

UNITED STATES OF AMERICA

Undermining security: violations of human dignity, the rule of law and the National Security Strategy in “war on terror” detentions

“The United States must defend liberty and justice because these principles are right and true for all people everywhere”

United States National Security Strategy, September 2002

On 6 March 2003, United Nations Secretary General Kofi Annan told a special meeting of the Security Council’s Counter-Terrorism Committee that: “Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension.”¹ Three weeks later, United States Secretary of State Colin Powell said: “States which demonstrate a high degree of respect for human rights are likeliest to contribute to international security and well-being.”² Amnesty International agrees. The road to security does not bypass human rights. Rather, respect for human rights should be a central plank of any government’s security strategy. Contempt for internationally agreed human rights principles breeds resentment and fuels divisions within and between countries.

By flouting fundamental principles of international law, the US administration’s detention policies in the so-called “war on terror” risk making the world a less secure place. When any state, let alone a country as powerful as the USA, adopts a selective or contemptuous approach to international standards, the integrity of those standards is eroded. Why should any other state not then claim for itself the prerogative to adhere to only those portions of international human rights law which suit its purposes?

Amnesty International has monitored the use of security legislation and security measures in all regions of the world for 40 years. In many cases where there has been a “war” against political opponents of whatever kind, human rights have been violated, including the right not to be tortured, the right not to be detained arbitrarily, and the right to life. Those affected have frequently included the wider population who are innocent of any illegal activity. Examples of this broad use of security law leading to the violations of the rights of ordinary people include the “dirty wars” in Latin American countries such as Argentina and Chile in the 1970s and 80s; South Africa during the *apartheid* era; Turkey and the Spain when they were responding to minority nationalist movements; India, especially in states with high levels of political violence; and Israel and the Occupied Territories to the present day.

¹ UN Secretary-General Kofi Annan, special meeting of the Security Council’s Counter-Terrorism Committee with International, Regional, and Sub-Regional Organizations, 6 March 2003.

² Remarks at Briefing on the State Department’s 2002 Country Reports on Human Rights Practices, Secretary Colin L. Powell, Washington, DC, 31 March, 2003.

We should learn from history. In a compelling criticism of the Guantánamo regime and the USA's proposals to try selected detainees by military commission, one of the United Kingdom's most senior judges, Lord Steyn, pointed out that "it is a recurring theme in history that in times of war, armed conflict, or perceived national danger, even liberal democracies adopt measures infringing human rights in ways that are wholly disproportionate to the crisis." Lord Steyn suggested that "the litany of grave abuses of power by liberal democratic governments is too long to recount, but in order to understand and to hold governments to account we do well to take into account the circles of history".³

A legal brief signed by 175 British parliamentarians and filed in the US Supreme Court in January 2004 in support of justice for the hundreds of detainees in US custody in Guantánamo Bay recalls a slice of history for the US authorities to consider: "The UK's recent experience with terrorism is... instructive. In answering charges that it violated the human rights of Irish citizens held in the UK because of suspected involvement in terrorism, the UK government claimed that it was compelled to take severe measures. However, the powers of detention exercised over suspected Irish terrorists were eventually criticized by the European Court of Human Rights as disproportionate violations of human rights. Such examples stand out 'as a caution that in times of distress the shield of military necessity and national security must not be used to protect government institutions from close scrutiny and accountability'"⁴

The military lawyers assigned to defend Guantánamo detainees tried by military commission have also filed a brief in the US Supreme Court. In it they describe the government's detainee policy as a "monarchical regime" in which President Bush "asserts the power to create a legal black hole". They too, in effect, call upon the authorities not to repeat history. They suggest that the executive is relying on "the antiquated environment" of half-century old US Supreme Court precedent "instead of addressing the world as it exists today".⁵

Amnesty International recognizes the serious nature of today's threats to public safety and the duty of states under international human rights law to protect their populations from violent criminal acts. However, such measures should be implemented within a framework of protection for all human rights. The challenge to states, therefore, is not to promote security at the expense of human rights, but rather to ensure that all people enjoy respect for the full range of rights. The US administration would appear to recognize this. For example, the Assistant Secretary of State for human rights has said that the US government will not forget

³ *Guantánamo Bay: the legal black hole*. Johan Steyn, 27th F.A. Mann Lecture, 25 November 2003.

