

**GLOBAL WAR ON TERRORISM AND PROSECUTION OF TERROR SUSPECTS:
SELECT CASES AND IMPLICATIONS FOR INTERNATIONAL LAW, POLITICS, AND
SECURITY**

*Srini Sitaraman **

Introduction

The global war on terrorism has opened up new frontiers of transnational legal challenge for international criminal law and counterterrorism strategies. How do we convict terrorists who transcend multiple national boundaries for committing and plotting mass atrocities; what are the hurdles in extraditing terrorism suspects; what are the consequences of holding detainees in black sites or secret prisons; what interrogation techniques are legal and appropriate when questioning terror suspects? This article seeks to examine some of these questions by focusing on the Global War on Terrorism (GWOT), particularly in the context of counterterrorism strategies that the United States have pursued towards Afghanistan-Pakistan (Af-Pak) since the September 2001 terror attacks on New York and Washington D.C.

The focus of this article is on the methods employed to confront terror suspects and terror facilitators and not on the politics of cooperation between the United States and Pakistan on the Global War on Terrorism or on the larger military operation being conducted in Afghanistan and in the border regions of Pakistan. This article is not positioned to offer definitive answers or comprehensive analyses of all pertinent issues associated with counterterrorism strategies and its effectiveness, which would be beyond the scope of this effort. The objective is to raise questions about the policies that the United States have adopted in conducting the war on terrorism and study its implications for international law and security. It is to examine whether the overzealousness in the execution of this war on terror has generated some unintended consequences for international law and complicated the global judicial architecture in ways that are not conducive to the democratic propagation of human rights.

Several tactics and strategies employed as part of the war on terror since the attacks on the United States on 11 September 2001 have produced a host of difficult legal, practical, and security issues with regard to the prosecution of terrorists and terror suspects within the bounds of commonly accepted principles of international law. Former President of the United States, George W. Bush (2001-2008), started an aggressive strategy that mostly operated

** Srini Sitaraman is an Associate Professor at the Department of Political Science and Asian Studies Program, Clark University.*

outside the bounds of internationally accepted human rights norms. The Bush administration began implementing the policy of denying Geneva Convention protections to terror suspects and combatants caught in the battlefield operations in Afghanistan and counterterrorism operations in Pakistan and several other countries. The Bush administration expanded the definition of torture so that it could be pushed to the extreme and still not be in violation of international or U.S. legal code.

Basically, the Bush administration rewrote the law on torture and detention to suit its aggressive counterterrorism strategies. Also the Bush administration established a network of secret prisons around the world, such as the notorious Camp X-Ray and Camp Delta, detention centres at the Guantánamo Naval Base in Cuba, the Bagram detention centre in Afghanistan, and the Abu Ghraib prison in Iraq to indefinitely detain and interrogate combatants. New methods were implemented such as subjecting terror detainees to harsh interrogation procedures in private planes of wealthy individuals while the plane circled the skies to avoid territorial jurisdiction.¹ The United States were also able to elicit the cooperation of the Pakistani government in apprehending terror suspects and transporting them to secret prisons without any formal extradition procedures. In instances where the Pakistani government did not share the terror suspects with the United States, the suspects were kidnapped by Pakistani intelligence agencies and on rare occasions tried in closed anti-terrorism courts.²

This article examines the pattern of extradition or rendition of terror suspects, holding terror suspects in secret prisons, detaining terror suspects for extended periods of time without charging them, exposing suspects to torture and harsh interrogation methods, and the quality of terror trials conducted in Pakistan and in the United States. Overall, the spotlight will be on the development of extra-judicial mechanisms for dealing with presumed terrorists and terror suspects and those apprehended in the battlefields in Iraq, Afghanistan and Pakistan. The focus of this article will be on terror suspects from Pakistan accused of attacking and plotting to destroy American installations and citizens abroad and in the United States. This article will examine detention, rendition, interrogation, trial, and sentencing of terror suspects by examining the sensational cases of Ahmed Omar Saeed Sheikh, Khalid Sheikh Mohammed and Dr. Aafia Siddiqui. These allow us to probe some of the practices that undergird the United States-led global war on terrorism.

During the last decade, i.e. since the 9/11 terror attacks, Afghanistan-Pakistan (Af-Pak) has emerged as a fount for global terrorism. International efforts, particularly American counterterrorism efforts, have concentrated on the Af-Pak region because of the nebulous and ungoverned boundary region

¹ P. Finn & J. Tate, 'N.Y. Billing Dispute Reveals Details of Secret CIA Rendition Flight', *Washington Post* 31 August 2011.

