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***Responding to Accusations of Torture by the
United States at Guantanamo Bay***

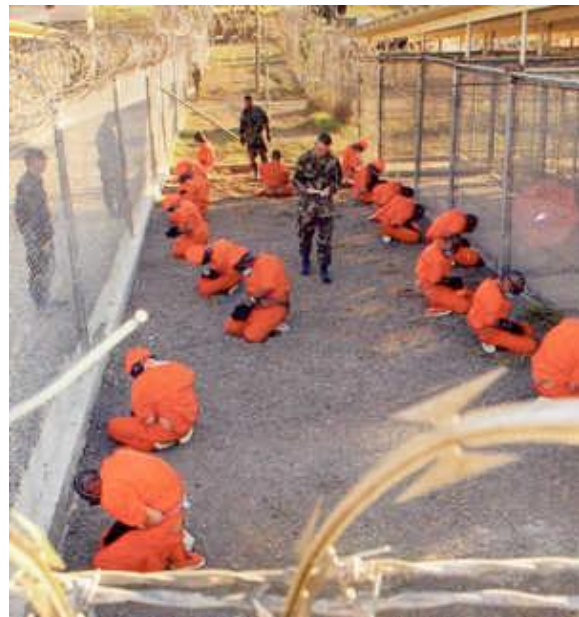
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Introduction: Torture remains a key issue for the international community. An accusation of torture by any UN member state naturally leads to detailed and public investigations. As a key bulwark of international law and humanitarian goals, the United Nations works to discourage torture by its member states. However, as an international organization with limited capability to enforce such international norms and laws over its sovereign member states, the UN is severely hindered in their authority and ability to prevent, investigate, and reprimand instances of torture conducted by states. Such is the case of the United States detention facility at Guantanamo Bay, Cuba, the center of the most controversial debate over the acceptability of torture in recent years.

Background: The United Nations has been focused on torture since the early 1980s and has developed and implemented treaties, conventions, and international committee dedicated to preventing, investigating and making restitution for torture. The ability for the international organization to implement and monitor such an integral part of international justice is critical to its effectiveness, authority, and legitimacy as an international organization.

The detention facility at Guantanamo Bay Naval Base, Guantanamo Bay, Cuba was established by President George W. Bush to keep suspected al Qaeda members captured during the invasion of Afghanistan. Guantanamo, located on the southern shore of Cuba, is held by the United States despite demands from the Cuban government for its return. The site was chosen by the administration because it was outside the territory of the United States, and ostensibly beyond the reach of the constitution and laws of the United States. In January 2002, the camp began to receive prisoners, who according to the United States administration also were not protected under the Geneva Conventions as they were terrorists, not enemy combatants, prisoners of war or civilians. At its peak in 2003-2006, some 740 prisoners were kept at several facilities in Guantanamo. Currently the United States has approximately 125 prisoners held there, in contravention of internal law.



By the beginning of 2003, reports were being made to the International Committee of the Red Cross (ICRC)—the repository of the Geneva Conventions—of physical and psychological abuse of “detainees” at the camp. These reports led to extended debate whether American

authorities were inflicting torture on prisoners, most notoriously waterboarding (simulated drowning), which White House lawyers maintained was not torture, ostensibly because medical supervision reduced the imminent risk of death. Practices included complete isolation, prolonged sleep deprivation, enforced nudity, prolonged exposure to extreme cold, prolonged exposure to painfully loud noise, chaining prisoners in painful “stress positions,” locking prisoners in simulated coffins, and waterboarding (simulated drowning).

Closely related was use of secret facilities to keep prisoners in other countries, including sites in Bulgaria and Romania. Best documented is the related practice of “extraordinary rendition”, where the U.S. Central Intelligence Agency would send prisoners to other countries to be tortured. Best documented was transfer of prisoners to Syria, where the United States cooperated with the government of President Assad.

These practices were justified by the fear of imminent threat of terrorist attack, and suspicion that terrorist suspects might be able to reveal clues related to possible attacks; ‘ticking bomb’ scenarios. Whether or not torture is an effective interrogation technique remains highly controversial. Critics maintain it usually is counterproductive, initially raising resistance and later eliciting only old and useless information or fabrications intended to end the pain. Advocates maintain that the possibility that it might work, and the danger of imminent terrorist attack, justifies continuing the practice. There are no documented examples of a terrorist attack revealed or thwarted by information recovered through torture. Successful interrogations were reportedly achieved at Guantanamo, but these relied on conventional interrogation practices stressing interrogator empathy and relationship-building.¹

Non-Governmental Organizations initiated civil suits to end abusive treatment. By 2004 reports of misconduct and the denial of basic legal rights had reached the domestic courts in the United States and by December of 2005, the U.S. Congress officially banned cruel, inhuman, and degrading treatment of all individuals in the custody of the United States.

The United Nations High Commissioner on Human Rights (UNHCHR), the UN’s human rights monitor, began investigating the treatment of prisoners in the camp in 2002 and in February 2006, released their 54 page special report based on its investigation into allegations of torture at the camp. The investigators reported violations of the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), all of while the United States has been a party. The report concluded with the recommendation that the United States close the detention facility immediately.

