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USA: Normalizing delay, perpetuating injustice, undermining the 'rules of the road'

Adherence to international human rights must be central to security strategy

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And we reject the notion that lasting security and prosperity can be found by turning away from universal rights... our support for universal rights is both fundamental to American leadership and a source of our strength in the world.
President Barack Obama, National Security Strategy, May 2010

Acting to give real meaning to words could be said to be at the heart of the human rights project begun in 1948. Adopting the Universal Declaration of Human Rights 62 years ago, the international community pointed to its text as a "common standard" – not for mere recitation, but for actual "achievement". Fulfilling, not simply repeating, the words of the Universal Declaration was, and must still be, the aspiration "for all peoples and all nations" as the "foundation of freedom, justice and peace in the world".

The USA has long displayed a particular fluency in the language of human rights, but its own actions, often couched in terms of domestic values, have frequently fallen short of its international obligations. This unfortunately remains the case today in respect of detentions, trials, accountability and remedy in the counter-terrorism context.

In the National Security Strategies issued under President George W. Bush in 2002 and 2006, the USA promised to champion the "non-negotiable demands of human dignity", including the "rule of law" and "equal justice", even as it sought to keep detainees it labelled as "enemy combatants" in a global "war on terror" from judicial supervision and pursued interrogation techniques and detention conditions that violated the international prohibition of torture and other cruel, inhuman or degrading treatment.[1] Clearly the administration considered "human dignity" during this period to mean something quite different from the understanding most governments around the world, including many of the USA's closest international partners, and international human rights bodies, had held for decades.

The latest National Security Strategy released by the White House on 27 May 2010 also makes promises on human rights and human dignity, some general, some specific. Generally, the strategy asserts, one of four "enduring national interests" for the USA is ensuring "respect for universal values at home and around the world". In addition, it asserts that the "rules of the road must be followed and there must be consequences for those nations that break the rules", such as on their "human rights commitments". More specifically, it reiterates among other things that torture is prohibited "without exception or equivocation". While this is welcome, some other parts of the security strategy, such as its restatement of the Obama administration's decision to retain military commission trials and indefinite detention without charge or criminal trial for use against selected terrorism suspects, are not:

> "When we are able, we will prosecute terrorists in Federal courts or in reformed military commissions that are fair, legitimate, and effective. For detainees who cannot be prosecuted – but pose a danger to the American people – we must have clear, defensible, and lawful

> standards. We must have fair procedures and a thorough process of periodic review, so that any prolonged detention is carefully evaluated and justified."[2]

As the legal authority for such detentions, the US authorities continue to rely upon the Authorization for Use of Military Force (AUMF), a broad resolution passed after little genuine debate by Congress in the immediate wake of the attacks of 11 September 2001. Because of the human rights violations that have been committed in the name of the AUMF over the years, Amnesty International has called since 2006 for its revocation. When the Obama administration took office, the organization called on it to clarify that it would not interpret the AUMF as representing any intent on the part of Congress to authorize violations of international human rights or humanitarian law, or as otherwise providing authority for such violations.[3]

Closure of the detention facilities at the US Naval Base in Guantánamo Bay, Cuba, is a goal repeated in the National Security Strategy, with the stated purpose not necessarily to respect and ensure human rights *per se*, but rather "to deny violent extremists one of their most potent recruitment tools." A human rights approach to ending the Guantánamo detentions would include the principle that any detainee not charged with a recognizable criminal offence for trial under fair procedures in an independent and impartial court – not a military commission with impoverished due process guarantees reserved for foreign nationals alone – should be immediately released, while ensuring that no-one is forcibly returned to a country where he would face human rights violations. The US authorities should drop any intention to construct a system for indefinite "national security" detention without criminal trial of anyone who is not recognised as a prisoner of war in connection with an international armed conflict. To simply move the detention practices put in place at Guantánamo to some other location would be as hollow a gesture as would be pronouncing the terms of universal human rights while depriving them of any real meaning or effect.

