District of New York, 5 October 2011.

⁹⁹ For example, see the case of 'Abd Hamad Mawhoush, pages 110 – 115, and Appendix 1 of USA:

Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>

¹⁰⁰ CIA is likely to avoid charges in most prisoner deaths. New York Times, 23 October 2005.

¹⁰¹ Human Rights Committee, *Olimzhon Eshonov v Uzbekistan*, Communication No 1225/2003, Views, 22 July 2010, para 9.2, UN Doc. CCPR/C/99/D/1225/2003. See also Principle 9, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the UN Economic and Social Council in Resolution 1989/65, 24 May 1989.

¹⁰² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/14/24, 20 May 2010, para 49. See also,

¹⁰³ UN Committee against Torture, General Comment No. 3 on Implementation of Article 14 by States parties, 19 November 2012, UN Doc. CAT/C/GC/3, paras 16-17; the United Nations has also formally recognized "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights", see UN Human Rights Council, res. 9/11 'Right to the truth', A/HRC/RES/9/11, 24 September 2008; see also Human Rights Commission, res. 2005/66 'Right to the truth', E/EN.4/RES/2005/66, 20 April 2005; Basic Principles on the Right to a Remedy and Reparation, UN General Assembly resolution 60/147, article 22(b).

¹⁰⁴ Counter Resistance strategy meeting minutes, 2 October 2002. Comments attributed to individuals are paraphrased in the record of this meeting.

¹⁰⁵ Standards of conduct for interrogation under 18 U.S.C. §§2340-2340A. Memorandum for Alberto R. Gonzales, Counsel to the President, signed by Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 August 2002.

¹⁰⁶ John Yoo. War by other means: An insider's account of the war on terror. Atlantic Monthly Press (2006), page 171.

¹⁰⁷ Military interrogation of alien unlawful combatants held outside the United States. Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 14 March 2003.

¹⁰⁸ Final Report of the Independent Panel to Review DoD [Department of Defense] Detention Operations, August 2004.

¹⁰⁹ "[redacted] the DCI [Director of Central Intelligence] assigned responsibility for implementing capture and detention authority to the DDO [Deputy Director of Operations] and to the Director of the DCI Counterterrorist Center (D/DCI)". Special Review: Counterterrorism detention and interrogation activities (September 2001 – October 2003), Central Intelligence Agency, Inspector General, 7 May 2004, para 3. "My transition to chief of CTC came during a precarious time. We had just captured our first major al-Qa'ida figure, Abu Zubayda" in late March 2002. José A. Rodríguez, Jr., *Hard measures: How aggressive CIA actions after 9/11 saved American lives*. Threshold Editions (2012), page 79. "Once Abu Zubaydah was stabilized, the Pakistanis turned him over to CIA custody. It was at this point that we got into holding and interrogating high-value detainees – 'HVDs', as we called them – in a serious way". George Tenet, *At the Center of the Storm*, Harper 2007, page 365.

¹¹⁰ José A. Rodríguez, Jr., *Hard measures: How aggressive CIA actions after 9/11 saved American lives*. Threshold Editions (2012). Preface, 'Who I am'.

¹¹¹ *Ibid.*, especially pages 183-196.

¹¹² See USA: Another door closes on accountability. US Justice Department says no prosecutions for CIA destruction of interrogation tapes, 10 November 2010, <http://www.amnesty.org/en/library/info/AMR51/104/2010/en>

¹¹³ OGA, Other Government Agency, usually refers to the CIA.

¹¹⁴ "There's a detention facility outside the city [of Kabul] that we use to question terrorists." Ali Soufan, *Black Banners: The inside story of 9/11 and the war against al-Qaeda*. W.W. Norton (2011), page 448, quoting "Samantha", head of the CIA's HVT [High Value Target] unit in Kabul, in a conversation with Ali Soufan in Kabul in September 2002. Ali Soufan is a former FBI interrogator who was involved in interrogating a number of detainees held in secret CIA custody.

¹¹⁵ SASC 2008 report, page 152.

¹¹⁶ OPR 2009 report, *op. cit.*, footnote 68.