⁴ *Rasul v Bush*, Brief of 175 members of both Houses of the Parliament of Great Britain and Northern Ireland as *amici curiae* in support of petitioners. The final quote is from *Korematsu v United States*, 584 F. Supp. 1406 (N.D. Cal. 1984).

⁵ *Al Odah et al v US*, In the Supreme Court of the United States, Brief of the military attorneys assigned to the defense in the Office of Military Commissions as *amicus curiae* in support of neither party, 14 January 2004. The 1950 US Supreme Court decision, *Johnson v Eisentrager*, is what the government seeks to rely upon to keep the domestic courts from intervening in the Guantánamo regime.

its commitment to human rights in the “war on terror”. He stressed that “in fact, the protection of human rights is even more important now than ever”.⁶

Taken at face value, the USA’s National Security Strategy similarly commits the United States to an approach that has human rights at its core. For example, it emphasises that the path to a safer world must include “respect for human dignity”. Indeed, it mentions the words “human dignity” no less than seven times in its 31 pages. In doing so it echoes the Universal Declaration of Human Rights, adopted in 1948 in response to years of “disregard and contempt for human rights” and which has at its heart a vision of a world in which the dignity of every human being is respected.

President George W. Bush claims to be a staunch defender of the Universal Declaration. He told the UN General Assembly that: “As an original signer of the UN Charter, the United States of America is committed to the United Nations. And we show that commitment by working to fulfil the UN’s stated purposes, and give meaning to its ideals. The founding documents of the United Nations and the founding documents of America stand in the same tradition. Both assert that human beings should never be reduced to objects of power or commerce, because their dignity is inherent.”⁷ In all three of his State of the Union addresses, as well as in his inaugural speech, he has asserted that the USA was founded upon and is dedicated to the cause of human dignity.⁸ In a recent speech at the International Institute of Strategic Studies on peace and security, he said that “We believe in...the duty of nations to respect the dignity and the rights of all.”⁹

In similar vein, the US National Security Strategy devotes an entire chapter to promising that the USA will “stand firmly for the non-negotiable demands of human dignity”, including “the rule of law” and “limits on the absolute power of the state”. The USA’s National Strategy for Combating Terrorism stresses that creating a world in which such principles “are embraced as standards, not exceptions, will be the best antidote to the spread of terrorism”. It concludes that “this is the world we must build today”.

Instead, the USA has built a prison camp at its military base in Guantánamo Bay in Cuba and filled it with hundreds of detainees from around the world. An unknown number of other people are held in undisclosed locations elsewhere – not even the International Committee of

⁶ Lorne Craner, Assistant Secretary, Democracy, Human Rights and Labor. Release of the Country Reports on Human Rights Practices for 2001. US State Department, Washington, DC. 4 March 2002.

⁷ President Bush Addresses United Nations General Assembly, 23 September 2003.

⁸ “Our aim is a democratic peace – a peace founded upon the dignity and rights of every man and woman.” State of the Union, 20 January 2004. “Our founders dedicated this country to the cause of human dignity, the rights of every person, and the possibilities of every life.” State of the Union, 28 January 2003. “America will always stand firm for the non-negotiable demands of human dignity.” State of the Union, 29 January 2002. “Never tiring, never yielding, never finishing, we renew that purpose today, to make our country more just and generous, to affirm the dignity of our lives and every life.” Inaugural speech, 20 January 2001.

⁹ President Bush delivers IISS address, 19 November 2003.

the Red Cross, the only international organization which has been able to visit the Guantánamo detainees, knows where these detainees are held or has access to them.¹⁰

The original detention facility in Guantánamo, Camp X-Ray, its successor Camp Delta, and now Camp Echo, where pre-military commission detainees have been held for months in even greater isolation, have become synonymous with a government's pursuit of unfettered executive power and disregard for the rule of law, in direct contradiction to its stated security strategy. With many of the detainees now well into their third year held in tiny cells for up to 24 hours a day without any legal process, it seems that the current US administration views human dignity and the rule of law as far from non-negotiable when it comes to national security.