A human rights approach is the one most likely to encourage constructive international cooperation with those partners who themselves profess to adhere to the principles of human rights and rule of law. A senior US Justice Department official stated recently:

> "some countries won't provide us with evidence we may need to hold suspected terrorists in law of war detention or prosecute them in military commissions. In some cases, they have agreed to extradite terrorist suspects to us only on the condition that they not be tried in military commissions. In such cases, use of federal courts may mean the difference between holding a terrorist and having him go free."[4]

International cooperation is a theme that runs through the May 2010 National Security Strategy.

REDEFINING 'PROMPT'

It is a basic principle of international human rights law that anyone deprived of his or her liberty by arrest or detention be entitled to challenge the lawfulness of their detention in a court. The purpose of this provision, including as articulated in article 9.4 of the International Covenant on Civil and Political Rights (ICCPR), is so that an independent and impartial court can rule "without delay" on the lawfulness of the individual's detention and order his or her release if the detention is unlawful. Promptness of action is an essential ingredient. Allowing governments to take timeliness or judicial enforceability out of the equation would make a mockery of this protection against arbitrary detention.

The USA criticizes other governments for their failure to stick to the "rules of the road" on judicial review of detentions. For example, in its most recent assessment of the human rights records of other countries, an annual assessment compiled by the US Department of State which uses the Universal Declaration of Human Rights as its benchmark, the USA takes issue with Egypt's Emergency Law. Under this law, the USA reports, an individual may be detained without charge or trial "for as long as 30 days, after which a detainee may demand a court hearing to challenge the legality of the detention order."[5] In similar vein, the USA criticizes Malaysia's Internal Security Act (ISA):

> "The ISA empowers police to arrest without a warrant and hold for up to 60 days any person who acts 'in a manner prejudicial to the national security or economic life of Malaysia.' During the initial 60-day detention period in special detention centers, the ISA allows for the denial of legal representation and does not require that the case be brought before a court. The home minister may authorize further detention for up to two years, with an unlimited number of two-year extensions to follow. In practice the government infrequently authorized ISA detention beyond two two-year terms. However, in one case the government detained an ISA detainee for approximately seven years."[6]

For the past *eight and a half years*, the USA has been holding people in indefinite military custody at Guantánamo Bay. Scores remain held without charge or criminal trial there today. Moreover, two years after the US Supreme Court ruled in *Boumediene v. Bush* that those held at the naval base had the right to a "prompt" habeas corpus hearing in US District Court to challenge the lawfulness of their detention, a majority remain without any ruling on the merits of their cases.[7] For example, none of the 14 men who were transferred to Guantánamo in early September 2006 from up to four and a half years held incommunicado in secret CIA custody have had rulings on the merits of their challenges.[8]

"Prompt", it seems, has lost any reasonable meaning for the US authorities – part of the damage to respect for universal human rights principles wrought by the USA's conduct in what it views as a global "war" against *al-Qa'ida* and associated groups. Prompt apparently no longer means "without delay" in this context, but something entirely opposite. And even a judicial order for the immediate release of a detainee does not necessarily lead to the individual's liberty being promptly restored, notwithstanding the express agreement of the USA to article 2.3(c) of the ICCPR by which it, in the clearest possible terms, committed to "ensure that the competent authorities shall enforce such remedies when granted."

A court's power to obtain the *immediate* release of an unlawfully held individual must be "*in its effects*, real and not merely formal".[9] However, the US District Court has effectively been reduced to issuing recommendations in the Guantánamo habeas corpus litigation. For even those Guantánamo detainees who have had judicial rulings in their favour are not guaranteed immediate release, and some have been held for months after such rulings as the USA has appealed the rulings (frequently, to engage in protracted and speculative arguments about the scope of possible grounds for detention – drawn out proceedings caused by the absence of any actual specific reference to detention in the AUMF and further demonstrating how woefully the US indefinite detention regime has failed to fulfil the requirement of article 9.1 of the ICCPR that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.").

The US authorities have also refused to release in the US mainland those who cannot be repatriated for fear of the human rights violations they would face in their home countries. In 36 of the 50 cases so far decided, the detention was found to be unlawful. Thirteen of these 36 men remain in Guantánamo.