² C. Gall, 'Picture of Secret Detentions Emerges in Pakistan', *New York Times*, 19 December 2007.

separating Afghanistan and Pakistan that has been highly conducive to the spread of global terrorism. With a host of terror groups finding a home in Pakistan, it has emerged as the primary front on the global war on terrorism.³ Not all terror suspects are Pakistani citizens, but most have a Pakistani connection by virtue of having travelled to, lived in, trained in, and operated from Pakistan. Several of the key suspects have travelled through and lived in Pakistan before reaching Afghanistan and in a few other cases terror suspects have relied on Pakistani terror groups to finance their plots, such as the perpetrators of the 9/11 attacks on the United States. Many others have used Pakistan as a base to launch attacks around the world.⁴ Several terrorists such as Al Qaeda's No. 3 man, Saudi born Abu Zubaydah who was captured in Pakistan in March 2002, Taliban leader Mullah Omar and Ayman al Zawahiri, who was always in the company of Osama Bin Laden, are said to still be hiding in Pakistan.⁵ Should these terrorists be tried in the national courts of Pakistan if and when they are apprehended? Or in the federal courts of the United States, in the state courts of the countries in which they intended or managed to carry out their terror plots? Should they be tried in military commissions, or held indefinitely in detention facilities such as the Guantánamo Naval Base? Would it work better if they were tried in the permanent International Criminal Court (ICC) or through some ad-hoc international criminal body specifically created to handle international terrorists? A complex and hybrid system has emerged in which suspects are being tried in the respective national courts of states that have experienced attacks (United Kingdom, Spain, France, Germany, Indonesia and India, to name a few) and in the federal courts and military commissions in the United States. Pakistan on the other hand has relied on special anti-terrorism courts intended to quickly secure convictions.

Broadly the United States have followed four types of counterterrorism strategies:⁶

- 1) an aggressive military campaign to destroy Taliban/Al Qaeda and other international terror groups in their hideouts bordering Pakistan and several other locations in Afghanistan;
- 2) targeted assassinations through commando-style military raids and targeted killings carried out through unmanned aerial vehicles (UAV) or drones;

³ B. Riedel, 'Pakistan and Terror: The Eye of the Storm', *Annals of the American Academy of Political and Social Science* 2008-618, p. 31.

⁴ H. Abbas, *Pakistan's Drift into Extremism, Allah the Army and America's War on Terror*, London: M.E. Sharpe, 2005; Za. Hussain, *Frontline Pakistan: the Struggle Within Militant Islam*, New York: Columbia, 2007.

⁵ A. Zirulnick, 'The Top 5 Al Qaeda Leaders Still Hiding in Pakistan,' *Christian Science Monitor*, 3 May 2011 at: <http://www.csmonitor.com/World/Asia-South-Central/2011/0503/The-top-5-Al-Qaeda-leaders-still-hiding-in-Pakistan/Ayman-al-Zawahiri> (accessed on 11 November 2011).

⁶ J. Saulino, 'Strategic Choices: Four Legal Models for Counterterrorism in Pakistan', *Harvard National Security Journal* 2011-1, pp. 248-282.

3) rendition, abduction, indefinite detention and disappearance of terror suspects;

4) trial of terror suspects in local courts (Pakistani courts) and in American courts (federal or state courts or in military commissions).

The focus of this article will be on extradition, extraordinary rendition, and disappearance and detention of terror suspects in secret and in special prisons: acts that fall within a spectrum of aggressive strategies employed by the United States since the 9/11 terror attacks, which have pushed the limits and conventions of international law on acceptability, accountability, and legality.

The debate on how to handle international terrorists has centred on whether to try terrorists in courts, preferably in the courts of the states from which they originate or in the states where they committed or intended to commit their crimes; or better yet many prefer to try terrorists in special international courts such as the International Criminal Court (ICC).⁷ However, presently there are no international courts for trying terror suspects and no significant efforts have been made towards developing such a system. Within the United States, there is a vibrant legal debate as to what type of courts would be appropriate for trying terrorists. Should they be tried by special military commissions that are closed in view of the sensitivity of the information that would be put on display during the trial or should terror suspects be tried in federal courts in the full glare of the media spotlight?⁸

I. Transboundary Counterterrorism Strategies

The primary debate surrounding rendition, abduction and disappearance of suspected terrorists has focused on how suspected terrorists are apprehended, how they are tried, and what legal protections they are afforded before and during their trial. The secondary debate has centred on the legality of the lethal use of force; for example on whether it is legal to assassinate terror suspects through unmanned aerial vehicles (UAVs or drones), since such assassinations are akin to extra-judicial executions that stand in contrast to generally accepted principles of international law. The tertiary debate has focused on the techniques used to extract information from terrorists. The focus has specifically been on the moral, legal, political, and security implications of aggressive interrogation techniques such as waterboarding, body slamming, walling, sleep and sensory deprivation that the United States have claimed are legal because they do not meet the definition of torture. But critics both within and outside of the United States have vociferously argued

⁷ K. Gude, 'After Guantanamo: A Special Tribunal for International Terrorist Suspects', Center for American Progress, April 2006.