¹¹⁷ Counter Resistance strategy meeting minutes, 2 October 2002. Comments attributed to individuals are paraphrased in the record of this meeting.

¹¹⁸ Hearing to receive testimony on the authorization of Survival Evasion Resistance and Escape (SERE) techniques for interrogations in Iraq: Part II of the Committee's inquiry into the treatment of detainees in US custody, 25 September 2008, US Senate, Committee on Armed Services.

¹¹⁹ Letter from Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, to Scott W. Muller, General Counsel, Central Intelligence Agency, 23 June 2004

¹²⁰ Oral testimony before the Senate Armed Services Committee, 9 September 2004.

¹²¹ *ACLU et al v. Department of Defense et al*. In the US District Court for the Southern District of New York, Fourth Declaration of Marilyn Dorn, Information Review Officer, Central Intelligence Agency, 30 March 2005.

¹²² Articles 3 and 14, Declaration on the Protection of all Persons from Enforced Disappearance, Adopted by General Assembly resolution 47/133 of 18 December 1992. (Disappearances Declaration).

¹²³ "With respect to the detainee you're talking about, I'm not an expert on this, but I was requested by the Director of Central Intelligence to take custody of an Iraqi national who was believed to be a highranking member of *Ansar al-Islam*. And we did so. We were asked to not immediately register the individual. And we did that." Secretary Rumsfeld, Defense Department regular briefing, 17 June 2004.

¹²⁴ *Army says CIA hid more Iraqis than it claimed*. New York Times, 10 September 2004.

¹²⁵ *Army says CIA hid more Iraqis than it claimed*. New York Times, 10 September 2004.

¹²⁶ George Tenet, *At the Center of the Storm*, Harper 2007, page 365.

¹²⁷ In 2006, the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners pointed to more than three dozen "suspect stopovers" before then end of 2005 in Iraq of planes used by the CIA in renditions.

¹²⁸ For further information, see USA: A case to answer: From Abu Ghraib to secret CIA custody, March 2008, <http://www.amnesty.org/en/library/info/AMR51/013/2008/en>

¹²⁹ Document available at http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001193.pdf

¹³⁰ In its final report issued in July 2004, the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) noted that Hassan Ghul, described as an "al Qaeda facilitator", was "currently in currently in US custody".

¹³¹ Memorandum for the Vice President et al. Humane treatment of al Qaeda and Taliban detainees, President George W. Bush, 7 February 2002.

¹³² The Terror Presidency, *op. cit.*, pages 172-173 (footnote 14 of the draft memorandum stated that the relocation of a "protected person" from Iraq did not mean that he or she would "forfeit the benefits" of that status.

¹³³ The Terror Presidency, *op. cit.*, page 41.

¹³⁴ Re: Permissibility of relocating certain 'protected persons' from Occupied Iraq. Memorandum for Alberto R. Gonzales, Counsel to the President, from Assistant Attorney General Jack L. Goldsmith III, Office of Legal Counsel, US Department of Justice, Draft, 19 March 2004.

¹³⁵ Letters to Scott Muller, General Counsel, CIA, from Assistant Attorney General Goldsmith, available at <http://www.justice.gov/olc/docs/aclu-ii-062304-2.pdf>, <http://www.justice.gov/olc/docs/aclu-ii-062304-1.pdf>

¹³⁶ Letter to John Rizzo, Acting General Counsel, Central Intelligence Agency from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 6 August 2004.

¹³⁷ Letter to John Rizzo, Acting General Counsel, Central Intelligence Agency from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 26 August 2004.

¹³⁸ Letter to John Rizzo, Acting General Counsel, Central Intelligence Agency from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 20 September 2004.

¹³⁹ Feinstein Statement on CIA Detention, Interrogation Report, 13 December 2012, <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=46c0b685-a392-4400-a9a3-5e058d29e635>

¹⁴⁰ *Amanatullah v. Obama*, Memorandum opinion, US District Court for the District of Columbia, 15 November 2012.

¹⁴¹ UN Doc.: CAT/C/GC/3, UN Committee against Torture, General Comment No. 3, on the Implementation of Article 14 by States parties, 13 December 2012, para. 17.