One of the most recent such decisions involves the case of Mohamed Mohamed Hassan Odaini, a Yemeni national, who has been held in Guantánamo without charge or trial since June 2002 after being taken into custody as a 17-year-old in Pakistan two months earlier. For more than seven years, the only review of his detention was executive not judicial. Even favourable executive findings did not lead to his release, demonstrating the need for enforceable judicial oversight. In April 2004 a member of the Pentagon's Criminal Investigation Task Force reviewed Mohamed Odaini's case and recommended that he be released. In 2007, Mohamed Odaini's US lawyer was informed that his client had been approved for release from Guantánamo under executive review procedures initiated in 2004 by the Bush administration. In June 2009, his lawyer was told that he had been approved for release under the executive review conducted by the Guantánamo Review Task Force, established under President Obama's

22 January 2009 executive order on closing the Guantánamo detention facility. Still Mohamed Odaini remained in custody.

The judicial review to which Mohamed Odaini had been entitled for years came to fruition in 2010. On 26 May 2010, over eight years after being taken into custody and nearly two years after the US Supreme Court's *Boumediene* ruling, District Court Judge Henry Kennedy found Mohamed Odaini's detention to be unlawful and ordered his release. Judge Kennedy wrote that the US authorities had

> "kept a young man from Yemen in detention in Cuba from age eighteen to age twenty-six. They have prevented him from seeing his family and denied him the opportunity to complete his studies and embark on a career. The evidence before the Court shows that holding Odaini in custody as such great cost to him has done nothing to make the United States more secure. There is no evidence that Odaini has any connection to Al Qaeda."

> *"…I speak to you in all the languages and dialects of the world to look to this family with eyes of mercy and sympathy. This family's main and greatest concern is the return of their son whose long absence made us miss him much more. We knew him as a loving brother and a caring sibling whose parents have been deprived of this love. A missing brother we pray he comes back safe to us…"*
>
> Letter to President Obama from sister of Mohamed Odaini (translation from Arabic original)

A month after the decision, Mohamed Odaini remains at Guantánamo, his release already years overdue. In his 26 May ruling, Judge Kennedy ordered the US administration to take "all necessary and appropriate diplomatic steps to facilitate Odaini's release forthwith" and to report back to the court by no later than 25 June 2010 on the detainee's status. Even now it is not clear what will happen to Mohamed Odaini given that President Obama in January 2010 ordered a suspension of any transfers to Yemen of Yemeni nationals held in Guantánamo, citing security concerns. The authorities have said that no Yemeni national will be repatriated until this moratorium is lifted.[10] Anonymous US administration officials are reported to have said that the administration is considering partially lifting the moratorium in the wake of Judge Kennedy's ruling.[11]

Amnesty International continues to call for Mohamed Odaini to be immediately repatriated to Yemen. If there is some legitimate reason why this cannot happen immediately, and immediate release in an appropriate third country is also not possible, Mohamed Odaini should be released in the USA with all necessary assistance and protection to re-establish his life. Indeed, while reparation for the harms done to Mohamed Odaini may seem less pressing than respect and fulfilment of his human right to immediate release, it is worth noting that article 9.5 of the ICCPR expressly provides that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

NORMALIZING DELAY

The USA's sense of timing and justice also appears to have generally been warped in the case of those Guantánamo detainees it says it intends to prosecute under its global war framework.

The Obama administration, like its predecessor, has sought to entirely block post-*Boumediene* judicial review in the case of those detainees whom the government has moved to prosecute, even when trial proceedings are not brought within a reasonable time or are proposed under the highly contentious military commission system. A case in point is that of Obaydullah, an Afghan national held in Guantánamo since October 2002.[12] A post-*Boumediene* habeas corpus petition challenging the lawfulness of his detention was filed in US District Court in July 2008. Two months later, charges were sworn against Obaydullah under the Military Commissions Act (MCA) of 2006. Two *years* later, he has neither been tried nor had his habeas corpus petition heard and ruled upon.

