

Combating International Terrorism & Torture on Suspected Terrorists in the Form of ‘Enhanced Interrogation Techniques’: Is It Justified Under IHL & IL Discourse

Nighat Nazir

Law Department, International Islamic University Islamabad, Pakistan

Abstract: - U.S. counterterrorism operations are being carried out on an unprecedented scale. After the terrorist attacks of 9/11, the US administration declared a worldwide war on terrorism, involving open and covert military operations, new security legislation, efforts to block the financing of terrorism, and more. Criticism of the ‘War on Terror’ addresses the moral grounds, fiscal efficiency as well as other issues pertaining to the war. Even the phrase ‘War on Terror’ itself is labeled as a misnomer. The notion of war has proven highly contentious, with critics charging that participating States exploited it to pursue long-standing policy and military objectives and jeopardize civil liberties, thereby violating obligations under the Geneva Conventions and other international instruments. The U.S. government is accused of deliberately choosing Guantánamo as its prison place because it believes that foreign citizens detained there will be outside the domain of U.S. law and international obligations under various international instruments. The Article will narrate the basic concept of torture and its prohibition under international law. It also highlights the enhanced interrogation techniques used by CIA on the detainees, though the US Government banned these techniques 10 years ago. It will also demonstrate that utilitarianism¹ does not support the use of torture in any circumstances, not only because another method of interrogation is more effective, but also because the practice of interrogational torture undermines individual security. Finally, it concludes that utilitarianism demands the absolute prohibition of torture. A detailed analysis of the International law and international human rights instruments expounds that the US must provide fair trials in Courts to all terrorism suspects, ensure accountability of any violation of human rights and bring all national security policies in line with its obligations under International law.

I. INTRODUCTION

The institutionalization of torture by US officials under the Bush Administration since September, 2001. It was the severe violation of the constitution and the laws of United States and as well as the violation of International Law. The torture policy evolved by the Bush Administration in Global

¹Utilitarianism is an ethical theory that states that the best action is the one that maximizes utility

War on Terrorism, the Department of Defense ‘DOD’² and the Department of Justice ‘DOJ’³ played the key role for the enhancement of torture policy. The Administration developed the policy of institutionalized torture⁴ which euphemistically referred to as “enhanced interrogation” and by the practice of “extraordinary rendition”.⁵

The law Professor John Yoo served as deputy assistant attorney general in office of Legal Council (OLC) in the Department of justice. In very short span of time; he wrote memos pertaining to the president authority in encountering terrorism. It comprised assertions that the Geneva Conventions did not apply to al-Qaeda or Taliban fighters.

² US Department of Defense: Executive Department of the Government of United State charged with coordinating and supervising agencies and functions of the Government and directly concerned with National Security and United States Armed Forces.

³ United States Department of Justice (DOJ): The Federal executive Department of United State is responsible for the enforcement of law and administration of Justice. The Department is led by the Attorney General, who is nominated by the President and confirmed by the Senate and is a member of the Cabinet. The current Attorney General is Eric Holder

⁴Kathleen Clark, elaborates the issues raised related to the torture memorandum that In 2001, war on terror Bush Administration was searching for the place to imprison and interrogate the Al Qaeda alleged members beyond the jurisdiction of and the supervision of United States Courts. The torture policy is developed by the Bush Administration under the supervision of Department of Defense and the Department of Justice. The DOD believed that the Naval Base at Guantanamo Bay is best place to work so it ask to Justice Department office of Legal Counsel whether federal courts would entertain habeas corpus petitions filed by prisoners at Guantánamo, or whether they would dismiss such petitions as beyond their jurisdiction. In 28 December, 2001, OLC answered with detailed analysis that how federal courts were likely resolved the jurisdiction query. The Memorandum prepared by OLC which elucidate the arguments against such jurisdiction but it also provided credible strengths in the opposing position. For Details see Kathleen Clark, Ethical Issues Raised by the OLC Torture Memorandum, (Washington University in St. Louis School of Law- May26, 2006), PAPER NO. 06-05-02. Online Available at: <file:///C:/Users/sony/Downloads/SSRN-id901675.pdf>

⁵ M. Cherif Bassiouni, “*The Institutionalization of Torture by the Bush Administration is anyone Responsible?*” (Antwerp-Oxford-Portland: Intersentia 2010), 1-5.

According to memos, “American International Communications could be subject to National Security Agency in investigation without warrant.” In response domestic and international anti-torture laws only applied to a very small class of interrogation practices. These memos commonly referred to as the “Torture memos”, according to OPR (Office of Professional Responsibility) examined that John Yahoo and Jay Bee signed off on 2002 memos and violates the professional norms and standers.⁶

The Memorandum presented by Mr. Alberto Gonzales under the subject of Re-application of the Geneva Convention on Prisoners of war to the conflict with Al Qaeda and the Taliban. According to statement, war against terrorism is a new kind of war. It was not the traditional battle between nations adhering to the laws of war that formed the background for POWs⁷. The nature of new war places a high premium on others factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid future violence against American.⁸

II. DEFINITION AND LEGAL STATUS OF ‘SUSPECTED TERRORISTS’

In the ‘war on terror’⁹ more than thousands people captured by US army and detained to them in different secret black sites under US control.¹⁰ While during 2001 to 2010 and till now an estimated 150,000 to 200,000 persons are captured and more than 800 are still living the life of imprisonment in

⁶Nancy V. Baker, “*The Law: Who Was John Yoo’s Client? The Torture Memos and Professional Misconduct*”, (New Mexico State University- Vol. 40, No. 4 (December 2010), pp. 750-770.

⁷ Geneva Convention III on the Treatment of Prisoners of War 1949.

⁸ Mark Danner, “*Torture and Truth America, Abu Ghraib, and the war on Terror*” (London: Granta Book, 2004), 83-85.

⁹The term “war on terrorism” is used globally counterterrorism in response to the 9/11 attacks on United States. Its multidimensional campaign with limitless scope. The military dimension involved in major wars in Afghanistan, Iraq and Syria while its intelligence dimension comprised to increase funding of CIA and capture the suspected terrorists and investigate them in Guantanamo Bay. <https://www.britannica.com/topic/war-on-terrorism>

¹⁰As CIA (Central Intelligence Agency) coercive interrogation techniques some of which by any standard amount to torture against ‘high-value’ detainees have received official praise. While more than a dozen of the ‘disappeared’ detainees held in secret CIA prisons centers since late 2006 been transferred to Guantanamo, nearly forty or so persons whose identities human rights organizations made public remain unaccounted for. Many likely were sent home to an unknown fate. In short, the administration decried photographed abuses at Abu Ghraib while simultaneously conducting a program of organized coercive interrogation in offshore CIA detention facilities. These methods used at the known detention centers. Only the simple information has emerged about torture by the CIA in secret prisons so-called “black sites” outside the United States. And there torture inflicted on individuals which unlawfully rendered by the United States to other countries of the world such as Syria or Egypt. (See for details: ICRC, James Ross (James Ross is Legal and Policy Director at Human Rights Watch, New York), “Black letter abuse: the US legal response to torture since 9/11”, (Cambridge, September 2007), Volume 89, number 867. Online available at: <https://www.icrc.org/eng/assets/files/other/irrc-867-ross.pdf>) (Last accessed 10.08.2015)

Guantanamo bay. The astonishing fact is that after more than six years the fifteen men were brought to Guantanamo Bay and the prosecutors sought charges against them but the convicted only one.¹¹ So the legal question is raised here about the imprisonment life of suspected person. It’s a rule of law ‘A person is innocent before court until proven guilty’.

“The impartial term “suspected terrorist” poses initial problem, which arises less from the vague expression “terrorist” than from the qualification as “suspected” of being a terrorist. The difficulty raised by the term “suspected terrorist” lies in the assumption of an uncertified criminal charge, not based on disclosed evidence, which can’t be challenged before competent tribunal, unless the alleged terrorist is brought before court. All that can be known priori about a suspected terrorist” in the targeted killings during armed conflict, is that he or she may be either a person failing under the category of a combatant (a legitimate target as long as he is not hors de combat), or of civilian”.¹²

Although there is no one widely accepted definition of terrorism in international law. In that way, there are various diplomatic attempts are made and some are ongoing to draft a global convention about terrorism. Now the same difficulty lies with the term ‘suspected terrorists’ as its uncertified criminal charge which is not based on disclosed evidence and even can’t be challenged before competent tribunal unless alleged terrorists is brought before court. It’s a comprehensive definition of suspected terrorists which almost cover the whole topic and issues.¹³

¹¹ This report was written by Deborah Colson, senior associate, Human Rights First Law and Security Program, and Avi Cover former senior counsel of Human Rights First Law and Security Program. “Tortured Justice Using Coerced Evidence to Prosecute Terrorist Suspects” which is written on April 2008. Bush Administration asserted that the “enhanced” interrogation techniques program by central intelligence Agency is compulsory to protect and save the American lives. However some government officials warned that the CIA program is unlawful and inhuman. It would be complicated and possibly prevent the future prosecution. Online available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/08307-etn-tortured-justice-web.pdf> (Last accessed 03.07.2015).

¹²Celso Eduardo Faria Coracini, “Targeted Killing of suspected terrorists during armed conflicts: compatibility with the rights to life and to a due process?” He explains the term “targeted killing” includes assassination but it also refers to the unlawful killing of protected person no matter their political position. It is lethal attack on a person that is not undertaken on the basis that the person is concerned is combatant, but rather where a state consider a particular individual to pose a serious threat as a result of his or her activities and decides to kill that person even at a time when the individual is not engaged in hostile activities.

