

## CHAPTER 10

# The U.N.'s Guantanamo Folly: Why the United Nations Report Is Not Credible

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A new report from the U.N. Commission on Human Rights concludes by calling on the United States to close its detention facility at Guantanamo Bay “without further delay.”<sup>1</sup> The report, issued by a body that counts Sudan, Cuba, China, and Zimbabwe as current members, alleges torture at the Guantanamo facility, and demands that “all persons found to have perpetrated, ordered, tolerated or condoned such practices, up to the highest level of military and political command,” presumably including the U.S. President and the Secretary of Defense, be “brought to justice.”<sup>2</sup> These demands, however, are groundless. None of the report’s authors toured Guantanamo, despite an invitation from the Pentagon,<sup>3</sup> and so the report is based largely upon recycled allegations, without legal foundation, from well-coached former detainees. As the United Nations tries desperately to recover from waves of corruption scandals, it seeks to shift attention to its favorite target, Washington’s prosecution of the war on terrorism. The Guantanamo report, based on little more than innuendo, unsubstantiated claims, and conjecture, is just such a ploy and deserves to be rejected out of hand.

### Dealing with the Long War’s Enemies

In the wake of combat operations in Afghanistan, the United States established a detention facility at the U.S. military base in Guantanamo Bay, Cuba. The primary purpose of detention during war is to prevent combatants from returning to the battlefield. The facility provides a safe and secure place to hold and interrogate dangerous combatants while operating in accordance with U.S. law and applicable treaty obligations. In addition, Combatant Status Review Tribunals were established to determine the validity and disposition of detainees’ designations as enemy combatants and their continued detention, including, in some cases, long-term detention. The U.S. Supreme Court acknowledged in 2004 that such military tribunals are appropriate under American and international law.

Establishing Guantanamo was a measured and effective response to the 9/11 terrorist attacks and must be considered in the context of the greatest assault on the United States since Pearl Harbor. As British Prime Minister Tony Blair has pointed out, “It is important we never forget the context in which this happened, which is the context of the war in Afghanistan and the reason for that is the slaughter of 3,000 innocent people on September 11.”<sup>4</sup>

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1. United Nations Commission on Human Rights, “Situation of Detainees at Guantanamo Bay,” February 15, 2006, at [www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.120\\_.pdf](http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.120_.pdf).
  2. *Ibid.*
  3. It should be noted that the U.N.’s request for full, unfettered access to Guantanamo detainees was denied by the Pentagon on the grounds of security. The U.N. Rapporteurs were offered the same degree of access as U.S. congressmen and senators, as well as the media and non-governmental organizations (NGOs).
  4. “Blair Reminds Guantanamo Critics of September 11 ‘Slaughter,’” *The Guardian*, February 23, 2006. Blair has steadfastly refused to condemn Guantanamo or support calls for the immediate closure of the camp, describing the facility as “an anomaly” that should “end sooner rather than later.”

## Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay

Long-term detention of dangerous suspects requires modern facilities. There must be adequate security to ensure the safety of the U.S. soldiers guarding detainees and to safeguard prisoners. Modern medical and support facilities are required, as well as the infrastructure to support military commissions and legal counsel for the detainees. Constructing all this in the theater of active combat was not an option, as such facilities will be little more than targets for terrorists. There are at present 500 detainees at Guantanamo and a further 200 have been released or returned to their country of origin. About 25 of those freed have since taken up arms again against the United States.

Since their inception, the Guantanamo operations have faced intense international scrutiny. The International Red Cross periodically inspects the facilities and has unfettered direct access to detainees. It presents its findings directly to the U.S. government. In addition, more than 100 Members of Congress have visited the facility, and so have 170 representatives of the national and international media and many representatives of nongovernmental organizations.

### The U.N. Commission on Human Rights

Within the ailing United Nations system, one would be hard-pressed to find a more dysfunctional or discredited agency than the Commission on Human Rights. For many years, it has been widely seen as the plaything of dictators, keen to steer the U.N. away from serious investigation into their affairs. About a quarter of the commission's current membership is made up of repressive regimes.<sup>5</sup> The Sudanese government, one of the most barbaric dictatorships of modern times, has sat on the commission for the past three years while actively coordinating a campaign of genocide by the Janjaweed militias in the Darfur region of the country, which has already left up to 300,000 dead. Another brutal dictatorship, Libya, chaired the 53-strong commission in 2003-04.