After Obaydullah was charged under the MCA, the Bush administration moved to have his habeas corpus petition dismissed or held in abeyance until completion of the military commission proceedings against him.[13] In December 2008, District Court Judge Richard Leon granted the government's motion and stayed the habeas corpus proceedings. By the time the Obama administration took office in January 2009, the charges against Obaydullah had still not been referred on for trial, and the new administration obtained a suspension of all military commission proceedings while the Guantánamo Review Task Force established by President Obama set about reviewing the Guantánamo detentions. Given the suspension of trial proceedings, Obaydullah's habeas corpus counsel moved to have the stay on his habeas corpus challenge lifted arguing that "it could be several months or years before he is subjected to such a [trial] proceeding, if at all".[14] The Obama administration opposed the motion, arguing that the charges against Obaydullah "still remain pending".[15] On 22 April 2009 Judge Leon refused to lift the stay. Another year has passed since then with the Obaydullah case in limbo.

The case was appealed to the US Court of Appeals for the DC Circuit. In January 2010, the Obama administration told the Court that the Guantánamo Review Task Force had completed its review and that the Attorney General had determined that prosecution in a military commission was "appropriate" for Obaydullah. The government's brief said that this meant that the "prior cause of delay in the decision as to whether to refer the charges in this case has been lifted".[16] Five months later, however, the charges against Obaydullah have still not been referred on for trial.

In an opinion released on 18 June 2010 – with Obaydullah soon to enter his ninth year in US military custody – the Court of Appeals revisited the question of the "prompt" habeas corpus hearing to which the US Supreme Court had said two years earlier that the Guantánamo detainees were entitled. While not entirely decoupling the habeas corpus question from the trial question, the Court of Appeals noted that the government had given no indication as to whether the charges against Obaydullah would in fact be referred on for trial or, equally important, if so, when. It further noted that under the revised MCA of 2009 there was no deadline upon the convening authority to make a decision as to whether to refer charges on for trial or not. It also noted that under revised rules for military commissions issued by the Pentagon in April 2010 the requirement articulated in the 2007 version of the rules for such a decision to be made "in a prompt manner" had been dropped.[17] The Court of Appeals added:

> "of course, the charges may be referred to a military commission tomorrow – which could raise anew the question of possible abstention [of the District Court from habeas review] – but they may also be dropped tomorrow, or remain pending for months or years to come.
>
> Seeing no reason sufficient to justify denying Obaydullah the 'prompt habeas corpus hearing' to which he is entitled, we reverse the order of the district court denying his motion and vacate the stay of his habeas corpus petition".[18]

The Court of Appeals sent the case back to the District Court to pursue the habeas corpus proceedings. In the absence of an appeal from the administration, or moves to refer the charges on for trial and a court again suspending consideration the habeas corpus petition, Obaydullah's challenge on the lawfulness of his detention might eventually be heard. It has already been delayed for years too long.

The National Security Strategy of May 2010 promises "swift and sure justice" in the case of those suspected of terrorist offences. Domestic political considerations are taking the upper hand in ensuring that delays continue, however.

Under the ICCPR, anyone charged for trial has the right to be tried "without undue delay" (article 14.3(c)) in an independent and impartial court (article 14.1). The UN Human Rights Committee, the expert body established under the ICCPR to monitor its implementation, has emphasised that this right is "not only

designed to avoid keeping persons too long in a state of uncertainty about their fate... but also to serve the interests of justice."[19] Uncertainty remains the norm for Guantánamo detainees, however, the interests of justice undermined by domestic politics.

Khalid Sheikh Mohammed was indicted in 1996 in US federal court for his alleged role in the Manila air (or "Bojinka") plot to blow up a dozen US airliners over the Pacific, and was the subject of a reported US plan at the time of the indictment for the FBI to arrest him in Qatar and transfer him to the USA for trial.[20] He was eventually taken into custody in March 2003 in Pakistan. Rather than being extradited and brought to trial in the USA, however, he was summarily handed over to US agents and held in secret CIA custody for the next three and a half years and subject to enforced disappearance, torture and other cruel, inhuman or degrading treatment authorized at high levels of the US government.