¹⁴² E.g., under the ICCPR, "Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights." General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, UN Doc.: CCPR/C/21/Rev.1/Add. 13, para. 15.

¹⁴³ UN Human Rights Committee, General Comment 29 (States of Emergency), 31 August 2001, UN Doc.: CCPR/C/21/Rev.1/Add.11. para 14.

¹⁴⁴ Principle 11, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

¹⁴⁵ See, among others, Principles 18 – 23, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005; Human Rights Committee, General Comment no. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, UN Doc.: CCPR/C/21/Rev.1/Add. 13, paras 16 and 18).

¹⁴⁶ UNCAT, article 14(1). While article 14 refers to torture in particular, the right to remedy and reparation applies also to other cruel, inhuman or degrading treatment or punishment. See for instance, UN Committee against Torture, General Comment No. 3 on Implementation of Article 14 by States parties, 19 November 2012, UN Doc. CAT/C/GC/3, para. 1; UN Committee against Torture, General Comment No. 2 on Implementation of Article 2 by States parties, 24 January 2008, UN Doc. CAT/C/GC/2, paras. 3 and 6; UN Committee against Torture, *Hajrizi Dzemajl et al. v Yugoslavia*, UN Doc CAT/C/29/D/161/2000 (2 December 2002), para 9.6; UN Human Rights Committee, General Comment no. 20 on prohibition of torture and cruel treatment or punishment, 3 October 1992, UN Doc. HRI/GEN/1/Rev.6 at 151 (2003), para 14; UN Human Rights Committee, General Comment no. 31 on

Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, para 16.

¹⁴⁷ *Ali et al v. Rumsfeld et al*, Consolidated amended complaint for declaratory relief and damages. US District Court for the District of Columbia, 5 January 2006.

¹⁴⁸ *Ali et al v. Pappas et al*. Consolidated amended complaint for declaratory relief and damages. In the US District Court for the District of Columbia, 5 January 2006.

¹⁴⁹ In Re: Iraq and Afghanistan detainee litigation, Memorandum opinion, US District Court for DC, 27 March 2007.

¹⁵⁰ *Ali et al v. Rumsfeld et al*, US Court of Appeals for the DC Circuit, 21 June 2011.

¹⁵¹ *Ali et al v. Rumsfeld et al*, Joint brief for defendants-appellees, In the US Court of Appeals for the DC Circuit, 15 October 2010.

¹⁵² Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 10. Detainees held in the custody of the USA will be within their power or effective control. As the Inter-American Commission on Human Rights has held in a case involving the USA and its obligations under the American Declaration of the Rights and Duties of Man "in respect of individuals falling within the authority and control of a state, effective judicial review of the detention of such individuals as required under Article XXV of the Declaration must proceed on the fundamental premise that the individuals are entitled to the right to liberty, and that any deprivation of that right must be justified by the state in accordance with the principles underlying Article XXV", *Ferrer-Mazorra v. United States*, Case 9903, Inter-Am. C.H.R., Report No. 51/01, OEA/Ser.L/V/II.111, doc. 20, rev. t 1188 (2000), para. 235.

¹⁵³ *Al Shimari et al v. CACI International et al*, Memorandum order, US District Court for the Eastern District of Virginia, 18 March 2009.

¹⁵⁴ *Al-Quraishi et al v. Nakhla et al*, US District Court for the District of Maryland, 29 July 2010.

¹⁵⁵ *Al Shimari et al v. CACI International et al*, US Court of Appeals for the Fourth Circuit, 21 September 2011.

¹⁵⁶ *Saleh et al v Titan and CACI*, US Court of Appeals for the DC Circuit, 11 September 2009.

¹⁵⁷ *Saleh et al v. Titan et al*, Brief for the United States as Amicus Curiae, In the US Supreme Court, May 2011.

¹⁵⁸ Secretary Rumsfeld statement on the ICC Treaty. US Department of Defense news release, 6 May 2002, <http://www.defense.gov/releases/release.aspx?releaseid=3337>

¹⁵⁹ Donald Rumsfeld. Known and unknown: a memoir, page 598.