¹³In cases such as *Chahal v. United Kingdom* (1996) 23 E.H.R.R. 413, the European Court of Human Rights held that Article 3 obliged states not to remove a person to another state where he or she would face a real risk of torture or inhuman or degrading treatment or punishment (hereafter “torture”), notwithstanding any threat to public safety or national security. The decision sometimes made it hard case to deal with suspected terrorists, who could not always be convicted of criminal offences and in respect of whom investigation or restrictions on movement might not adequately protect public safety. David Feldman, “*DEPORTING SUSPECTED TERRORISTS TO FACE TORTURE*”, (The Cambridge Law Journal - July 2008), pp. 225 – 227. Online Available at: http://journals.cambridge.org/abstract_S0008197308000482

As international law defines only two categories of persons during armed conflict either a person is falling under the category of 'Combatants' or 'Civilian' so what about third category unlawful enemy combatants or suspected terrorists.¹⁴

1. Logic behind Torture & the "Torture Memos"

After 9/11 attacks, the Bush Administration played the very significant role to stop threat of future terrorist's attacks. The most important objective to create "the huge pressure to stretch the law and to give the power to President" thought necessary to gain vital intelligence. However, officials also worried that "criminal restrictions" would result in their actions subjecting them to future prosecution.¹⁵ It was the double pressure agitation behind the torture memos, not adopting enough protective measures to stop future attacks and equally present fear of doing too much end up before the court or grand jury lies beyond the controversial legal policy decisions of Bush Administration. As well as the approval of interrogation techniques which is known as "torture memos".¹⁶

Terrorist assaulted against United States, the President executed every tool of Intelligence toward the destruction and to defeat the global network of terrorism. During 'War on Terrorism' the CIA captured enemy combatants associated with terrorist activities. The CIA asked the U.S. Attorney General for legal advice about certain enhanced interrogation techniques which they wanted to use particularly on Al Qaeda combatants. The Attorney General handed over the responsibility to respond the request of OLC which is an office in the Department of Justice that answers legal questions arising within the Executive Branch. The OLC prepared a memo within a few days and submitted it to the CIA in August 2002. The memo which was written by OLC lawyer John Yoo was signed by the head of OLC at the time Jay Bybee. Although there were following OLC memos on the same or similar subjects, this particular memo has come to be known as the "Torture Memo" and is the focus of this Note. The label "Torture Memo" is of course, prejudicial but

¹⁴The Article 3 of the European Convention on Human Rights (ECHR) provides, 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' Obligations under Article 3 are absolute and non-derogable even in the occurrence of war or a public emergency threatening the life of the nation.¹⁴ European Convention on Human Rights, Article 3 Prohibition of torture, Online Available at: <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention_ENG.pdf>

¹⁵ See For Details: Jhon yoo's (Department of Justice) provided legal advice which supported presidential authority board on the issue of national security. This advice commonly known as "torture memos". NANCY V. BAKER, "The Law: Who was John Yoo's Client? The Torture Memos and Professional Misconduct", (New Mexico State University-2010)

¹⁶ See for details. A Research Project by Ms. krewer Department of Army Civilian, "The "Torture Memos": a failure of strategic leadership" USAWC Class of 2009.

nonetheless widely accepted. The Torture Memo was released to the public in early 2009.¹⁷

2. Torture in the Form of "Interrogation Techniques"

The practice of torture is prohibited almost in all comprehensive international human rights instruments.¹⁸ The extreme interrogation techniques that led to the abuses at Abu Ghraib were planned and implemented first at Guantanamo Bay and then exported to Iraq. The U.S government deliberately chose Guantánamo as its prison place because it believed foreign citizens detained there stood beyond the reach of U.S. law and international obligations under the Geneva Conventions and other international humanitarian and human rights law. The U.S. government intended that in Guantanamo camp prisoners would have no remedy to challenge his imprisonment in U.S. courts. Legal memoranda from reveal that the White House and the DOD wanted to know how far they could "legally" go in interrogating alleged terrorists. And the Guantanamo Bay was the perfect location to examine these limits.¹⁹

The U.S. Statute 18 United States Code §§ 2340 2340A (hereinafter the Torture Act). The Torture Act defines torture as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control. The Torture Act²⁰ further defines severe mental pain or suffering as:

¹⁷ Catharine Richmond, "Tortured Logic: Why Attempting to Punish the Authors of the "Torture Memo" Is Unprecedented and Unjustified". Online at: <<http://www.google.com.pk/url?sa=t&rc=j&q=logic%20behind%20torture%20memos%20pdf&source=web&cd=1&cad=rja&ved=0CCsQFjAA&url=https%3A%2F%2Ffojs.lib.byu.edu%2Fspc%2Findex.php%2FPrelawReview%2Farticle%2Fdownload%2F14203%2F14051&ei=0A32UbejK8SXO565gdgF&usq=AFQjCNG5ceL1IdmaX6ww6x6pPat-vmFkQ&bvm=bv.49784469,d.ZWU>> (Accessed 23.07.2015)

¹⁸ Paul Hoffman, "Human Rights and Terrorism" Human Rights Quarterly. VOL.26, No.4(Nov,2004), pp.932-955. Availbel at <<http://www.jsotire.org/stable/20069768>>

Laurel E. Fletcher, Eric Stover, "Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and their Impact on Former Detainees" (University of California, Berkeley: November 2008). "The New Paradigm" Online at: <http://www.law.berkeley.edu/files/IHRLC/Guantanamo_and_Its_Aftermath.pdf> (Accessed date: 24.08.2014).

²⁰Prisoners being interrogated in very different ways: Held in solitary imprisonment for periods more than a year; Deprived of sleep for days and weeks and in at least one case months; Exposed to prolonged temperature extremes beaten; Threatened with transfer to a foreign country for torture; Tortured in foreign countries or at U.S. military bases abroad before transfer to Guantánamo; Sexually harassed and raped or threatened with rape; Deprived of medical treatment for serious conditions, or allowed treatment only on the condition that they "cooperate" with interrogators; Regularly "short-shackled" (wrists and ankles bound together and to the floor) for hours and even days during interrogations. These aggressive interrogation techniques, when joined with the stress of indefinite arbitrary detention, which caused the prisoners tremendous psychological and physical injury. At least one prisoner nearly died during his interrogation process. See for details: Report on "Torture and Cruel, Inhuman, and degrading

“ The prolonged mental harm caused by or resulting from:

- a) The intentional infliction or threatened infliction of severe physical pain or suffering;
- b) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- c) The threat of imminent death;
- d) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.”²¹

Most prisoners live in unbearable condition. Most of them have serious untreated medical problems which are caused by living conditions or physical punishment. Some have lost their sanity. Numerous prisoners have tried to commit suicide and some of them multiple times.

3. Top Secret Enhanced Interrogation Techniques

Harsh interrogation techniques sanctioned by top officials of the CIA .According to ABC news has been told by former and current intelligence officers and supervisors disclose the specific details about techniques and their impact on confession. According CIA sources defined a list of six "Enhanced Interrogation Techniques" inaugurated in mid-March 2002 and used on a dozen top al Qaeda targets imprisoned in isolation at secret locations on military bases in regions from Asia to Eastern Europe. According to the official sources, only a handful of CIA interrogators are trained and authorized to use the techniques.²²

Treatment of Prisoners at Guantánamo Bay, Cuba” (Center for constitutional Rights: July, 2006). Online available at: <http://ccrjustice.org/files/Report_ReportOnTorture.pdf> (Last accessed date: 21.06.2015).

²¹18 United States Code § 2340 (1) (2004)

²²In new Enhanced interrogation, interrogator powerfully grabs the shirt front of the prisoner and shakes him. An open-handed slaps which causing pain and fear and hard open-handed slap to the stomach. The aim is to cause pain, but not internal injury. Doctors consulted advised against using a punch, which could cause lasting internal damage. In ‘Long Time Standing technique’ is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than 40 hours. Exhaustion and sleep deprivation are effective in yielding confessions. Apart from that the prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is extinguished with cold water. The harshest technique Water Boarding in which prisoner is bound to a persuaded board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner's face and water is poured over him. Inevitably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a stop. According to the sources, CIA officers who subjected themselves to the water boarding technique lasted an average of 14 seconds before caving in. They said al Qaeda's toughest prisoner, Khalid Sheik Mohammed, won the admiration of interrogators when he was able to last between two and two-and-half minutes before begging to confess. According to John Sifton with Human Rights Watch "The person

Since September 11, 2001, The Central Intelligence Agency (CIA) had been violently interrogating high value suspects and agency personnel became concerned about the possibility of prosecution for their actions. Believing that many "enhanced interrogation techniques" was essential to gathering information about a future terrorist strike. It wanted clarification on what standards of conduct from international and domestic law would apply to their interrogations of detainees suspected of being al-Qaeda members. The OLC also addressed the issue of legal immunity and defenses available to those who stepped over the line while questioning detainees (OLC 2002a).²³

In August, 2002, the OLC sent a memo to John Rizzo(acting general counsel of the CIA,) which address the question of "whether certain proposed conduct" in the interrogation of an al-Qaeda suspect Abu Zubaydah, then in detention,²⁴ "would violate the prohibition against torture" in U.S. law (OLC 2002b). This memo was also authored by Yoo and signed by Bybee, and formalized the oral advice that the OLC had already provided. It also symbolized as the Yoo II memo.²⁵

- The attention grasp consists of grasping the detainee with both hands. One hand on each side of the collar operating, in a controlled and quick motion. In the same motion as the grasp, the detainee is drawn toward the interrogator.
- During the walling technique, the detainee is pulled forward and then quickly firmly pushed into a flexible false wall so that his shoulder blades hit the wall. His head and neck are supported with a rolled towel to prevent whiplash.

believes they are being killed.it really amounts to a mock execution, which is illegal under international law.

Brain Ross and Richard Esposito, “CIA's Harsh Interrogation Techniques Described”, ABC News,Nov. 18, 2005
<http://abcnews.go.com/WNT/print?id=1322866>

²³Nancy V. Baker, “The Law: Who Was John Yoo's Client? The Torture Memos and Professional Misconduct”, (New Mexico State University- Vol. 40, No. 4 (December 2010), pp. 750-770.