On 6 September 2006, President George W. Bush announced that Khalid Sheikh Mohammed had days earlier been transferred to military detention in Guantánamo where he would face trial. He was eventually charged in February 2008 under the Military Commissions Act of 2008 with involvement in the attacks of 11 September 2001. These charges were pending against him and four other detainees at the time the Bush administration left office in January 2009. The cases sat in stasis for another 10 months until, on 13 November 2009, Attorney General Eric Holder announced that the five men "accused of conspiring to commit the 9/11 attacks" would be transferred for prosecution in federal court in New York, adding that their trials had been "too long delayed".[21] However, hopes have been dashed that the administration which ordered that the CIA's long-term secret detention facilities be closed would also act with urgency to release or bring to trial the individuals who had been held in them. Today, over seven months after the Attorney General's announcement – and over seven years after Khalid Sheikh Mohammed was taken into custody – the five men remain in Guantánamo along with more than 170 others.

Confirmation that the certainty of Attorney General Holder's November 2009 announcement had taken on an elastic quality came when he told the US Senate Judiciary Committee on 14 April 2010 that the administration was reviewing the question of where to prosecute the five detainees – in military commissions or in federal court – and that "no final decision has been made about the forum" in which they would be tried. He said "we expect that we will be in a position to make that determination, I think, in a number of weeks". What number he had in mind remains a mystery as the weeks have turned into months, leaving the USA on the wrong side of its obligation to bring these men to trial within a reasonable time or release them. There are suspicions now that, for political reasons, the administration may put off the decision until after the mid-term congressional elections in November 2010. This would deepen an already shameful state of affairs and cement a violation of the USA's international obligations.

The Obama administration has been in office for 17 months. Regardless of the failings of the previous administration, the USA's failure to ensure within a reasonable time fair trials or release of detainees labelled by the previous administration as "enemy combatants" is unacceptable. A fully functioning civilian judicial system, with the experience, capacity and procedures to deal with complex terrorism prosecutions, was available from day one. Military commissions should long ago have been abandoned in favour of this system.

PERPETUATING INJUSTICE

The words "effective remedy" are also being drained of meaning by the USA. As a state party to the ICCPR, the USA has undertaken to ensure that anyone whose rights under the treaty have been violated has an effective remedy. As Amnesty International has previously pointed out, this administration, like its predecessor, is blocking remedy for counter-terrorism abuses, in violation of the USA's obligations.[22] A recent example concerns Maher Arar.

On 14 June 2010, the US Supreme Court announced that it was refusing to consider the case of Maher Arar, a denial that gave the administration what it had asked for in a petition filed with the Court in May. The Supreme Court's failure to take the case means that the ruling of the US Court of Appeals for the Second Circuit is allowed to stand. In November 2009, the Second Circuit had dismissed the lawsuit brought by Maher Arar, a dual Canadian/Syrian citizen who was arrested at a New York airport in September 2002 while travelling on a Canadian passport en route home to Canada from vacation in Tunisia. After 12 days held incommunicado by the US authorities, he was sent, via Jordan, to Syria, where he was held for a year, including 10 months in a small underground cell. A Canadian judicial commission later concluded that he was subjected to torture during that time. His lawsuit claimed that the US officials conspired to send him to Syria for the purpose of interrogation under torture, and provided Syria with information and questions for the interrogation.

In the face of a dissent by four of the Second Circuit judges arguing that the ruling "risks a government that can interpret the law to suit its own ends, without scrutiny", the majority ruling stated that "it is for the executive in the first instance to decide how to implement extraordinary rendition, and for the elected members of Congress – and not for us judges – to decide whether an individual may seek compensation from government officers and employees directly, or from the government, for a constitutional violation".

The right to an effective remedy is recognised in all major international and regional human rights treaties. The UN Human Rights Committee has affirmed that this right can never be derogated from, even during times of national emergency. International law requires that remedies not only be available in law, but accessible and effective in practice. Victims are entitled among other things to equal and effective access to justice (including "effective judicial remedy") regardless of who may ultimately be responsible for the violation; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.[23] Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In its May 2010 petition to the US Supreme Court urging it not to take the Arar case, the Department of Justice argued that the lawsuit implicates "significant national security concerns", and judicial intervention would "call upon the courts to review sensitive intergovernmental communications, second-guess whether Syrian officials were credible enough for United States officials to rely on them, and assess the credibility of any information provided by foreign officials concerning [Maher Arar's] likely treatment in Syria, as well as the motives and sincerity of the United States officials who concluded that [he] could be removed to Syria consistent with Article 3 of the [UN Convention against Torture]".[24] The Second Circuit had properly concluded, the government brief went on, that this litigation would interfere with foreign relations and the government's ability to ensure national security.