International concern about Guantánamo continues to grow. For example, the newest Nobel Peace Laureate, Iranian human rights defender Shirin Ebadi, singled it out in her acceptance speech: "[I]n the past two years, some states have violated the universal principles and laws of human rights by using the events of 11 September and the war on international terrorism as a pretext... It is in this framework that, for months, hundreds of individuals who were arrested in the course of military conflicts have been imprisoned in Guantánamo, without the benefit of the rights stipulated under the international Geneva Conventions, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."¹¹

While some of the Guantánamo prisoners were detained in the theatre of conflict in Afghanistan, others were taken into custody far from that battlefield. The arrests of some were little more than extrajudicial abductions, and flouted human rights protections and judicial proceedings pending in those countries. The US State Department's most recent report on human rights in other countries notes that judicial authorities in Bosnia-Herzegovina have found that "human rights conventions" were violated when six Algerian nationals were transferred from Bosnia "to the custody of a foreign government in January 2002."¹² The State Department failed to mention that the foreign government in question was that of the USA, and that the six men ended up in Guantánamo Bay, where they remained more than two years later.

The first prisoners, transferred from Afghanistan on 20-hour flights in conditions of sensory deprivation and heavy use of restraints, arrived in Guantánamo Bay on 11 January 2002. A photograph released by the Pentagon at this time has become an icon of unacceptable US exceptionalism. It shows detainees in orange jumpsuits, kneeling before US soldiers, shackled, handcuffed, and wearing blacked-out goggles over their eyes and masks over their mouths and noses. Former Guantánamo detainee Sayed Abbasin has recalled: "I arrived tied and gagged; it was the act of an animal to treat a human being like that. It was the worst day of my

¹⁰ Reports suggest that some of these secret detention facilities may be in Thailand, Jordan and Pakistan. See, for example, *Operation Take Away My Freedom: Inside Guantanamo Bay On Trial*, By David Rose. Vanity Fair, January 2004.

¹¹ <http://www.nobel.se/peace/laureates/2003/ebadi-lecture.html>

¹² Entry on Bosnia-Herzegovina, Country Reports on Human Rights Practices – 2003. Released by the Bureau of Democracy, Human Rights, and Labor, 25 February 2004

life”.¹³ Meanwhile, television images of orange-clad shackled detainees shuffling to interrogations, or being wheeled there on mobile stretchers, have cemented the symbolism of this prison camp, to which human rights organizations have been denied access.

For some, like Sayed Abbasin, the transfer to Cuba followed weeks of harsh treatment in US custody elsewhere. Mohammed Ismail Agha was a “slight, illiterate village boy of 13” when he was taken into US custody in Afghanistan in late 2002 and held in Bagram Air Base for six weeks. He was nevertheless considered to be a “threat to US security” and was subsequently held in US custody without charge or trial for more than a year, including at Guantánamo Bay. He was released back to Afghanistan in late January 2004 with two other child detainees following an official determination that they “no longer posed a threat to our nation”, with no explanation as to how children could threaten the security of one of the most powerful countries on earth.¹⁴

Mohammed Ismail Agha has alleged that he was held in solitary confinement in Bagram and subjected to what have become known as “stress and duress techniques”.¹⁵ He has said: “They were interrogating me every day and in the first three or four days giving just a little food, and giving punishment”. He said he was forced to sit on his haunches for three or four hours at a time, even when he wanted to sleep.¹⁶ He said: “It was a very bad place. Whenever I started to fall asleep, they would kick on my door and yell at me to wake up. When they were trying to get me to confess, they made me stand partway, with my knees bent, for one or two hours. Sometimes I couldn’t bear it anymore and I fell down, but they made me stand that way some more.”¹⁷ His allegations echo what other former detainees held by the US military in Afghanistan have said.¹⁸

¹³ For details of Sayed Abbasin’s case, including his allegations of ill-treatment, see *USA: Threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue*, AI Index: AMR 51/114/2003, August 2003, <http://web.amnesty.org/library/Index/ENGAMR511142003>.