²⁴ For details see: The CIA used ten techniques on Abu Zubaydah ,which listed as attention hold, walling, facial hold, insult slap, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in confinement box, and the waterboarding” (OLC 2002b, 2-4).The memo defined each of these techniques, Yoo referred to the CIA's statement that none of the military personnel subjected to these techniques as part of SERE training (survival, evasion, resistance, escape) had suffered severe or prolonged harm. Although they were not repeatedly exposed, and SERE did not include the technique called "insects placed in confinement box." After assessing each technique in light of the anti-torture law, Yoo determined, "Even when all of these methods are measured combined in an overall course of conduct, they still would not inflict severe physical pain or suffering" (OLC 2002b, 4-5, 11). The fact that Rizzo had consulted with interrogation experts and outside psychologists and had read relevant literature demonstrated "the presence of a good faith belief that no prolonged mental harm" would affect Zubaydah as a result of the interrogation process, including the use of waterboarding.

²⁵ Ibid

- The facial hold is used to hold the detainee's head fixed. The interrogator places an open palm on either side of the detainee's face and the interrogator's fingertips are kept well away from the detainee's eyes.
- With the facial or insult slap, the fingers are slightly spread apart. The interrogator's hand makes contact with the area between the tip of the detainee's chin and the bottom of the corresponding earlobe.
- In cramped confinement, the detainee is placed in a confined space, typically small or large box, which is usually dark. Confinement in the smaller space lasts no more than two hours and in the larger space it can last up to 18 hours.
- Insects placed in a confinement box involve placing a harmless insect in the box with the detainee.
- During wall standing, the detainee may stand about 4 to 5 feet from a wall with his feet spread approximately to his shoulder width. His arms are stretched out in front of him and his fingers rest on the wall to support all of his body weight. The detainee is not allowed to reposition his hands or feet.
- The application of stress positions may include having the detainee sit on the floor with his legs extended straight out in front of him with his arms raised above his head or kneeling on the floor while leaning back at a 45 degree angle.
- Sleep deprivation will not exceed 11 days at a time.
- The application of the water board technique involves binding the detainee to a bench with his feet elevated above his head. The detainee's head is immobilize and an interrogator places a cloth over the detainee's mouth and nose while pouring water onto the cloth in a controlled manner. Airflow is restricted for 20 to 40 seconds and the technique produces the sensation of drowning and suffocation.²⁶

The Bush Administration argument for authorization of harsh interrogation techniques can be traced to the legal memorandum that Assistant Attorney General Jay S. Bybee with co-wrote with Sir John Yoo in August 2002. The memo described that abuse does not rise to the level of torture under U.S. law unless such abuse inflicts pain like “equivalent in intensity to the pain accompanying serious physical injuries, such as organ failure, impairment of bodily function, or even death.” It was different from all previous definition of torture in International Law. As mental torture required in this legally uncertain view, suffering not just at the moment of infliction but lasting psychological harm, such as seen in mental disorder. An interrogator could know that his

²⁶ For details see the Special Review CIA (Central Intelligence Agency) Inspector General, “Counterterrorism Detention and Interrogation Activities (September 2001-October 2003) (2003-7123.IG)” 7 May 2004. Online available at: <<http://graphics8.nytimes.com/packages/pdf/politics/20090825-DETAIN/2004CIAIG.pdf>> (Last accessed date.11.01.2013).

actions could be the cause of pain but “if causing such harm is not the objective. He lacks the obligatory specific intention” to be found guilty of torture. The memo, in obvious disregard of the U.S.’s obligations under international law, also stated that domestic laws banning torture could not constitutionally be applied to interrogations ordered by the president in his capacity as commander-in-chief of the armed forces.²⁷

The Army’s Field Manual 34-52 (FM 34-52) governing interrogations have been consistent with prohibitions on torture and degrading treatment. The interrogation techniques outlined in the current FM 34-52 are all psychological, not physical, methods that focus on developing an emotional rapport with the prisoner.²⁸

III. SELECTED CASE STUDIES OF “ENHANCED INTERROGATION” TECHNIQUES

These selected cases elaborate the act of torture, cruel and inhuman degrading treatment or punishment which is committed by US military, intelligence personals and as well as by their superiors. These people were subjected to an extremely harsh detention regime characterized by ill treatment.²⁹ While torture and all these acts are prohibited under International law and US law.

1. The Case of Abu Zubaydah

Abu Zubaydah was captured in Faisalabad, Pakistan on March 28, 2002. Zubaydah, at 31-year-old Saudi-born Palestinian, who suffered several gunfire wounds during his arrest, was handed over to American agents and has been held in an undisclosed location.³⁰ The interrogation of Abu Zubaydah began with two FBI³¹ special agents who began an

²⁷ Louis –Philippe F.Rouillard, “Misinterpreting the Prohibition of torture under International Law: The Office of Legal Counsel Memorandum”, American University Law Review, Volume 21(2005),p.5-15

²⁸ See for details: Report on “Torture and Cruel, Inhuman, and degrading Treatment of Prisoners at Guantánamo Bay, Cuba” (Center for constitutional Rights: July, 2006). Online available at: http://ccrjustice.org/files/Report_ReportOnTorture.pdf (Last accessed date: 21.06.2014).

²⁹ Ibid

³⁰ For details see: U.S. Department of Justice began releasing a series of memos drafted under the direction of Bush administration lawyer John Yoo outlining U.S. legal justifications for coercive interrogation in Central Intelligence Agency (CIA) prisons On 16 April 2009. One of the most broadly cited of these memos, dated 1 August 2002, addressed to General Counsel John Rizzo of the CIA, and signed by Assistant Attorney General Jay Bybee, describes proposed CIA torture techniques for Zayn al-Abidin Muhammad Husayn (Abu Zubaydah), a prisoner who was shot and apprehended by the CIA in Faisalabad, Pakistan, in March 2002. Before being subjected to indefinite detention as a so-called enemy combatant in the U.S. prison at Guantánamo Bay, Cuba, Abu Zubaydah was tortured within the CIA’s offshore prison network: he was reportedly imprisoned in Thailand, Poland, Jordan, and Diego Garcia, among other locations. Neel Ahuja, “Abu Zubaydah and the Caterpillar” .Online Available at: http://socialtext.dukejournals.org/content/29/1_106/127.abstract

³¹ Federal Bureau of Investigation

interview process with him before CIA interrogators were available. From March to until June 2002, the FBI began a report-building method of dealing with Abu Zubaydah. According to Soufan FBI's top experts on Al-Qaeda and influent in Arabic, he and Steve Gaudin were able to gain the confidence of Abu Zubaydah with the use of proven FBI interrogation techniques. Under their supervision, Abu Zubaydah eventually identified Khalid Sheikh Muhammad as the mastermind behind the 9/11 attacks.³²

The arrival of CIA interrogators especially James Mitchell brought a radical change in the treatment of Abu Zubaydah. Soufan described the CIA's method of interrogation to be "borderline torture"³³ after observing a coffin like box that Mitchell had built for Abu Zubaydah. He objected directly to the CIA, but he was assured that the procedures used had been proved "at the highest levels".³⁴

The President Bush allegedly told CIA director George Tenet "I said "Abu Zubaydah" was important .You are not going to let me lose face on this, are you?" Tenet replied "No sir, Mr. President. Indeed President Bush mentioned the Abu Zubaydah interrogation specifically in his statement to the press after the decision of Hamadan case of Supreme Court in which he admitted the existence of CIA "black sites".³⁵ Abu Zubaydah was eventually weatherboard 83 times as an acknowledged by the CIA.³⁶ First, they beat him. As authorized by the Justice Department and confirmed by the Red Cross, they wrapped a collar around his neck and smashed him over and over against a wall. They forced his body into a tiny, pitch-dark box and left him for hours. They stripped him naked and suspended him from hooks in the ceiling. They kept him awake for days. And they strapped him

³² See for details: Mark Danner was a participant or observer in the following events: April to June 2002, Zubaydah interrogated, tortured by CIA interrogators in Thailand prison, which tactics to be used during investigation process. Available at: <http://www.historycommons.org/entity.jsp?entity=mark_danner_1>

³³ The most powerful army in the world is subjecting a person to brutal treatment that qualifies as "borderline torture". For example it is "borderline torture" to keep the person in animals caged in extreme small quarters.

³⁴ See for details: OIG Report, Office of the Inspector General's (OIG) recent report on the Federal Bureau of Investigation's (FBI) involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq..

³⁵ See for details: Transcript, "President Bush's speech on Terrorism". *The New York Times*, September 6, 2006.