Its litigation strategy to seek to block judicial remedy for human rights violations endured by such detainees leaves the impression that the protection of executive power and the promotion of immunity from real accountability to victims of human rights violations are being prioritized, just as they were under the previous administration. While far from satisfactory, now that it has successfully blocked judicial remedy for Maher Arar, there can no longer be any excuse for the total failure of US administrative and legislative authorities to take effective measures to meet its international obligations to victims of human rights violations for which the USA bears responsibility.[25] The current situation, with Maher Arar remaining entirely without effective remedy or reparation from any US authority, is flagrantly inconsistent with, and a continuing violation of, US human rights obligations.[26]

The occasion of the annual international day for victims of torture on 26 June would seem a particularly pertinent time for the USA to begin to end this remedy and accountability vacuum.[27] It is now seven years since President Bush marked this date in 2003 with a statement that amounted to rank hypocrisy:

> "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...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… The suffering of torture victims must end, and the United States calls on all governments to assume this great mission."

Three months earlier, Khalid Sheikh Mohammed had been subjected in secret US custody 183 times to the torture technique known as water-boarding. The secret detention program had been authorized by President Bush.

Without a doubt, there has been a positive change in tone on human rights and engagement with the international community under the Obama administration. The fact that the CIA program such as it was under the Bush administration is now believed to have been ended, and the agency's use of "enhanced" interrogation techniques stopped, is welcome. The fact is however, there has been zero accountability and remedy for the violations, including crimes under international law, committed under the program.

Responding to the recent events in his case, Maher Arar has told Amnesty International of his view that: "This Supreme Court decision, along with lower court's rulings, essentially gives the green light to the US administration to engage in torture without any fear of ever being prosecuted." Similar to what the administration has said in other litigation, and what the White House has stated in its May 2010 National Security Strategy, the Justice Department's brief to the Supreme Court on the Arar case asserted that the case did "not concern the propriety of torture or whether it should be 'countenanced' by the courts." Torture, it said, "is flatly illegal and the government has repudiated it in the strongest terms… The President has stated unequivocally that the United States does not engage in torture".

Amnesty International has welcomed the promises made by the Obama administration that it will not torture. This promise is not enough, however. The USA is obliged under international law not only to prevent those who act on its behalf from committing, participating in, tolerating, acquiescing in, or otherwise being responsible for any act of torture or other cruel, inhuman or degrading treatment, as defined under international law – as well as other human rights violations such as enforced disappearance, secret detention, and arbitrary detention – but to investigate and hold accountable those responsible for authorizing and carrying out such violations in the past, including by bringing those responsible for crimes under international law to justice.

In its National Security Strategy, the administration asserts that "We are working within the broader UN system and through regional mechanisms to strengthen human rights monitoring and enforcement mechanisms, so that individuals and countries are held accountable for their violation of international human rights norms." The USA's failure to ensure accountability and remedy for its own conduct is leaving its positive words on torture ringing somewhat hollow, as similar words rang hollow under the previous administration.

TIME TO ADHERE TO THE 'RULES OF THE ROAD'

The USA must review the full range of its conduct in the counter-terrorism context to ensure that its human rights obligations are being met. The Guantánamo detentions have become mired in a domestic US political context in which over the short-term it may seem less costly to invoke concepts such as "national security" or "global war" to justify deep departures from the USA's human rights commitments, than to confront and remedy the human rights violations of the past and present.

The USA should adhere to the "rules of the road" on human rights, not continue to undermine them via the distorting lens of its global "war" paradigm, under which domestic political considerations and sweeping and ever-growing national security arguments are being driven into a head-on collision with the universal principles of human rights, justice, and the rule of law.