¹⁴ *Transfer of juvenile detainees completed*. US Department of Defense news release, 29 January 2004.

¹⁵ In December 2002 the *Washington Post*, citing interviews with “several former intelligence officials and 10 current US national security officials – including several people who witnessed the handling of prisoners”, alleged that detainees in Bagram had been subjected to “stress and duress” techniques during CIA interrogation. US military officials in Afghanistan were later quoted confirming the use of these techniques, and former prisoners have also alleged their use. The techniques alleged include prolonged standing or kneeling, hooding, blindfolding with spray-painted goggles, being kept in painful or awkward positions, sleep deprivation, and 24-hour lighting. *US decries abuse but defends interrogations*. *Washington Post*, 26 December 2002.

¹⁶ *Afghan boy talks about Guantánamo*. Associated Press, 7 February 2004.

¹⁷ *An Afghan boy’s life in US custody*. *Washington Post*, 12 February 2004.

¹⁸ Two detainees died at Bagram Air Base in December 2002 in suspicious circumstances. Neither is believed to have been seen by the International Committee of the Red Cross. In March 2003, US military officials were reported to have confirmed that autopsy reports in the cases of Dilawar, a 22-year-old Afghan man, and Mullah Habibullah, aged about 30, gave cause of death as “homicide” and that “blunt force injuries” were found in both cases. On 5 April 2004, the Chief of Public Affairs at the US Army Criminal Investigation Command told Amnesty International that the investigation into the deaths was “ongoing”.

Wazir Mohammad, an Afghan taxi driver, was released from Guantánamo Bay in November 2003, and spoke to Amnesty International in Kabul in late February 2004. During the interview, he recalled his detention in US custody in Afghanistan in April and May 2002 prior to his transfer to Guantánamo. He said that he was held in a cell on his own in Bagram Air Base for 45 days, shackled and handcuffed for the first week. He recalled the 24-hour lighting in the detention area and how military personnel would keep the detainees awake at night by banging a stick on metal to make a loud noise. He was interrogated once for about an hour. Every day for the 45 days he was told he would be released.

Wazir Mohammad was not released, however, but transferred from Bagram to Kandahar Air Base. He said that during the transfer he was hooded and handcuffed, and that the restraints were so tight that it cut the blood flow to his hands. In Kandahar, he was again interrogated once for about an hour. He said that he was forced to crawl on his knees from his cell to the interrogation room, a crawl of about 10 minutes.

During his whole time in Bagram and Kandahar, Wazir Mohammad was held incommunicado. He was given no opportunity to challenge the lawfulness of his detention. He had no lawyer, no access to his family, and was not brought before any court, including the “competent tribunal” envisaged by the Geneva Conventions to determine prisoner status in time of war. He never met a delegate from the International Committee of the Red Cross either. He was then put on a plane to Guantánamo Bay. He said that he was hooded and handcuffed for the 22-hour flight. When asked about toilet facilities during the flight, he refused to elaborate, saying that he could not talk of some of the things that happened on the plane.¹⁹ Upon arrival at Guantánamo, Wazir Mohammad said that he and his fellow detainees were taken off the plane “like cargo, not people”. Where was the US National Security Strategy’s commitment to human dignity then? How does cruel and degrading treatment of detainees promote national security?

The administration’s rejection of judicial review of the detentions likewise contradicts the Security Strategy’s guarantee of “limits on the absolute power of the state”. In refuting the need for judicial intervention, the executive recently announced that it would institute a process of annual executive review of detentions. This inadequate substitute for judicial review is a part of the recent upsurge in information about the detainees provided by the administration since the US Supreme Court announced that it would consider the question of whether the domestic courts have jurisdiction over the Guantánamo detainees. The administration has also pointed to the multi-step screening process it says it uses to determine if the detention of any particular individual is necessary, and notes that a sign of the efficiency of this process is that only a small fraction of those captured in Afghanistan were designated for detention at Guantánamo. It adds that once in Guantánamo, there is further assessment of the detainee, including via “interviews”. The US claims that “vital” intelligence has been obtained from these interrogations.²⁰

¹⁹ Amnesty International has been told that during the flights to Guantánamo prisoners were forced to resort to defecating and urinating in their clothing.