³⁶ See for details: According to CIA Abu Zubaydah and Khalid Sheikh Muhammad are representative of special types of detainees whom water boarded and they were Osama Bin Laden's key lieutenants." Indeed, Zubaydah -was al Qaeda's third or fourth highest ranking member and had been involved in every major terrorist operation carried out by al Qaeda." Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General Office of Legal Counsel, Re: Interrogation of al Operative at 7 aAugust, 2002. Abu Zubaydah involvement in the September 11 attacks. After his capture on March 27, 2002, Zubaydah became the most senior member of al Qaeda in United States custody have close relationship with Osama Bin Laden. Available at: <http://www.irishtimes.com/focus/2009/cia_memo1/index.pdf> (Last accessed 12.08.2012)

to an inverted board and poured water over his covered nose and mouth to "produce the sensation of suffocation and incipient panic "Eighty three times".³⁷

According to President Bush, the agency developed an "alternative set" of, tough interrogation techniques, and put them to use on Zubaydah and other HVDs.³⁸ Though virtually all of the techniques that were used on Zubaydah remain classified, CIA Director Michael Hayden confirmed that water boarding was used on Zubaydah. Assistant Attorney General for the Office of Legal Counsel (OLC) Steven Bradbury testified before Congress that the "CIA's use of the water boarding procedure was adapted from the SERE training program".³⁹

Joseph Margulies, a law professor at Northwestern University and Abu Zubaydah's defense counsel wrote in newspaper editorial:

*"Today, he suffers blinding headaches and permanent brain damage. He has an excruciating sensitivity to sounds, hearing what others do not...partly as a result of injuries he suffered while he was fighting the communists in Afghanistan, partly as a result of how those injuries were exacerbated by the CIA and partly as a result of his extended isolation, Abu Zubaydah's mental grasp is slipping away."*⁴⁰

2. Khalid Sheikh Muhammad

Khalid Sheikh Muhammad is commonly known by media the highest level detainee in U.S. custody and according to 9/11 commission, he was the principle designer of 9/11 attacks. Muhammad was captured in Pakistan in March 2003, and kept by CIA "Black Sites" for over three years until his transfer to Guantanamo Bay in September 2006. Khalid Sheikh Mohammed, the self-confessed mastermind of the September 11 attacks, alleged to the ICRC that on several occasions the water boarding was stopped "on the intervention of a health person who was present in the room each time this procedure was used". Mohammed, who begged guilty last year to the September 11 attacks, said he gave a lot of false information during the harshest period of his interrogation.⁴¹ "I am sure

³⁷ Joseph Margulies, "Abu Zubaydah's Suffering" *Los Angeles Times*, April.30, 2009.

³⁸ High value Detainees

³⁹ Report, "Inquiry into the Treatment of Detainees in U.S. Custody" report of the Committee on Armed Services United States Senate, Nov.20, 2008, at 16-18.

⁴⁰ Joseph Margulies, "Abu Zubaydah's Suffering" *Los Angeles Times*, April.30, 2009.

⁴¹ As far as the interrogation process is concerned, according to ICRC report the Mr. Khalid Sheikh Muhammad describe the method of ill-treatment used in his third place detention: "I would be strapped to a special bed, which can be rotated into a vertical position. A cloth would be placed over my face .water was then poured onto the cloth by one of the guards so that I could not breath. This obviously could only be done for one or two minutes at a time. The cloth was then removed and the bed was put into

that the false information I was forced to invent in order to make the ill-treatment stop wasted a lot of their time and led to several false red-alerts being placed in the US".⁴² He told the Red Cross.

I was told that they would not allow me to die but that I would be brought to the 'verge of death and back again' Khalid Sheikh Mohammad.⁴³ On September 6, 2006, President Bush publicly announced that fourteen "high value" detainees had been transferred from the High Value Detainee Program run by the Central Intelligence Agency (CIA) to the custody of the Department of Defense (DOD) in Guantanamo Bay. These fourteen detainees were reportedly held in the CIA detention program from the time of their arrest to hold in unclosed detention.⁴⁴

During the harshest period of interrogation he provided the false information in order to satisfy the interrogators and stop the ill-treatment. According to him "I later told the interrogators that their method were stupid and counterproductive. I am sure that the false information I was forced to invent in order to make the ill-treatment stop wasted a lot of their time and led to several false red alerts being placed in the US."⁴⁵

3. Binyam Mohamed

Binyam Muhammad was born in Ethiopia and he came to Britain in 1994 seeking political asylum. He was arrested in Pakistan in April 2002 and two years later, he was taken to Guantánamo on 19 September 2004. He was detained as a suspected enemy combatant by the US Government in Guantanamo Bay prison between 2004 and 2009 without

vertical position. The whole process was then repeated during about 1 hour. Mark Danner, "Torture And Truth America, Abu Ghraib, and the War on Terror" ,Memo: President Bush on Humane Treatment of Al-Qaeda and Taliban Detainees, Feb 7,2002.(Grant Publication:2004),105-106

⁴² M. Cherif Bassiouni, "The Institutionalization of Torture by the Bush Administration is anyone Responsible?" Interrogation Techniques, (Antwerp-Oxford-Portland: Intersentia 2010), 63-64.

⁴³ International Committee for the Red Cross, ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody.Feb.14, 2007.

⁴⁴For further Details: the main motive of ICRC to recognizes the right to US authorities to take measures to address the legitimate security concerns, including the detention program and interrogation of individual suspected terrorists which are posing to be a threat to national security .However, the ICRC believes that the US authorities can achieve these objectives by respecting its obligation and historical commitments and respect to International Law.The general term "ill treatment" has been used throughout; however it should in no way be understood as minimizing the severity of the condition and treatment to which the detainees were subjected. Indeed, as concluded by this report, the ICRC clearly considers that the allegation of the fourteen include description of treatment and interrogation techniques –singly or in combination-that amounted to torture and or cruel, inhuman or degrading treatment.

⁴⁵ International Committee for the Red Cross, ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody.Feb.14, 2007.

charges. During this period he was allegedly subjected to rendition to Morocco where he was held for 18 months then he transferred to the CIA-run "Dark Prison" in Kabul in Afghanistan.⁴⁶

"Binyam Mohamed's lengthy and brutal experience in detention weighs heavily with the Court... Binyam Mohamed's trauma lasted for two long years. During that time, he was physically and psychologically tortured. His genitals were mutilated. He was deprived of sleep and food. He was summarily transported from one foreign prison to another. Captors held him in stress positions for days at a time. He was forced to listen to piercingly loud music and the screams of other prisoners while locked in a pitch-black cell. All the while, he was forced to inculcate himself and others in various plots to imperil Americans. The Government does not dispute this evidence."⁴⁷

Binyam Mohamed alleged that charges of terrorist offenses in the United States were based on confessions. He was detained as a suspected enemy combatant by the US Government in Guantanamo Bay prison between 2004 and 2009 without charges and further asserted that those confessions were tempted by torture whereas detained in Pakistan and Morocco. He challenges that throughout his six-year detainment he was beaten sleep deprived threatened with

⁴⁶ Report, "Torture and rendition: Guantánamo case profiles" (9 January 2012), Online available at: <<http://www.amnesty.org/en/news/guantanamo-case-profiles>>(Last accessed date, 14.05.2011).

⁴⁶ He claims that he was tortured in Pakistan, Morocco and Afghanistan between 2002 and 2004 including being beaten and scalded and having his penis slashed with a blade. He claims he was transferred to an alleged CIA-run site in Kabul, Afghanistan. Where he was held in a black hole at the "Prison of Darkness" and deprived from sleep, irritated with loud sound, starved and then beaten and hung up. When the UK government declined, his lawyers started High Court proceedings on 6 May 2008 culminating in a February 2009 ruling that referred to the claims of torture. Judges refused to order the disclosure of a summary of US reports on his detention, citing a threat to US intelligence-sharing with Britain - although the foreign secretary said there had been no such threat and the UK "never condoned torture". Online available at: <<http://news.bbc.co.uk/2/hi/7906381.stm>> (Last accessed date, 25.09.2014).

⁴⁷ He claims that he was tortured in Pakistan, Morocco and Afghanistan between 2002 and 2004 including being beaten and scalded and having his penis slashed with a blade. He claims he was transferred to an alleged CIA-run site in Kabul, Afghanistan. Where he was held in a black hole at the "Prison of Darkness" and deprived from sleep, irritated with loud sound, starved and then beaten and hung up. When the UK government declined, his lawyers started High Court proceedings on 6 May 2008 culminating in a February 2009 ruling that referred to the claims of torture. Judges refused to order the disclosure of a summary of US reports on his detention, citing a threat to US intelligence-sharing with Britain - although the foreign secretary said there had been no such threat and the UK "never condoned torture". Online available at: <<http://news.bbc.co.uk/2/hi/7906381.stm>> (Last accessed date, 25.09.2014).

rape, electrocution and death forced to listen to loud music day and night and subjected to incisions made by scalpel on his body and genitals. His both civil and criminal cases were dismissed to ensure that the evidence of torture was not utilized moreover for or against him. In the English proceedings the central issue is the existence and disclosure of forty-two documents comprising information given to the English Security Service by U.S. intelligence services.⁴⁸

Mohamed requested that these documents from the British government for his defense against charges in the United States. The courts in the United States ordered disclosure of the forty-two documents in their entirety to Mohamed's lawyers. Despite the release of the documents, the United States government continued to discourage the English courts from releasing any of the information to Mohamed in open judgment and repeatedly threatening to reconsider the intelligence relationship between the two countries. Ultimately, the English Court of Appeal decided to release a seven paragraph redacted summary of the documents despite objections from the United States in 2010.⁴⁹

Mohamed was held incommunicado by Pakistani officials for three months and during this time he claims that he was mistreated. Subsequently, in July 2002 Mohamed asserts he was the subject of an American "extraordinary rendition" process from Pakistan to Morocco where he was detained for eighteen months and declaims that he was subjected to torture and cruel, inhuman or degrading treatment by Moroccan authorities throughout his imprisonment. Mohamed was again rendered to Kabul in January 2004 where he claims further mistreatment, and finally was transferred to Guantanamo Bay, Cuba in September 2004.⁵⁰

4. Abd Al-Rahim Al-Nashiri

Abd Al-Rahim Al-Nashiri was a Saudi national and suspected member of al-Qaeda. He was alleged mastermind

⁴⁸ In the proceedings by Farhi Saeed Bin Mohamed the USA Government was required to address both federal and international law about the acceptability of evidence obtained by torture and evidence acquired from an individual who had been tortured prior to providing the evidence upon which the Government intended to rely. In response the Government represented that it "recognizes torture to be abhorrent and unlawful, and unequivocally adheres to humane standards for all detainees...consistent with these policies and with the treaty obligations imposed by the Convention on the United States as a State Party, the Government does not and will not rely on statements it concludes were procured through torture in the Guantanamo habeas litigation".p.58.online available at: <<http://www.statewatch.org/news/2010/feb/uk-usa-binyam-mohamed-judgment-10-2-01.pdf>> (Last accessed 23.08.2015)