During his 2008 election campaign, then-Senator Obama pledged to close the prisons at Guantanamo. Subsequent efforts remove about 600 prisoners. Many released or transferred to other countries. Efforts bring remaining prisoners to the United States failed, due to strong partisan resistance in the U.S. Congress and state governments. Guantanamo prisons remain open, housing an estimated 140 prisoners.

¹ Eichenwald, Kurt. *500 Days: Secrets and Lies in the Terror Wars* (Touchstone/Simon & Schuster, 2012).

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Current situation: The international community, while concerned for the mistreatment of individuals, is on a different level concerned with how the Guantanamo Bay case will affect international order and justice. If the United States, despite the prominent role it played negotiating and its signature of the Geneva Conventions, is not only willing to conduct torture in disregard for their commitments, but also is able to do so without punishment from the international community, the authority of these agreements has been greatly weakened, created a precedent for other governments to engage in torture, and making it much harder for the international community to criticize governments who use torture.

Prominent NGOs such as Amnesty International, the Center for Constitutional Rights, and Human Right Watch consistently demand the facilities opened to lawyers, human rights monitors and family visitors. Other commentators have called for the trial and punishment of those responsible for what is now commonly understood as torture of prisoners at Guantanamo Bay.

Role of the United Nations and Major Resolutions: The Geneva Conventions of 1949 are the most notable treaties overseeing the treatment of prisoners of war, civilian affected by war, and people injured in war. Under Common Article 3, all Geneva Conventions are intended to apply under all conditions. As Chapter V, Article 25 of the United Nations Charter states, the United Nations is responsible for enforcing these all other legally binding international agreements. However, the UN rarely decides Geneva Convention violations, leaving these issues to be resolved by the International Committee of the Red Cross (ICRC), member states and national law.

This is not to say the UN has remained silent on the issue of torture however. UN has established the Committee Against Torture (UNCAT) which is comprised of 10 individuals from

various nation states working to implement the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* passed on 10 December 1984 as UN Resolution 39/42 and signed by all major international actors (Russia (then USSR), China, France, the US and the UK.

While the US administration argued prisoners were not entitled to the rights stated in the Geneva Convention, article two of the UN Convention Against Torture (CAT) to which the United States is a signatory clearly states that “no exceptional circumstances whatsoever, whether a state of war, internal political instability or any other public emergency may be invoked as a justification of torture.” In order to implement this international convention, the U.S. passed a domestic mandate criminalizing torture. In addition to monitoring the convention, the CAT also considers individual complaints, state to state complaints, as well as conduct inquiries on their own.

In addition, *UN Resolution 1985/33*, passed by the UN Commission on Human Rights established a special rapporteur to investigate instances of torture. There are three functions of the mandate:

- transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture;
- undertaking fact-finding country visits; and
- submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly.

It was under this rapporteur the allegations of abuse at Guantanamo Bay were investigated and exposed.

In 2002, the UN decided they needed a system of inspections in place in order to periodically investigate those committing or accused of committee torture. On 18 December 2002, the UN General Assembly passed *A/RES/57/199*, the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. This protocol essentially set the framework for implementing the original resolution. Among the 72 signatories (of whom 64 have ratified) to this treaty are France and the United Kingdom. However, China, Russia and the United States have not signed this protocol.

Country positions: Issues of torture, special rendition and the practices at Guantanamo Bay raise difficulties for the United Nations system. Overall, the overwhelming majority of member states strongly oppose torture under any circumstances and most also reject imprisoning anyone without due process of law. Under the precedence of the key agreements noted above, the UN system—lead by UNHCR—works where possible expose and discourage any practices that harm human rights under international humanitarian law and human rights law (IHL/HRL). UNHCR investigations have condemned some United States’ policies and actions.

Some of the most adamant demands to close the facility and formally abandon torture come some of the United States’ closest allies: especially European allies, most prominently the United Kingdom. German chancellor Angela Merkel has also taken a hard stance against the continued operations at the facility. The European Union and several Latin American governments also have pressed the United States to formally abandon the policies that supported detainment at Guantanamo. French and Swiss jurists have been very prominent in efforts to coordinate pressure against Guantanamo, detainment and torture. Most recently a French Judge requested access to

Guantanamo records in response to complaints of rape and torture by three French citizens while detained at Guantanamo Bay.²

Many other countries resist UN action on these issues. Other countries that stress the primacy of national sovereignty and the inviolability of national law within their own territory are critical of the role of the UN system in such matters. Led by China, Iran, Russia and Syria, they defend the right of states to act to aggressively to protect their security. African, Middle Eastern, and Asian countries are generally hesitant to see the UN involved in these issues. China, currently dealing with their own accusations of human rights issues, is signatory to a number of the same treaties banning the activities conducted at Guantanamo Bay, but has remained relatively quiet on the specific issues facing the United States.

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² "[French judge seeks access to Guantanamo over torture claims](#)," *Agence France-Presse*, 17 January 2012.

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