²⁰ *Rasul v Bush*, Brief for the respondents, March 2004.

Wazir Mohammad was interrogated twice in Afghanistan and then about a dozen times in the 18 months he spent in Guantánamo, a period during which the only person he says he saw from outside the detention regime was a delegate of the International Committee of the Red Cross, with whom he met a single time, on the first day of his detention in Cuba. The only “intelligence” it seems that Wazir Mohammad would have been able to provide to his interrogators was that he was a taxi driver whose livelihood was being further destroyed every day he was held in detention thousands of miles from his home in Afghanistan.

The multi-level detention process trumpeted by the administration has not prevented the prolonged detention of people such as Wazir Mohammad who appear simply to have been in the wrong place at the wrong time.²¹ He is one of 146 detainees to have been transferred from Guantánamo to date, the vast majority released upon arrival in their home country.²² These were detainees who had been labelled by the US President and his administration as “bad people”, “killers” and “terrorists”. On 13 February 2004, Secretary of Defence Donald Rumsfeld continued this disregard for the presumption of innocence, at the same time potentially placing detainees at greater risk of human rights abuses if returned to their countries: “Very simply the reason for their detention is that they’re dangerous. Were they not detained, they would return to the fight and continue to kill innocent men, women and children.”²³ Less than a month later, the Pentagon turned five British detainees over to the UK authorities. The UK police did not even see the necessity to use handcuffs on the detainees, and the men were all released soon after their arrival in the United Kingdom.²⁴

Three of the UK detainees claim to have been subjected to more than 200 interrogations each during their time in US custody, without access to any court, to legal counsel, or to relatives. Forty years ago, examining the question of interrogations in incommunicado detention, the US Supreme Court noted that: “Even without employing brutality... the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals... It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation’s most cherished principles - that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can

²¹ See cases, for example, Sayed Abbasin and Wazir Mohammad in *USA: Threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue*, AI Index: AMR 51/114/2003, August 2003, <http://web.amnesty.org/library/Index/ENGAMR511142003>.

²² Those who have not been released include four Saudi nationals and seven Russian nationals returned for continued detention in Saudi Arabia and Russia. Amnesty International is concerned about these transfers and about the fate of the individuals concerned, and continues to call on the US authorities not to forcibly return anyone to a country where he would be at risk of serious human rights violations. See: Urgent Action update: <http://web.amnesty.org/library/Index/ENGAMR510442004>.

²³ Secretary Rumsfeld remarks to Greater Miami Chamber of Commerce, 13 February 2004.

²⁴ *How we survived jail hell*. The Observer, 14 March 2004.

truly be the product of his free choice.”²⁵ As the US National Security Strategy says, there must be limits on the power of the state. Unchecked state power raises the prospect not only of unchallengeable errors, but also, history shows, of serious abuses of human rights and dignity.

The three released UK prisoners have recalled how they made false confessions after being put in isolation cells and repeatedly interrogated.²⁶ Their allegations have fuelled concern not only that detainees may face trial by military commission on the basis of coerced statements, but also more generally that the Guantánamo regime is as likely to produce bad intelligence as good, hardly a constructive strategy for the promotion of national security. Detainees held in this legal limbo, with its system of rewards and punishment for cooperation or non-cooperation, are likely to say what they believe their captors want to hear in order to gain leniency or release. A leading expert on interrogations and confessions has said: “The longer people are detained, the harsher the conditions, and the worse the lack of a support system, the greater the risk that what they say will be unreliable”.²⁷ The mental health aspects of this indefinite detention heighten the concern in this regard. It will soon be a year since the International Committee of the Red Cross first said that it had observed a “worrying deterioration” in the psychological well-being of a large number of the detainees because of the lack of legal process. The credibility of any detainee statements made under such circumstances would be extremely suspect, and inadmissible as evidence in many courts.