⁴⁹ Binyam Mohamed was initially charged under the United States Military Commissions Act with terrorist offenses including a dirty bomb plot in part relating to confessions he made while at Bagram Airbase in Kabul and at Guantanamo Bay. Particularly, the United States alleged Mohamed received Al Qaeda training in Afghanistan and conspired to detonate a radioactive dirty bomb in the United States. The United States dropped all charges against Mohamed in October 2008 and finally released him in February 2009. Online available at: <https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/34_esupp/07_mehalko.pdf>(Last accessed 24.08.2015)

⁵⁰ Ibid.

behind the bombing of the U.S.S Cole Naval Destroyer off the coast of Yemen. He is arrested by the special agents of CIA in the United Arab Emirates in November 2002. During his allegation he was held in secret "black sites" and then he moved to Guantanamo. According to U.S officials charge that he developed close connections to most senior al-Qaeda members and grew to have a long history of jihadist activity.⁵¹ According to CIA acknowledgement Al-Nashiri was the third detainee who was waterboarded along with Abu Zubaydah and Khalied Sheikh Muhammad during his investigation. Official U.S. government documents state that —

[t]he interrogation team continued [enhanced interrogation techniques] on al Nashiri for two weeks in December 2002. The documents include a list of 10 —enhanced interrogation techniques that the CIA used on its prisoners. These include: attention grasp (grabbing the detainee with both hands and yanking him towards the interrogator); walling (pulling the detainee forward and then pushing him into a flexible false wall); facial hold (holding the detainee's head immobile by placing an open palm on either side of the detainee's face); facial or insult slap (slapping the detainee's face); cramped confinement (imprisoning the detainee in a small dark box); insects (placing a harmless insect in the small dark box with the detainee); wall standing (making the detainee stand 4 to 5 feet from a wall with his arms stretched out in front of him and his fingers resting on the wall to support all of his body weight); stress positions (including having the detainee sit on the floor with his legs extended straight out in front of him with his arms raised above his head or kneeling on the floor while leaning back at a 45 degree angle); sleep deprivation (not exceeding 11 days at a time); and water boarding.⁵²

In each case, everyone to be suffocated and was strapped on sloping bed. A cloth was placed over the face which covered the nose and mouth of detainee and then water poured continuously on the cloth. And by blocking off any air the person could take the breath. By this form of suffocation persuade a feeling of panic and acute impression of death. During this process interrogator removed the cloth and the bed was rotated into a head-up and vertical position so that the person was left hanging by the straps. The procedure was

⁵¹ <<http://worldnews.about.com/od/terrorism/p/Abd-Al-rahim-Al-nashiri.htm>> (Last accessed date, 25.07.2014)

⁵² Al-Nashiri v. Poland, online available at: <http://www.opensocietyfoundations.org/sites/default/files/echr-al-nashiri-application-20110506.pdf> (Last accessed date, 23.08.2011).

repeated at least twice during single interrogation session. Beside this process of investigation, he was apprehended in the prolonged stress standing and his ankles and legs swelled in the result of continues forced standing with their hands shackled above his head.⁵³

A heavily redact transcript of a 2007 closed proceeding held in Guantánamo Bay reveals that Mr. al Nashiri said: "From the time I was arrested five years ago, they have been torturing me. It happened during interviews. One time they tortured me one way and another time they tortured me in a different way. Mr. Al-Nassir's own descriptions of the torture methods applied on him by the U.S Government are blacked out in the transcript. He does, however, state: Before I was arrested I used to be able to run about ten kilometers. Now, I cannot walk for more than ten minutes. My nerves are swollen in my body."⁵⁴

Al-Nashiri has stated that any self-incriminating evidence while his detention was entirely the result of torture. In February 2009, all charges against Al-Nashiri were dropped without prejudice when President Obama suspended the military commission for further review. Mr. Al-Nashiri was detained at the secret detention facility he was subjected to a wide range of abusive interrogation methods including hooding, prolonged stress positions, mock executions using a handgun and a power drill, shackling, and threats of sexual violence to his family. These techniques were specifically designed to extract information by inflicting psychological and physical suffering on Mr. al-Nashiri.⁵⁵

5. Mohammad Al-Qahtani

Mohammad Al-Qahtani is thought to have been missing 20th hijacker of 9/11 attacks. After being rejected entry into U.S. in August 2001, he went to Pakistan, where he was captured in December 2001 and eventually sent to Guantanamo Bay. The U.S. military transferred Mohammed al Qahtani to Guantánamo in January 2002 and immediately

began interrogations and applying the routine tactics in use at Guantánamo during that time. By July 2002, however, agents from the FBI also started interrogating Mr. al Qahtani. Military intelligence interrogators then began using methods against Mr. al Qahtani that became increasingly aggressive on or around August 2002.⁵⁶

At some point in early September 2002, military intelligence personnel at Guantánamo began planning a new, more aggressive interrogation regime for Mr. al Qahtani. Military intelligence officials wanted to apply the training tactics used in the "SERE" program, the Survival, Evasion, Resistance and Escape training program for U.S. Special Forces. The SERE program is designed to teach U.S. soldiers how to resist torture techniques if they are captured by enemy forces. In Guantánamo, though, military intelligence officials wanted to use the training methods as interrogation techniques against Mr. al Qahtani and others. The SERE training program involves forms of torture such as religious and sexual humiliation, and waterboarding.⁵⁷

According to a DOD interrogation log which has been made public, Al-Qahtani had been subjected to 160 days of isolation in a pen perpetually flooded with artificial light. He was interrogated on 48 of 54 days, for 18 of 20 hours at a stretch. He was stripped naked; straddled by taunting female guards, in a exercise called "invasion of space by a female;" forced to wear women's underwear on his head and put on a bra; threatened by dogs; placed on leash; and told that his mother was a whore. Al-Qahtani was also subjected to a phony kidnapping, deprived of heat, given large quantities of intravenous liquids without access to a toilet, deprived of sleep and forced to undergo an enema. At one point, Al-Qahtani's heart rate had dropped so precipitately, to 35 beats a minute, that he required cardiac monitoring.⁵⁸

⁵⁶ M. Cherif Bassiouni, "The Institutionalization of Torture by the Bush Administration is anyone Responsible?" *Interrogation Techniques*, (Antwerp-Oxford-Portland: Intersentia 2010), 64-65.

⁵⁷ As Military intelligence interrogators began using aggressive interrogation techniques against Mr. al Qahtani on November 23, 2002. Details of his interrogation regime officially known as the "First Special Interrogation Plan," emerged when a military interrogation log for Mr. al Qahtani was disclosed from Guantánamo. The log describes six weeks of physical and psychological interrogation methods that involved prolonged sleep deprivation painful stress positions physical abuses sexual physical psychological and religious humiliation the use of military dogs and sensory overstimulation. According to some news accounts, Mr. al Qahtani endured at least 160 days of severe isolation in a cell constantly flooded with light with much of this time also including interrogations using aggressive tactics as part of the First Special Interrogation Plan. . Online available at: http://ccrjustice.org/files/Publication_DeclarationonAlQahtani.pdf (Last accessed date 27.03.2014)

⁵⁸ At Guantánamo, Mohammed al Qahtani was subjected to a regime of aggressive interrogation techniques, known as the "First Special Interrogation Plan," that were authorized by U.S. Secretary of Defense Donald Rumsfeld. Those techniques were implemented under the supervision and guidance of Secretary Rumsfeld and the commander of Guantánamo Major General Geoffrey Miller. These methods included, but were not limited to forty-eight days of severe sleep deprivation and 20-hours interrogations like forced nudity sexual humiliation religious humiliation physical force prolonged stress positions and prolonged sensory overstimulation and threats

⁵³ See for details: International Committee of the Red Cross Report, "ICRC Report on the Treatment of the fourteen "High Valued Detainees" in CIA Custody" Washington 14 february,2007,WAS 07/76. According to the report of International Committee for the Red Cross (ICRC), Mr. Al-Nashiri and thirteen others high-value detainees held in different places during their detention. According to him all fourteen men are being subjected torture and ill-treatment, particularly from the early stages of their detention. They are ill-treated physically and psychologically. They want to extract information by ill-treatment. The torture regime began quickly after arrest, and included transfers of detainees to numerous locations. The solitary confinement and incommunicado detention remain continues throughout the entire period of their unclosed detention.

⁵⁴ Al-Nashiri v. Poland, online available at: <http://www.opensocietyfoundations.org/sites/default/files/echr-al-nashiri-application-20110506.pdf> (Last accessed date, 23.08.2011).

⁵⁵ Ibid.

Mr. al Qahtani did not receive any therapeutic medical evaluation of and treatment for the physical or psychological injuries for this abuse. He is continuously suffered from ongoing psychological pain and suffering from his torture and cruel, inhuman and degrading treatment. Despite of all evidences of torture and abuse bt U.S officials, accountability has never been held against those officials.⁵⁹

6. Omar Khadr

The young children less than 18 years have been subjected to “enhance interrogation” techniques and prolonged detention. According ‘ to the report of Washington Post’ that the Bush Administration in accordance with its obligation under the United Nation Committee on the rights of the child the U.S. confessed that almost 2,500 juveniles detained between 2002 to 2008 on “war on terror”.⁶⁰ Omar Khadr twenty one-year-old Canadian citizen was detained at Bagram Air Base in Afghanistan, before being transferred to Guantánamo in October 2002. He was 16 years old when he was taken to Guantanamo. Now in his sixth year of imprisonment Khadr has spent more than quarter of his life in Guantanamo Bay. In November 2007, Khadr was accused the charges of attempted murder providing material support for terrorism and spying. He is accused of killing an American soldier with a hand grenade during combat with U.S. forces in Afghanistan in 2002. If Khadr’s trial proceeds he will be the first juvenile in recent history to be tried for war crimes by any western nation, including the United States.⁶¹

with military dogs. The aggressive techniques were standing alone and in combination which brought the result of severe physical and mental pain and suffering. Online available at: http://ccrjustice.org/files/Publication_DeclarationonAlQahtani.pdf (Last accessed date 27.03.2015).