Even U.N. Secretary-General Kofi Annan, usually tolerant of dictatorial governments, acknowledges the need for a complete overhaul of the U.N.'s human rights apparatus:

We have reached a point at which the commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole and where piecemeal reforms will not be enough. The commission's ability to perform its tasks has been overtaken by new needs and undermined by the politicization of its sessions and the selectivity of its work.<sup>6</sup>

That Annan endorsed the Guantanamo report so soon after acknowledging the commission's complete dysfunction and failure is a staggering act of hypocrisy.<sup>7</sup>

### The Motives and Background of the U.N.'s Rapporteurs

This latest report is little more than a selective and politicized document from a thoroughly condemned body. The commission's claim that it was written by a team of "independent investigators" is incredible. Rather, the authors are all long-serving U.N. "Rapporteurs," part and parcel of the U.N.'s widely disparaged human rights apparatus.

The chair of the investigation, Leila Zerrougui, is president of the U.N. working group on "arbitrary detention" and previously headed the U.N. Subcommittee for the Promotion and Protection of Human Rights between 2000 and 2004. She is also a judge on the Supreme Court of Algeria, a country with a very poor human rights record<sup>8</sup> and has held positions in Algeria's Ministry of Justice and Presidency of the Republic.<sup>9</sup> It is extraordinary that an Algerian public official, whose own government stands accused of presiding over the disappearance of thousands of people

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5. Joseph Loconte, "Relativism and Rights," National Review Online, February 3, 2006.

6. Secretary-General Kofi Annan, speech to the U.N. Commission on Human Rights, Geneva, April 7, 2005.

7. "UN Chief Says US Should Close Prison at Guantanamo Bay as Soon as Possible," Associated Press, February 17, 2006.

8. See U.S. Department of State, *Country Report on Human Rights Practices*, 2004, February 28, 2005, at [www.state.gov/g/drl/rls/hrrpt/2004/41718.htm](http://www.state.gov/g/drl/rls/hrrpt/2004/41718.htm).

9. Biographical details published by the International Commission of Jurists, at [www.icj.org/article.php3?id\\_article=3441&id\\_rubrique=11&lang=en](http://www.icj.org/article.php3?id_article=3441&id_rubrique=11&lang=en).

in the 1990s,<sup>10</sup> now sits in judgment of the United States. To promote full transparency and accountability, the United Nations should release the complete details of Zerrougui's service for the Algerian regime.

Further, a survey of the backgrounds of Zerrougui's colleagues on the U.N.'s Guantanamo investigation reveals in some instances extreme and highly biased views regarding the U.S.-led war on terrorism, as well as a trigger-happy willingness to make unsubstantiated allegations against the United States and key allies.

While serving as the U.N.'s Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, Asma Jahangir defended 18 Pakistani nationals deported by the United States in the aftermath of the 9/11 attacks at a forum given by the American Civil Liberties Union (ACLU), declaring that "they do not have the resources to defend themselves against the tyrannical behavior of a superpower."<sup>11</sup> Jahangir, former chair of Pakistan's Human Rights Commission, strongly opposed U.S. military action against the Taliban regime in Afghanistan by demonstrating on the streets of Lahore<sup>12</sup> and subsequently undertook a 10-day investigative mission to Afghanistan to probe alleged "massacres" of captured Taliban and al-Qaeda fighters by the U.S.-backed Northern Alliance.<sup>13</sup> Early in 2002, Jahangir had called for an urgent investigation into reports, quickly discredited, of "summary executions" of Palestinians by Israeli troops at the Jenin refugee camp.<sup>14</sup> The U.N.'s own inquiry into Jenin subsequently concluded that there had been no massacre by the Israeli Defense Force.<sup>15</sup>

Paul Hunt, a fellow rapporteur on the U.N.'s Guantanamo commission, has been particularly exercised by U.S. military operations in Iraq. In his unique role as "Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," Hunt demanded an "independent inquiry" into the American offensive against al-Qaeda-backed insurgents in the Iraqi city of Fallujah in May 2004 to investigate "credible allegations that the Coalition Forces have been guilty of serious breaches of international humanitarian and human rights law."<sup>16</sup>

Like Hunt, Manfred Nowak, the U.N.'s "Special Rapporteur on Torture" appears just as concerned with the conduct of the U.S.-led war on terrorism as he is with the terrorist threat that America and its allies are confronting. In a recent newspaper interview, Nowak equated the actions of terrorists with the anti-terror tactics of the United States. Nowak observed that "the world is more dangerous: on the one hand due to terrorists, and on the other due to actions taken in the fight against terrorism, which are violating international rights law."<sup>17</sup> Nowak, a law professor who has worked with the United Nations for over 10 years, has also accused the United States of holding terrorist suspects in secret facilities on U.S. ships in international waters and has launched his own inquiry into that allegation.<sup>18</sup>

### **The U.N.'s Guantanamo Team**

- **Leila Zerrougui**, Chairman Rapporteur of the Working Group on Arbitrary Detention (Algeria)
- **Leandro Despouy**, Special Rapporteur on the Independence of Judges and Lawyers (Argentina)
- **Manfred Nowak**, Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Austria)
- **Asma Jahangir**, Special Rapporteur on Freedom of Religion or Belief (Pakistan)
- **Paul Hunt**, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (New Zealand)

10. See "Algeria: 10 Years of State of Emergency, 10 Years of Grave Human Rights Abuses," Amnesty International USA, at [www.amnestyusa.org/countries/algeria/document.do?id=6464EC953D18525580256B5A0056096F](http://www.amnestyusa.org/countries/algeria/document.do?id=6464EC953D18525580256B5A0056096F)

11. "Rights Activist Jahangir Takes Up Cause of 18 Deported Pakistanis," Ethnic News Watch, *News India*, November 15, 2002.