In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations, and to the end that every individual and every organ of society” must work towards its full realization. In line with this, the USA’s National Security Strategy asserts that the United States will “speak out honestly” against human rights violations and adds that it will press governments “that deny human rights to move toward a better future”. However, the government’s disregard for human rights drains it of authority to criticize others, and may also set a precedent that puts the security of its own citizens at risk.

In a brief filed in the US Supreme Court urging it to find that the US courts have jurisdiction over the Guantánamo detainees, more than 20 former US diplomats – whose ambassadorial postings included Colombia, Brazil, Zimbabwe, Russia, El Salvador, India, Sri Lanka, Portugal, Mauritius, Malta, Israel, Zambia, Nigeria, Libya, Indonesia, Philippines, Egypt, Jordan, Central African Republic, Kuwait, Greece, Côte d’Ivoire, Costa Rica, Venezuela and Peru, wrote that the Guantánamo situation is “from our foreign policy experience, a case of vast public import. Indeed, it has already become notorious abroad... [T]he perception of this case abroad – that the power of the United States can be exercised outside the law and even, it is presumed, in conflict with the law – will diminish our stature and repute in the world.”

²⁵ *Miranda v Arizona*, 384 U.S. 436 (1966).

²⁶ *How we survived jail hell*, op.cit.

²⁷ Professor Gisli Gudjonsson, quoted in: *Operation Take Away My Freedom: Inside Guantanamo Bay On Trial*, By David Rose. Vanity Fair, January 2004.

The signal sent by the Guantánamo regime, the former diplomats said, “puts United States citizens abroad – as well as those of other nations – at risk because it can be invoked in support of other countries’ practices of arbitrary detention...Unfortunately, that message appears to have been received. Other states have already used the United States’ example to justify their own abuses. For example, explaining the detention of militants without trial, Malaysia’s law minister said that the practice was “just like the process in Guantánamo Bay.” He emphasised that he “put the equation with Guantánamo Bay just to make it graphic to you that this is not simply a Malaysian style of doing things.”²⁸

In another brief filed in the US Supreme Court in support of the Guantánamo detainees, a group of retired US military officers wrote: “[E]ven as American officials condemn other nations for detaining people indefinitely without access to a court or tribunal, authoritarian regimes elsewhere are pointing to US treatment of the Guantánamo prisoners as justification for such actions.” The brief cites the examples from Eritrea, Egypt, Cameroon, Burkina Faso and Côte d’Ivoire. “If American detention of the Guantánamo prisoners – indefinite confinement without any type of review by a court or tribunal – is regarded as precedent for similar actions by countries with which we are at peace, it is obvious that it may be similarly regarded by enemies who capture American soldiers in an existing or future conflict. As a result, the lives of captured American military forces may well be endangered by the United States’ failure to grant foreign prisoners in its custody the same rights that the United States insists be accorded to American prisoners held by foreigners.”²⁹ A group of former US prisoners of war endorsed this sentiment in their own brief to the Supreme Court. If the US violates human rights, they said, “it puts at risk the safety of the men and women of the US armed forces and its own ability to insist on compliance by other nations with the norms of the Geneva Conventions.”³⁰

The International Commission of Jurists, a non-governmental organization whose membership is composed of 60 eminent jurists who are representatives of the different legal systems of the world, has said that its own work to promote the rule of law in the international community is undermined by the USA’s creation of the legal black hole at Guantánamo.³¹

Double standards are a source of international resentment against the US authorities. In 2002, a report sponsored by the non-partisan US think tank, the Council on Foreign Relations (CFR), concluded that the administration was failing to counter the fact that “around the world, from

²⁸ *Rasul v Bush*, Brief of Diego C. Asencio, A. Peter Burleigh, Lincoln Gordon, Allen Holmes, Robert V. Keeley, L. Bruce Laingen, Anthony Lake, Samuel W. Lewis, Stephen Low, Robert A. Martin, Arthur Mudge, David Newsom, R. H. Nolte, Herbert S. Okun, Thomas R. Pickering, Anthony Quainton, William D. Rogers, M. Onteagle Stearns, Viron P. Vaky, Richard N. Viets, Alexander F. Watson, William Watts, and Robert J. Wozniak as *amici curiae* in support of the petitioners, citing *Malaysia Slams Criticism of Security Law Allowing Detention Without Trial*, AP, 17 September 2003.