⁵⁹ Ibid.

⁶⁰ The U.S. has detained approximately 2,500 juveniles younger than 18 years as enemy combatants in Iraq Afghanistan and Guantanamo Bay since 2002. According to public report the American Civil Liberties Union say that al detained juveniles were “engaging in anti-coalition activities” .according to report eight juveniles were brought to Guantanamo Bay since 2002 which have been captured age of 13 to 17. Although there are no juveniles in prisoner camp Cuba. Beside this two people Omar Khadr and Mohammad Jawad were come under the age of 18 and both were faced the military commission trail. See Walter Pincus, “U.S. Has Detained 2,500 Juveniles as Enemy Combatants”, The Washington Post May 15, 2008. Online available at: http://articles.washingtonpost.com/2008-05-15/world/36885281_1_juveniles-detention-child-soldiers (Last accessed 25.04.2016).

⁶¹ Omar Khadr was born on September 19, 1986 in Toronto, Canada. At age of 10 years, Omar Khadr moved with his family to Jalalabad in Afghanistan. On July 27, 2002, at 15 years of his age, Omar Khadr was captured by the US military in Afghanistan after a battle where he was severely wounded. Omar Khadr was held and interrogated for over two years without being officially charged. He was formally recognized by the United Nations as a child soldier in 2010. He was the first child condemned for war crimes since the Nuremberg Tribunal defined the concept after WWII. He remains the youngest person and the only Western citizen who detained to Guantanamo Bay.

Online details are available: <http://www.weareomarkhadr.com/files/ADecadeOfInjustice.pdf> (Last accessed 11.01.2016).

Omar Khadr’s case is unique by the following reasons:

- Omar was the first person in modern history to face a military commission for alleged crimes committed as a child.
- He is the youngest prisoner held in extrajudicial detention by the United States.
- Canada has refused to seek extradition or repatriation despite the urgings of Amnesty International, UNICEF, Lawyers against the War, Lawyers Rights Watch Canada, the Canadian Bar Association⁴ and many Canadian jurists, social justice advocates and Members of Parliament.
- Omar is the only Western citizen who remains at Guantánamo Bay for a long period of time.⁶²

The 15-year-old Canadian Omar Khadr was brutally attacked and wounded by shot in the back and captured by US Armed Forces in Afghanistan in 2002. He had two wide holes in his chest which were caused by being shot twice in the back 5 shrapnel wounds to several areas of his body including his left eye. Unconscious, he was airlifted and initially detained at Bagram Air Base, where he received medical attention. He was interrogated approximately a week later after regained his consciousness and remained stretcher bound for several weeks. Omar remained at Bagram for three months during which time he was forced to perform extensive labour by American soldiers. On October 2002, he was transferred to Guantánamo Bay Where he is interrogated by U.S. officials.⁶³ At the Bagram Air Base U.S. officials tortured the severely wounded Omar Khadr, day in day out for months until he admitted everything they wanted to hear. Then the US locked him in the notorious Guantanamo Bay prison for the next 10 years.⁶⁴

⁶² This report was written by Deborah Colson, senior associate, Human Rights First Law and Security Program, and Avi Cover former senior counsel of Human Rights First Law and Security Program. “Tortured Justice Using Coerced Evidence to Prosecute Terrorist Suspects” which is written on April 2008. Online available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/08307-etn-tortured-justice-web.pdf> (Last accessed 03.03.2015)

⁶³ At Guantanamo Bay prison U.S. Armed Forces officials have held Omar “virtually incommunicado” means no access to outsiders and in solitary confinement for over 3 years period of time. Omar was not permitted any contact with a lawyer until November 2004. During his imprisonment Omar suffers from depression persistent body pain loss of vision in his left eye blurred vision in his right eye shortness of breath the sensation of being unable to get enough oxygen and a ‘significant mental disorder’ attributed to his treatment during detention. He has difficulty breathing and stomach problems which he attributes to the food. Fara McLare, “Omar Khadr The continuing scandal of illegal detention and torture in Guantánamo Bay”, (Prepared for Lawyers Rights Watch Canada-2008), 5. Online available at: http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Omar.Ahmed_.Khadr_.Fact_.Summary.June_.1.08.pdf (Last accessed 15.06.2016).

⁶⁴ See for details: Fact sheet of Omar Khadr (26) is back in Canada, after 10 years of mistreatment in the notorious Guantanamo Bay prison. In Canada is his position hardly improved? <http://freedomarkhadr.files.wordpress.com/2012/09/2013-0207-fact-sheet-omar-khadr31.pdf> (Last accessed 18.06.2017).

The Pentagon formally charged the Canadian citizen Omar Khadr with Murder by an Unprivileged Belligerent an Attempted to murder and Aiding the Enemy and Conspiracy with Usama bin Laden Ayman al Zawahiri Sayeed al Masri Muhammad Atef Saif al adel Ahmed Said Khadr and various other members of the al Qaida organization on November, 2005. The United States informally indicated they would not seek the death penalty for Khadr.⁶⁵

- U.S. Armed Forces personnel have subjected to torture and inhuman and degrading treatment Omar Khadr throughout his imprisonment and to a horrifying variety of illegal treatments. Reported abuses to which he has been subjected include:
- Short shackled wrists and ankles tied together and the cuffs bolted to the floor and his hands tied above a door frame for hours and had cold water thrown on him.
- A bag placed over his head and was threatened with military dogs and forced to carry 5-gallon pails of water to aggravate his shoulder wound.
- Keep in solitary confinement for a month at 'refrigerator' temperatures (referred to in Secretary of Defense Rumsfeld's memorandum as 'manipulation of the environment')
- Forced to perform painful exercises while short shackled and threatened with forced nakedness forced to urinate on him while in stress positions.
- Keep in solitary imprisonment forced into stress positions for periods of hours, e.g. forced to lie on his stomach with hands and feet cuffed together behind his back.
- Forced to provide involuntary statements forced to sit during interrogations on an extremely cold floor had his body dragged back and forwards while short shackled through the urine and pine oil in order to clean the floor with his body. Repeatedly lifted and dropped while short shackled as a punishment for 'poor performance' threatened with rape/sexual violence refused the opportunity to say prayers held in a cell that is 'freezing cold' 24 hours a day.
- Omar says is causing him shortness of breath and the sensation of not being able to get enough oxygen exposed to continuous electric light in his cell he has found partially dissolved tablets and/or powder at the bottom of a glass given to him by his captors. He says the pills produce various effects such as sleepiness dizziness, alertness etc.⁶⁶

⁶⁵ Fara McLare, "Omar Khadr The continuing scandal of illegal detention and torture in Guantánamo Bay", (Prepared for Lawyers Rights Watch Canada-2008), 5. Online available at: http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Omar.Ahmed_.Khadr_Fact_Summary.June_.1.08.pdf (Last accessed 15.06.2018).

⁶⁶ Fara McLare, "Omar Khadr The continuing scandal of illegal detention and torture in Guantánamo Bay", (Prepared for Lawyers Rights Watch Canada-2008), 5. Online

The Canadian government did not raise the voice to help its juvenile citizen. Omar Khadr decided there was no other way then to plead guilty to crimes he did not commit. It would be his only way out of Guantanamo. He admitted guilt of 'war crimes' which did not exist at the time of the event and that were not even internationally recognized as war crimes. The Military Commission declared illegal twice by the US Supreme Court. Since this "conviction" politicians and journalists, who are ignorant of the circumstances refer to him as a 'terrorist' 'war criminal' and "convicted murderer" whereas the facts show "an abandoned and tortured Canadian child convicted in a miscarriage of justice". On 29 September 2012 Omar Khadr finally returned to his home country Canada.⁶⁷

7. Mohammad Jawad Case

Another example of enhanced interrogation techniques and torture is Mohammad Jawad an uneducated Afghan young adult according to his military defense Counsel Maj. David Frakt, he was living in a Pakistani refugee camp when he was employed by Afghan militia drugged and forced to fight alongside them. He was ultimately captured by U.S. forces after throwing a hand grenade on U.S. troops and their translator and they got serious injury. Although there are no official documents stating Jawad's exact age but he believed that he was 16 years old when he was taken into U.S. custody. Whereas the U.S. military claimed that he was 17 years old at the time of his imprisonment. As investigations undertaken by the Afghan Independent Human Rights Commission claim Jawad could have been young at the age of 12 years. Jawad was certainly a juvenile when taken into custody and should have been afforded the rights and safeguards appropriate to his age.⁶⁸

During his early detention at Bagram in Afghanistan Jawad alleged that he was made to wear a black bag over his

available at: http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Omar.Ahmed_.Khadr_Fact_Summary.June_.1.08.pdf (Last accessed 15.06.2014).

⁶⁷ See for details: Fact sheet of Omar Khadr (26) is back in Canada, after 10 years of mistreatment in the notorious Guantanamo Bay prison. In Canada is his position hardly improved? <http://freemarakhadr.files.wordpress.com/2012/09/2013-0207-fact-sheet-omar-khadr31.pdf> (Last accessed 18.06.2013).