12. "Give Peace a Chance, Say Asian Activists," Inter-Press Service, October 16, 2001.

13. "UN Investigator To Probe Alleged Killings of Taliban Fighters by Northern Alliance," Associated Press, October 18, 2002.

14. "UN Official Demands Probe of Israeli Killings of Palestinians," PanAfrican News Agency, April 15, 2002.

15. United Nations General Assembly Report of the Secretary-General Prepared Pursuant to General Assembly Resolution ES-10/10, July 30, 2002, at [www.un.org/peace/jenin](http://www.un.org/peace/jenin). See also "UN Report: No Massacre in Jenin," USA Today/Associated Press, August 1, 2002, at [www.usatoday.com/news/world/2002-08-01-unreport-jenin\\_x.htm](http://www.usatoday.com/news/world/2002-08-01-unreport-jenin_x.htm).

16. "UN Rights Expert Calls for Inquiry Into US-led Assault on Fallujah," Agence France-Presse, May 3, 2004.

17. "Torture by UK and US 'Biggest Human Rights Threat Since Nazis,'" *The Sunday Herald*, November 20, 2005.

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In addition to his personal crusade to expose abuses by the United States, Nowak has also targeted the British government's new anti-terror legislation, threatening to report Britain to the U.N. General Assembly for human rights violations.<sup>19</sup> Nowak criticized a UK proposal to deport Islamic extremists and has called on Britain to reverse its plan to draw up "memorandums of understanding" with Middle Eastern and African countries to whom Britain would send terror suspects.

### U.S. Policy Must Be Dictated by the National Interest

The U.N.'s Guantanamo report is a highly charged political polemic that lacks credibility and should have no bearing on U.S. detention policies. Rather, the long-term future of the Guantanamo facility must be decided by the overriding national security criteria. The U.S. military should do what is best to secure the nation and its allies against the threat of transnational terrorism while continuing to respect its obligations to follow U.S. law, including applicable international treaties. So far, Guantanamo has succeeded as an effective tool in the war on terrorism, and the absence of any terrorist attacks on U.S. soil since 2001 is a testament to that.

U.S. anti-terror policy cannot be dictated by supranational institutions such as the United Nations. U.S. policy on Guantanamo Bay can only be set by the President and the United States Congress, in consultation with America's allies and treaty partners—not by bureaucrats in Turtle Bay or Geneva. A U.S. decision to give in and close the Guantanamo facility would not only undermine America's security but also be a major propaganda victory for al-Qaeda and its affiliates, who would portray it as the humbling of a superpower.

The United Nations should focus on combating real human rights abuses in countries such as Syria, Iran, Burma, and North Korea, as well as members of its own human rights commission, including Sudan and Zimbabwe. Further, the U.N. must finally put an end to abuses in its peacekeeping operations, where acts of great cruelty toward defenseless refugees have irreparably tarnished the world body's reputation.<sup>20</sup> U.N. officials and peacekeepers must be brought to justice for the rape and abuse of the people they are supposed to be protecting.

The U.N., which has struggled for decades to even agree on a definition of terrorism, once again demonstrates a clear lack of moral clarity in its release of the commission's Guantanamo report. The United States, as well as key allies such as Great Britain, should reject the hectoring of unelected U.N. officials and call upon the world body to take a more positive role in combating international terrorism. The U.N. must be reminded that appeasement of violent extremists is always doomed to failure.

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18. "Expert Says UN Looking For Secret US Detention Facilities as Part of Probe," Associated Press, June 29, 2005.

19. See "Expulsions Illegal, UN Tells Clarke," *The Guardian*, August 25, 2005, at <http://politics.guardian.co.uk/terrorism/story/0,15935,1555931,00.html>; and "Row Over New Rules for Deporting Hate Preachers," *The Times Online*, August 24, 2005.

20. See Nile Gardiner, Ph.D., "The U.N. Peacekeeping Scandal in the Congo: How the U.S. Should Respond," *Heritage Foundation Lecture* No. 868, March 22, 2005, at [www.heritage.org/Research/InternationalOrganizations/hl868.cfm](http://www.heritage.org/Research/InternationalOrganizations/hl868.cfm).