²⁹ *Rasul v Bush*, Brief *amicus curiae* of retired military officers in support of petitioners.

³⁰ *Rasul v Bush*, brief of former American prisoners of war as *amici curiae* in support of petitioners.

³¹ *Rasul v. Bush*. In the Supreme Court of the United States. Brief of the International Commission of Jurists and the American Association for the International Commission of Jurists, *amici curiae*, supporting petitioners, 9 January 2004.

Western Europe to the Far East, many see the United States as arrogant, hypocritical, self-absorbed, self-indulgent, and contemptuous of others”.³² On the day of publication, the White House responded that it would set up an Office of Global Communications to play a coordinating role in countering such perceptions. As the President’s spokesman put it, “better coordination of international communications will help America to explain what we do and why we do it around the world.”³³ At the time, Amnesty International warned that in the area of human rights, at least, the USA would need to move beyond public relations and into substantive change if it wished to improve its reputation abroad.³⁴ Guantánamo is perhaps the most notorious failure of the administration in this regard, fuelling international divisions and undermining international cooperation.

In his speech to the UN General Assembly six months before the invasion of Iraq, President George W. Bush said: “We created the United Nations Security Council, so that...our resolutions would be more than wishes. After generations of deceitful dictators and broken treaties and squandered lives, we dedicated ourselves to standards of human dignity shared by all, and to a system of security defended by all”.³⁵ Warning of military action against Iraq if Security Council resolutions were not met, President Bush asked: “Are Security Council resolutions to be honoured and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?”

Earlier, the Security Council had passed a resolution in which it reminded all states to “ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”³⁶ That resolution was passed one year after the first prisoners arrived at Guantánamo Bay. Almost 600 are still held there without any sort of legal process, in violation of international law and flying in the face of the Security Council’s resolution.³⁷

In her Nobel acceptance speech, Iranian human rights defender Shirin Ebadi suggested that “a question which millions of citizens in the international civil society have been asking themselves for the past few years, particularly in recent months, and continue to ask, is this: why is it that some decisions and resolutions of the UN Security Council are binding, while some other resolutions of the council have no binding force? Why is it that in the past 35 years, dozens of UN resolutions concerning the occupation of the Palestinian territories by the state of Israel have not been implemented promptly, yet, in the past 12 years, the state and people of Iraq, once on the recommendation of the Security Council, and the second time, in

³² *Public diplomacy: A strategy for reform*. A report of an Independent Task Force on Public Diplomacy sponsored by the Council on Foreign Relations. 30 July 2002.

³³ Ari Fleischer, White House press briefing, 30 July 2002.

³⁴ USA: *Human rights v public relations*, <http://web.amnesty.org/library/index/ENGAMR511402002>.

³⁵ Address to the United Nations General Assembly, 12 September 2003.

³⁶ Resolution 1456, adopted by the Security Council at its 4688th meeting on 20 January 2003.

³⁷ On 2 April 2004, the Pentagon announced the release of a further 15 detainees from Guantánamo.

According to the Pentagon, that brought to 146 the number of detainees transferred from the base since detentions began there, and left “approximately 595” still held at the base.

spite of UN Security Council opposition, were subjected to attack, military assault, economic sanctions, and, ultimately, military occupation?”

The US-led invasion of Iraq, widely perceived as having been internationally illegal and driven by less than transparent motives or reliable intelligence, has undoubtedly fuelled international tension and some see it as having left the world a less secure place.³⁸ Can the same be said about the human rights scandal now into its third year in Guantánamo Bay? After all, this icon of international law-breaking suggests that the USA shares at least some of the attributes which it associates with what it calls “rogue states”. Rogue states, according to the National Security Strategy, are those which “display no regard for international law” and “callously violate international treaties to which they are party”.