⁶⁸ Mohammed Jawad 23-year-old Afghan, was taken into US custody when he was somewhere between the ages of 12 to 17 (he does not know his birthday and his relatives have given conflicting accounts). He was charged with attempted murder in violation of the laws of war and intentionally causing serious bodily injury. The US government alleged that while in Afghanistan in 2002 he threw a grenade at a military vehicle caused the two US soldiers and their interpreter injury. Both the trials and defense in his case allege that Jawad was likely drugged at the time of the alleged crime. <http://www.hrw.org/news/2008/12/04/mohammed-jawad> (Last accessed date 13.05.2014).

head shackled and forced to stand naked for prolonged periods of time severely beaten and deprived from sleep and thrown down a flight of stairs. In early 2003, he was transferred to Guantanamo where his mental state gets quickly worse. During investigation Interrogators found him talking to posters on his wall. In December 2003, he made an attempt to suicide first by banging his hand against a metal wall and by hanging. Just a few months after his suicide attempt it was documented that in May 2004 Jawad was subjected to intense sleep deprivation where he was moved from cell to cell 112 times over a 14 days period.⁶⁹ For his six years long imprisonment Mohammad Jawad was tortured day and night along with the other prisoners.⁷⁰

According to his statement:

*“There was a lot of oppression when I was in Guantanamo and these inhumane actions were not for just one day, one week or one month. I was oppressed the whole time until I was released. They tortured prisoners very badly and did not allow prisoners to sleep, did not give enough food. They knew I was underage but they did not care about my age. They insulted our religion and our Holy Quran, and they insulted us and behaved in an inhumane way.”*⁷¹

The formally charges brought against Jawad in January 2008. By the time Frakt had been appointed to Jawad’s defense counsel. According to Frakt he found him to be in an “extremely fragile mental state” and that he had “lost track of time lost touch with reality and suffered from severe depression.” In the fall of 2008, the judge at military

⁶⁹ Cherif Bassiouni, *“The Institutionalization of Torture by the Bush Administration. Is anyone responsible?”* (Antwerp – Oxford – Portland: Intersentia, 2010), p. 55-56.

⁷⁰ David J.R.Frakt, *“MOHAMMED JAWAD AND THE MILITARY COMMISSIONS OF GUANTANAMO”* Jawad was taken to a U.S. base on the border of Kabul Afghanistan. Where he was stripped for naked photographed and then subjected to a highly coercive interrogation. These were started from midnight to last well into the morning. Although he initially denied throwing the hand grenade the interrogators eventually extracted another “confession.” This second confession provided a completely different version of the grenade attack and the events leading up to it than the confession prepared by the Afghan police. These two conflicting coerce statements finally formed the centerpiece of the prosecution’s case. Online at: <[⁷¹ Online available at: <<http://www.chowrangipk.com/innocent-muhammad-jawad-released-from-guantanamo-bay-after-6-years.htm>>1 \(Last accessed 11.04.2015\).](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1497&context=dlj&sei-redir=1&referer=http%3A%2F%2Fwww.google.com.pk%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dmuhammad%2520jawad%2520torture%2520in%2520gunatanamo%26source%3Dweb%26cd%3D9%26cad%3Drja%26ved%3D0CGUQFjAI%26url%3Dhttp%253A%252F%252Fscholarship.law.duke.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1497%2526context%253Ddlj%26ei%3DZOLrUYUg64_sBrTgOAH%26usg%3DAFQjCNE8XKJvH-VGNd3x6Rpkv0RJcug%26bvm%3Dbv.49478099%2Cd.bGE#search=%22muhammad%20jawad%20torture%20gunatanamo%22>” (Last accessed date 25.06.2014)</p>
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commission ruled that Jawad’s confession was inadmissible because he had been tortured, and that in any case, throwing a grenade at U.S troops during combat did not amount to a war crim. One prosecutor in his case Darrel J.Vandeveld was too distressed over the evidence of Jawad’s torture and unwillingness of his superior. As Col. Morris Davis considers a plea deal that he ultimately affectionate his acceptance. However, the lack of charges against him Jawad remained in detention until July 2009. when in response to a habeas corpus petition filed on behalf of Jawad by the ACLU and with the assistance of the former prosecutor Vandeveld U.S. District Judge Ellen Huvelle made clear that Jawad had been illegally detained and ordered the government to release him.⁷²

8. Mohammedou Ould Salahi

Mohammedou Ould Salahi was Mauritanian by birth. He studied electrical engineering and ran an internet cafe in Germany. The U.S authorities unsuccessfully tried to connect Salahi to a plot to blow up the Loss Angeles airport. Shortly after 9/11, he was detained in Mauritania on suspicion of having closer link with al-Qaeda. U.S public agents illegally rendered Salahi to Jordan, where he was detained and tortured for eight months.⁷³

He was then sent to Bagram in Afghanistan and ultimately transferred to Guantanamo in August 2002, where he remains. Salahi arrived at Guantanamo and his interrogation was undertaken by FBI, which communicated on its standard rapport-building techniques.⁷⁴ The FBI’S “friendly tenor” was criticized heavily by military interrogators. In July 2003, Major General Miller sought “special project status” on behalf of Defense Intelligence Agency for Salahi, so that he could authorize techniques not specified by the Secretary of Defense in the “Counter-Resistance Techniques in the war on Terrorism” memorandum of April 16, 2003. Secretary Rumsfeld approved for this request on August 13. Following the

⁷² Cherif Bassiouni, *“The Institutionalization of Torture by the Bush Administration. Is anyone responsible?”* (Antwerp – Oxford – Portland: Intersentia, 2010), p. 56-55.

⁷³ M. Cherif Bassiouni, “The Institutionalization of Torture by the Bush Administration is anyone Responsible?” *Interrogation Techniques*, (Antwerp-Oxford-Portland: Intersentia 2010), 61-62.

⁷⁴ Amnesty International Report: “United States of America Rendition – torture – trial?” The case of Guantánamo detainee Mohamedou Ould Slahi, (20 September- 2006). During September 2006 fourteen detainees so-called ‘high-value detainees’ who had been held in secret custody by the USA’s Central Intelligence Agency (CIA) in undisclosed locations outside the United States were transferred to military detention in the US Naval Base in Guantanamo Bay Cuba. The detainees had been held incommunicado in secret locations for up to four and a half years. Amnesty International considered that at least some of them had become the victims of enforced disappearance which is a crime under international law. President George W. Bush defended announce the transfers and the use of secret detentions and the ‘alternative’ interrogation techniques. He said that used to break the resistance of these detainees. President Bush refused to elaborate on these techniques.

approval interrogators threatened the life of Salahi and his family members several times during his interrogation.⁷⁵

During his detention he was subjected to sensory deprivation isolation sleep “adjustment”, and 20-hours interrogation that could amount to sleep deprivation. Beside that he also alleged that he was subjected to extreme temperatures in a room called the “freezer”, and that he was subjected to storable lights, deprivation of clothing in front of females, sexual touching of females, and severe beatings. At one point, Salahi was masked and taken on a boat ride where he was beaten and made to overhear a conversation in Arabic between Egyptian and a Jordanian, discussing whose country would ultimately ‘get him’.⁷⁶

Even if Slahi is never prosecuted he could be detained indefinitely as an enemy combatant. And the decision to assigned him as an enemy combatant and most probably was made at least in part on the basis of his own coerced statements. In 2005, a habeas corpus challenge to Salahi’s detention was filed with the U.S Federal District Court of District of Columbia. On March 22, 2010, Federal District Court Judge James Robertson ruled that the U.S could no longer continue to detain Salahi and ordered his release. The DOJ is currently appealing the decision.⁷⁷

IV. OVERVIEW OF UTILITARIANISM AND ABSOLUTE PROHIBITION ON TORTURE

International law, numerous treaties, others human rights instruments and even each state officially prohibit torture below all circumstances. However the debate on torture revitalized after the terrorist attacks of 9/11, and others acts of terrorism prompted many to doubt the wisdom of a total ban on Interrogational torture. The United States entered an unconventional war that required unconventional strategies. At the point when battling an enemy that lacks

comparable resources and destructive power, information often becomes more important than gaining territory or destroying the enemy warriors. The theory of utilitarianism does not support the use of torture in any circumstances, not only because another method of interrogation is more effective, but also because the practice of interrogational torture undermines individual security. According to the utilitarian view, torture should be banned for two reasons. First, initially the advantages of allowing some torture are peripheral and uncertain, while the costs are substantial, given the separate likelihood of unnecessary torture. Second, allowing some torture may drive a slippery slope to torture in less justifiable circumstances.

The Legal standard permits some torture offers intense expenses and yields most effective marginal and uncertain benefits. The official need to be made a serious and correct judgements and efficaciously determine the circumstances in which torture is allowed. An actual terrorist threat exists and threat is imminent and sufficiently hazardous to justify the torture. The suspect possesses necessary information and torture will be effective to disclose information and disclosed information will be reliable and intimidator will be Able to differentiate truthful and false information. If any of those seven determinations prove incorrect, officials tortured unnecessarily. Officials ought to make these determinations quickly, often without any opportunity to locate verifying data. They should blindly bet whether or not a particular suspect possesses reliable facts and could reveal it thru torture. Even if the suspect discloses facts, any contingency plans hooked up via a terrorist organization that alters its assault following a member’s capture would render the records vain. In short, the legal stander that permits some torture will probably motive a great deal useless torture, and unnecessary torture is a grave value to utilitarian.

Torture additionally yields only marginal advantages. One person does not often possess all the important information to prevent an imminent catastrophe. Moreover, to obtain any real advantage from torture. The quantity and quality of information acquired from torture must be exceed from the quantity and quality of information acquired from alternative investigative method. If the identical statistics might be acquired by less cost means why torture at all? Second, permitting some torture may power us down a “slippery slope” to its use in less justifiable circumstances. Utilitarian’s assert four kinds of slippery slope arguments. First, a prison standard allows some torture may result in gradually more common use in combating terrorism. Second, a legal standard permits torture would possibly lead to it use in achieving security objectives. After all, if countering terrorism justifies torture, surely other targets justify torture. Third, exclusion of torture serves special symbolic functions, eliminating the ban on torture may additionally have an effect on different laws. If we lift the long-standing ban against torture, even if only in extraordinary circumstances, it signs diminished the value of human dignity. Finally, legalizing torture inside the United

⁷⁵ Confidential Report: “A Review of FBI’s involvement in and observation of Detainee interrogation in Guantanamo Bay/Afghanistan and Iraq.”(Oversight and Review Division office of the Inspector General-May 2008).FBI’s did not request to their agents for the guidance regarding detainee treatment in military zones. No formal policy exist until the discloser of Abu Ghraib issue late April 2004.in that way Detainee treatment policy was quickly prepared and issued on May,2004.Availbel at: <<http://www.justice.gov/oig/special/s0805/final.pdf>> (Last accessed 24.06.2013).