[1] See, for example, USA: Undermining security: violations of human dignity, the rule of law and the National Security Strategy in 'war on terror' detentions, April 2004, http://www.amnesty.org/en/library/info/AMR51/061/2004/en
[2] National Security Strategy, http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf
[3] See, for example, USA: The promise of real change. President Obama's executive orders on detentions and interrogations, 30 January 2009, http://www.amnesty.org/en/library/info/AMR51/015/2009/en
[4] Assistant Attorney General David Kris Speaks at the Brookings Institution, Washington, D.C., 11 June 2010, remarks available at http://www.justice.gov/nsd/opa/pr/speeches/2010/nsd-speech-100611.html
[5] 2009 Human Rights Report: Egypt, available at http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136067.htm
[6] 2009 Human Rights Report: Malaysia, available at http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm
[7] "While some delay in fashioning new procedures is unavoidable, the costs of delay can no longer be borne by those who are held in custody. The detainees in these cases are entitled to a prompt habeas corpus hearing". US Supreme Court, *Boumediene v. Bush*, 12 June 2008
[8] USA: Detainees continue to bear costs of delay and lack of remedy. Minimal judicial review for Guantánamo detainees 10 months after *Boumediene*, April 2009, http://www.amnesty.org/en/library/info/AMR51/050/2009/en
[9] UN Human Rights Committee, *A v. Australia*, Communication No. 560/1993. UN Doc CCPR/C/59/D/560/1993 (30 April 1997), para. 9.5, emphasis added.
[10] Final report, Guantánamo Review Task Force, 22 January 2010, page 18, http://www.justice.gov/ag/guantanamo-review-final-report.pdf
[11] US considers partially lifting ban on transfers of detainees to Yemen. The Washington Post, 19 June 2010.
[12] Prior to this, he was held in Bagram air base in Afghanistan after being taken into US custody there in July 2002.
[13] *Obaydullah v. Bush*, Respondents' motion to dismiss the petition without prejudice, or alternatively, to hold the petition in abeyance pending completion of military commission proceedings. In the US District Court for the District of Columbia (DC), 12 November 2008.
[14] *Obaydullah v. Obama*, Motion to vacate the existing stay on the habeas petition, In the US District Court for DC, 24 February 2009.
[15] *Obaydullah v Obama*, Respondent's opposition to petitioner's motion to vacate the existing stay on habeas petition. In the US District Court for DC, 13 March 2009.
[16] *Obaydullah v. Obama*, Brief for the respondents-appellees, In the US Court of Appeals for the DC Circuit, 6 January 2010.
[17] See also, USA: More of the same: New Manual for Military Commissions confirms acquittal may not mean release, 29 April 2010, http://www.amnesty.org/en/library/info/AMR51/036/2010/en
[18] *Obaydullah v Obama*. US Court of Appeals for the DC Circuit, 18 June 2010.
[19] UN Human Rights Committee, General Comment 32 (2007).
[20] Richard A. Clark, *Against all enemies. Inside America's war on terror*. 2004. Free Press, p.152-153.
[21] Attorney General announces forum decisions for Guantánamo detainees, US Department of Justice, 13 November 2009, http://www.justice.gov/ag/speeches/2009/ag-speech-091113.html
[22] USA: Blocked at every turn: The absence of effective remedy for counter-terrorism abuses, November 2009, http://www.amnesty.org/en/library/info/AMR51/120/2009/en
[23] 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, General Assembly resolution 60/147 of 16 December 2005.
[24] *Arar v. Ashcroft*. Brief for John D. Ashcroft, former Attorney General, and the official capacity defendants in opposition. On petition for a writ of *certiorari* to the US Court of Appeals for the Second Circuit. In the Supreme Court of the United States, May 2010.
[25] In its brief to the US Supreme Court, the US administration asserted that the Court's refusal to take the case would not leave "executive power unbounded". It continued: "While the aggrieved party may have no private remedy for money damages, if the executive in fact has exceeded his appropriate role in the constitutional scheme, Congress enjoys a broad range of authorities with which to exercise restraint and balance" (Internal quote marks omitted).
[26] By contrast, Maher Arar was provided by Canada with a judicial inquiry and ultimately a formal apology from the government and monetary compensation for the responsibility of Canadian authorities in relation to his case.
[27] See, for example, 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