In April 2003, it was reported that Secretary of State Colin Powell wrote a “strongly worded” letter to Secretary of Defence Donald Rumsfeld, citing complaints from the governments of eight allied countries whose nationals were among the Guantánamo prisoners, and suggesting that the situation threatened to undermine international security cooperation.³⁹ Since then, at least one former US government official has said that the Guantánamo detentions have undermined rather than promoted security. On 24 March 2004, testifying before the commission of inquiry into the attacks of 11 September 2001 in the USA, Secretary Powell’s predecessor, Madeleine Albright, said: “I have found widespread dismay in many corners of the world at the Bush administration’s decision to detain hundreds of people in Guantánamo for more than two years without trial, access to legal assistance or any specific charges being made against them. No other aspect of our policy has done as much to squander support for the United States and to create doubts about our commitment to our own ideals. It is possible and perhaps probable that anger over these detentions has helped bin Laden succeed in recruiting more new operatives than the number of suspects now being held.”

Genuine and stringent adherence to basic human rights principles would have avoided any such resentment and “squandering” of international support. Even now, the US State Department would appear to agree. Its website contains the following statement: “The protection of fundamental human rights was a foundation stone in the establishment of the United States over 200 years ago. Since then, a central goal of US foreign policy has been the promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights. The United States understands that the existence of human rights helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises.” The detentions in Guantánamo, Bagram, and undisclosed locations show that the USA is not practicing what it preaches.

³⁸ For example, Zbigniew Brzezinski, US National Security Adviser under the Carter administration, has said that as a result of the attack on Iraq, “the war on terrorism probably has been set back because there are many more hostile terrorist groups now than there were a year ago, according to the International Institute of Strategic Studies in London, and the Palestinian peace process is literally in shambles”. Interview with Brian Braiker of Newsweek, 31 March 2004. On 2 April 2004, Secretary of State Colin Powell admitted that the evidence that Iraq had mobile biological weapons laboratories, to which he had referred in his pre-war speech to the United Nations, had turned out to be unreliable.

³⁹ *Powell urges Pentagon to act on detainees*. Associated Press, 7 May 2003.

Harold Hongju Koh, Assistant Secretary of State for human rights under the Clinton administration, has suggested that since 11 September 2001, “freedom from fear has become the obsessive watchword of US human rights policy”.⁴⁰ He describes the creation of “extralegal zones” such as Guantánamo Bay and “extralegal persons” such as “enemy combatants” as two of the central elements of this flawed approach. Acting above the law in this way runs directly counter to the vision of the Universal Declaration of Human Rights which holds that “it is essential...that human rights should be protected by the rule of law.”

Two years before the adoption of the Universal Declaration, the US Supreme Court wrote: “All of the mobilization and all of the war effort will have been in vain if, when all is finished, we discover that in the process we have destroyed the very freedoms for which we fought.”⁴¹ In the so-called “war on terror”, the same could be said. While the pursuit of freedom from fear is a legitimate governmental human rights objective, it will be a self-defeating one if it is pursued at the expense of the other fundamental freedoms enshrined in the Universal Declaration. The US National Security Strategy pays lip service to these basic rights, but the administration is failing to live up to that promise. As a result, the USA’s detention policies in the “war on terror” threaten to undermine security rather than to promote it, by eroding the rule of law and respect for long-held values of human dignity.

In a poem written to his family from Guantánamo Bay in 2002, Afghan national Wazir Mohammad wrote “No one’s asked me am I human or not”.⁴² The US administration would do well to consider his words. They say in another way what the Universal Declaration of Human Rights says, namely that people, including all detainees in all situations, are human beings first and foremost. The Declaration holds that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. There is no reason to abandon the wisdom and vision of the Universal Declaration now.

⁴⁰ The United States and Human Rights after September 11th. The John Galway Foster Lecture, University College, London, UK, 21 October 2003.

⁴¹ *Estep v United States*, 327 U.S. 114 (1946)

⁴² p24, *Threat of a bad example*, *op. cit.* <http://web.amnesty.org/library/Index/ENGAMR511142003>.