⁷⁶ The “high value” detainee, Mohamedou Ould Slahi, who has been held in Guantánamo since August 2002, he was tortured and ill-treatment in US custody appears to have been influenced by what at least one of the fourteen detainees held in secret CIA custody. While Yemeni national Ramzi bin-al Shibh allegedly said as interrogated in prolonged incommunicado detention under the “alternative” methods to which President Bush referred. Amnesty International Report: “United States of America Rendition – torture – trial?” The case of Guantánamo detainee Mohamedou Ould Slahi,(20 September- 2006).Available at:<<http://www.amnesty.org/en/library/asset/AMR51/149/2006/en/752cba2f-d3f0-11dd-8743-d305bea2b2c7/amr511492006en.pdf>> (Last accessed:25.06.2013).

⁷⁷ Available at :<<http://www.humanrightsfirst.org/wp-content/uploads/pdf/08307-etn-tortured-justice-web.pdf>> (Last accessed: 18.06.2013).

States might spread legalization to other countries. It might be universally recounted that if the superpower United States can't hold safety without committing torture, weaker and more embattled countries cannot be predicted to defend themselves without torture.

V. LEGAL POSITION OF 'SUSPECTED TERRORIST' & APPLICABLE LAW

- i. International Law
- ii. International Humanitarian Law
- iii. Human Rights Law
- iv. US law

The foregoing analysis of torture, as President Bush and his administration claims that the Central Intelligence Agency (CIA) 'enhanced' interrogation program is necessary to protect the nation from another terrorists attack and save American lives. According to Bush Administration view the widespread use of torture on the suspected terrorists is morally permissible in certain catastrophic circumstances in order to prevent the greater evil. It is legal debate that if the stakes are high enough torture can be justified on significant ground. As 'The End Justify the Means'.⁷⁸ In addition, the CAT convention bans torture absolutely means in all prospective torture is strictly ban. No exceptional circumstances whatsoever, whether a state of war, internal political instability or any kind of public emergency there is no justification is invoke for torture. The UN Declaration of Human Rights, the International Convention of civil and Political Rights, International Convention on Economic, Social and Cultural Rights, Convention and Protocol relating to the status of Refugees, the European Convention for the protection of Human Rights and Fundamental Freedoms and the Geneva Convention all prohibited both torture and cruel, inhuman degrading treatment all the times.⁷⁹ International law mechanism must be strong in implementation and free be loopholes and lacunas. Likewise Bush Administration formulated torture memorandum and its implementation through legal consultancy.

As far the "suspected terrorists" are concerned customary international law defines that either a person is full terrorists or civilian accused. And there is general principle of

⁷⁸ This phrase is originated from the book "The Prince" by Niccolo Machiavelli's which is interpreted as whatsoever is required to get the result you want, regardless of the methods used. It does not matter whether these methods are legal or illegal, fair or foul, kind or cruel, truth or lies, democratic or dictatorial, good or evil.

⁷⁹ Fritz Allhoff. "Terrorism, Ticking Time-Bombs, and Torture" (The University of Chicago Press Chicago and London: 2012) Part II, 'Torture and Ticking Time -Bombs' page 57-132. He gives details in his book part II "Can the Tortured of Terrorist Suspects be justified" that after 9/11 incident wide use of torture and other forms of ill treatment become the part of American policy and practice. There is a debate that torture is morally permissible in certain circumstances. These circumstances are those analogous to the hypothetical ticking bomb scenario. Where the torture on suspected terrorists can be justified to find the location of a explode bomb in order to prevent the greater evil.

law that a person is considered innocent until proven guilty. If a person is proven guilt the trail is proceed in competent tribunals because every person has a right of fair trial.⁸⁰ So in that way torture is even not allowed on full terrorists. Customary International Law strictly prohibits the torture and other cruel inhuman and degrading treatment. Violation and justification are different concepts in international law because international law provides the mechanism which strictly prohibit the torture and others methods of harsh interrogation techniques. In contrary US is justifying torture by violating the international peremptory norms (Jus cogens) by using the new method of torture like waterboarding etc. Secret detention centers and rendition centers must be closed as to ensure the prohibition of torture as a principle of law.

The principle of 'Human Treatment' as the cornerstone of International Humanitarian law so it must be applicable with the treatment of suspected terrorists and even full terrorist (charges proved).for war does not require mutilation, cruel treatment or torture so there is no obvious incompatibility between human treatment and fighting of war. Indeed law of war always aspired to provide restrained and morally acceptable way to conduct the war.⁸¹ Actually the principle of proportionality is opens the new gate way to justify some coercive practices in those cases where is no another way or to stop terrorists activities which are extremely dangerous threat to the many innocent lives. In such emergency situations, the principle of proportionality and necessity allow the lesser evil means the torture on few prisoners can be justified by the prevention of greater evil in taking bomb situation. It 'lesser evil' seems opens the door to the justification of torture in several cases.

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⁸⁰ The right to a fair trial is a norm of international human rights law intended to protect individuals from the unlawful and arbitrary deprivation of other basic rights and freedom. As the most prominent of which are the right to life and liberty of the person. It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf> (Last accessed 2.07.2015).

⁸¹ Larry May, "Torturing Detainees During Interrogation" (Washington University) p, 201-205. Online Available at: <http://rocket.csusb.edu/~tmoody/ijap192-May.pdf> Last Accessed(9 April,2014)

⁸² This phrase is originated from the book "The Prince" by Niccolo Machiavelli's which is interpreted as whatsoever is required to get the result you want, regardless of the methods used. It does not matter whether these methods are legal or illegal, fair or foul, kind or cruel, truth or lies, democratic or dictatorial, good or evil.

torture is strictly ban. No exceptional circumstances whatsoever, whether a state of war, internal political instability or any kind of public emergency there is no justification is invoke for torture. The UN Declaration of Human Rights, the International Convention of civil and Political Rights, International Convention on Economic, Social and Cultural Rights, Convention and Protocol relating to the status of Refugees, the European Convention for the protection of Human Rights and Fundamental Freedoms and the Geneva Convention all prohibited both torture and cruel, inhuman degrading treatment all the times.⁸³ International law mechanism must be strong in implementation and free be loopholes and lacunas. Likewise Bush Administration formulated torture memorandum and its implementation through legal consultancy.

VI. CONCLUSION

Under CAT, all member states are not only presupposed to prevent acts of torture, but they're also required to prevent "acts of cruel, inhuman or degrading treatment or punishment. While only a few of the interrogation strategies used by the CIA could be defined as torture, and others techniques fall into the category of cruel and degrading. The Bush Administration has advanced form of legal justifications for its action in the "War on Terror" and particularly for the use of "enhanced interrogation techniques" against suspected terrorists. The most significant justifications for these actions memorandums written by governmental lawyers from different US State agencies. Commonly referred to as the 'Torture Papers,' these memorandums attempted to legally justify the use of enhanced interrogation techniques based on loopholes and uncertainties under domestic law of the United States.

International Law strictly prohibited the torture and no person can justify the torture beneath International Law and those who justified the torture receive the truth that torture is illegal under International Law whatever situation its absolute ban on torture. It is obligatory, this problem ought to be highlighted and Congress appoints independent commission to investigate all incidents of torture and abuse at Guantánamo, to place an end to the practices of torture and cruel, inhuman and degrading treatment. And keep government officers responsible and close the detention facility at Guantánamo Bay. Beside this to make instructions to prevent such abuses in the future. It has been demonstrated throughout records that better interrogation techniques do not work due to the fact

individuals will deliver their interrogators false information in order to stop interrogation method.

Torture violates deontological, utilitarian and virtue ide and regardless of its common use, when properly taken into consideration, torture violates consequentialist theory. First, to interpret the preconditions for torture effectively, officers must triumph over the modal hassle of distinguishing feasible dangers and actual threats and the trouble of conceptual vagueness inside the terms "imminence" and "catastrophe. Second, officials need to inflict needless pain because of their incapacity to distinguish false and sincere disclosures of subjects. Third, torture is more susceptible to the slippery slope due to conceptual vagueness in term "suspect," which is only exacerbated by way of the tense circumstances surrounding war and the difficulty of figuring out suspects who own useful information.

There is no situation where torture can be morally justified, ticking bomb or no ticking bomb. As leader of nations, it is important that US reconsider the techniques used prior to 2009 in order to ensure they are never used again. It make sure that interrogators are well trained and versed in both domestic and international law to prevent events such as Abu Ghraib and Guantanamo from occurring in the future. With more guidance and oversight, our interrogators will know when they have crossed the thin line between what is legal and what violates international and domestic law.

⁸³ Fritz Allhoff. *"Terrorism, Ticking Time-Bombs, and Torture"* (The University of Chicago Press Chicago and London: 2012) Part II, 'Torture and Ticking Time –Bombs' page 57-132. He gives details in his book part II "Can the Tortured of Terrorist Suspects be justified" that after 9/11 incident wide use of torture and other forms of ill treatment become the part of American policy and practice. There is a debate that torture is morally permissible in certain circumstances. These circumstances are those analogous to the hypothetical ticking bomb scenario. Where the torture on suspected terrorists can be justified to find the location of a explode bomb in order to prevent the great0er evil.