¹⁶⁰ Judicialization of International Politics. Memorandum for The Vice President, Secretary of State, The Attorney General, Assistant to the President and Chief of Staff, National Security Advisor, Counsel to the President. From Donald Rumsfeld, Secretary of Defense, 9 April 2003.

¹⁶¹ International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes. August 2002, <http://www.amnesty.org/en/library/info/IOR40/025/2002/en>

¹⁶² Potential Responses to the Judicialization of International Politics. Attached to Judicialization of International Politics, Memorandum for The Vice President et al, From Donald Rumsfeld, Secretary of Defense, 9 April 2003, *op . cit*.

¹⁶³ Remarks on Operation Iraqi Freedom and an exchange with reporters, 23 March 2003.

¹⁶⁴ Emphasis added. Memorandum for the Vice President et al. Humane treatment of al Qaeda and

Taliban detainees, President George W. Bush, 7 February 2002.

¹⁶⁵ ICRC February 2004 report, *op. cit.*

¹⁶⁶ Iraq: Memorandum on concerns relating to law and order, 23 July 2003, <http://www.amnesty.org/en/library/info/MDE14/157/2003/en>

¹⁶⁷ An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment, 7 May 2004, <http://www.amnesty.org/en/library/info/AMR51/078/2004/en>, ("The world is watching as your administration responds to the most recent evidence of torture and degrading treatment of Iraqis at the hands of US personnel. While Amnesty International welcomes official statements that the allegations are being taken seriously, the ultimate proof of this will be in actions not words. In this regard, your government's record in the context of "war on terror" detentions gives cause for concern, as fundamental principles of law and human rights continue to be violated despite the administration's stated commitment to these principles.")

¹⁶⁸ See also, USA: Human dignity denied, *op.cit*, pages 100-101.

¹⁶⁹ Legal brief on proposed counter-resistance strategies. Memorandum for Commander, Joint Task Force 170, LTC Diane E. Beaver, Staff Judge Advocate, Guantánamo Bay, 11 October 2002.

¹⁷⁰ SASC 2008 report, page 223.

¹⁷¹ "George Tenet asked if he had permission to use enhanced interrogation techniques, including waterboarding, on Khalid Sheikh Mohammed.... 'Damn right,' I said." George W. Bush, Decision Points, pages 170-171. Khalid Sheikh Mohammed is currently facing a death penalty trial by military commission at Guantánamo. What happened to him and the other detainees previously held in secret CIA custody, and where they were held, remains classified at the highest level of secrecy by the USA.

¹⁷² Senate Armed Services Committee hearing, 7 June 2004.

¹⁷³ List of issues to be considered during the examination of the second periodic report of the United States of America, Response of the United States of America, See question 5 at <http://www.state.gov/j/drl/rls/68554.htm>

¹⁷⁴ See The Obama Administration and International Law. Harold Hongju Koh, Legal Adviser, US Department of State, Annual Meeting of the American Society of International Law, 25 March 2010, <http://www.state.gov/s/l/releases/remarks/139119.htm> ("This also means following universal standards, not double standards. In his Nobel lecture at Oslo, President Obama affirmed that 'adhering to standards, international standards, strengthens those who do, and isolates those who don't.' And in her December speech on a 21st Century human rights agenda, and again two weeks ago in introducing our annual human rights reports, Secretary Clinton reiterated that 'a commitment to human rights starts with universal standards and with holding everyone accountable to those standards, including ourselves'.")

¹⁷⁵ Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 1 March 2013, UN Doc. A/HRC/22/52, para 35.

¹⁷⁶ Ben Emmerson, *Reconciliation in Iraq is impossible without US truth about its dirty war*, The Guardian, 7 March 2013, available at: <http://m.guardian.co.uk/commentisfree/2013/mar/07/reconciliation-iraq-impossible-us-truth-dirty-war>.

¹⁷⁷ President George W. Bush. Interview with Al-Ahram International, 6 May 2004.

¹⁷⁸ Radio Interview with Secretary Rumsfeld on the Eileen Byrne Show, WLS Chicago, 7 July 2006, <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=42>.

¹⁷⁹ Physicians for Human Rights, Broken Laws, Broken Lives: Medical Evidence of Torture by US personnel and its impact, June 2008, available at <http://brokenlives.info/>