⁸ L. A. Dickinson, 'Using Legal Process To Fight Terrorism: Detentions, Military Commissions, International Tribunals, And The Rule Of Law', *Southern California Law Review* September 2002-6, pp. 1407-1492.

that such methods do in fact constitute torture and that they violate commonly accepted precepts of international law.⁹

When terror suspects are captured and transferred to secret prisons it automatically precludes transparency in police and judicial procedures. This easily lends itself to abuse, acts of torture, and other illegal methods of information extraction and coerced confessions that are not accepted as evidence in the civilian judicial system of the United States or under international law. Immediately following the 9/11 terror attacks on the United States, the administration of George W. Bush put together an extra-legalistic system to go after terrorists and terror suspects across international boundaries. The argument articulated by the Bush administration, which has been mostly followed by the Obama administration, its public rhetoric notwithstanding, is that the standard rules of American civil and criminal procedures and the protections offered under the Geneva Conventions, the Convention on Torture, and other international treaties do not extend to terror suspects and terrorists because they are defined as unlawful or enemy combatants.

In the post-9/11 era it is agreed that states operate in a complex security environment in which states, in their desire to prevent future attacks, push the bounds of law—restrictions of civil liberties and suspensions of prisoner rights—to realise their security objectives. As the former Central Intelligence Agency (CIA) Director, Cofer Black, put it, “after 9/11 the gloves came off.”¹⁰ States can swing too far to the right, resulting in the suspension of generally accepted international norms, weakening the judicial system both within and across states. The United States’ and Pakistan’s actions clearly suggest that both are operating outside the bounds of generally accepted principles of international law or at the very least that they are pushing the boundaries of international legal norms. The three case studies of Ahmed Omar Sheikh, Khalid Sheikh Mohammed and Dr. Aafia Siddiqui demonstrate that the actions taken by the United States and Pakistani government, some in collaboration and some independently, have important ramifications for international law and human rights norms.

1.1 The Case of Ahmed Omar Saeed Sheikh

Ahmed Omar Sheikh was born to Pakistani immigrant parents in the United Kingdom. He received top grades on his board exams, earning him a highly coveted spot at the *London School of Economics* (LSE) to study statistics and economics in early 1990s. His objective at that time was to move to London and work in high finance. Sheikh was described as likable, thoughtful, thorough, and an accomplished chess player with a strong moral centre and

⁹ M. Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, New York: New York Review of Books, 2004.

¹⁰ D. Priest & B. Gellman, ‘U.S. Decries Abuse but Defends Interrogations’, *Washington Post*, 26 December 2002.

eagerness to engage in charitable causes and please others.¹¹ However, a trip to Bosnia sometime in December 1992 or early 1993 led by a London-based Muslim charity—*Convoy of Mercy*—altered Ahmed Omar Saeed Sheikh's worldview. By the time classes began in October 1993, Sheikh had dropped out of LSE and almost a year later he reappeared in India in October 1994. It is alleged that Sheikh made his way through his Bosnia contacts to training camps being run in Pakistan by anti-India, pro-Kashmir terror groups. He apparently trained in camps belonging to the terror group *Jaish-e-Mohammed* (JeM) or Army of Mohammed. Subsequently he masterminded the kidnapping of three British tourists and one American travelling in India, shackled them with chains and sent a ransom note to the local police demanding the release of Islamic militants in Indian jails.

Luckily for the abducted tourists the Indian police was able to mount a rescue operation and arrest Sheikh; he was tried and held in Tihar Jail in India from 1994 through December 1999. However, Ahmed Omar Sheikh was released along with two other notorious terrorists—Maulana Masood Azhar and Mushtaq Ahmed Zargar—in exchange for the lives of 155 Indian passengers during the infamous hijacking of the Indian Airlines flight IC-814 from Kathmandu, Nepal to Kabul, Afghanistan that lasted from 24 to 31 December 1999. After his release in 1999 to the custody of the Pakistani intelligence agency and/or the Afghan Taliban, Ahmed Omar Sheikh seems to have gone into hiding in Pakistan or in Afghanistan only to reappear in early 2002 to kidnap Daniel Pearl, the South Asian Bureau Chief of the *Wall Street Journal*, a highly regarded financial daily based in New York City. Daniel Pearl was investigating the links between Pakistani terror groups and Richard Reid, the shoe bomber who tried to detonate an explosive hidden in his shoe en route from Paris, France to Miami, Florida on 21 December 2001. Pearl was lured into an elaborate trap laid by Omar Sheikh and kidnapped on 23 January 2002 in Karachi, Pakistan. Later Sheikh sent a ransom email to Pearl's employer—the *Wall Street Journal*—and several other media outlets in the United States.

Omar Sheikh was arrested after a massive manhunt in which the Federal Bureau of Investigation (FBI) of the United States aided the Pakistani law enforcement and intelligence agencies.¹² After his arrest the Pakistani police rigorously questioned Sheikh and it was during this interrogation that he mentioned that Pearl might already be dead. Pearl's kidnapping looked very similar to the kidnapping operation that Sheikh had run in New Delhi in 1994. He had relied on his charm and proficiency in English to lure Pearl into a trap that resulted in his kidnapping and subsequent execution. Ahmed Omar Sheikh was charged and immediately put on trial for the kidnapping and murder of Daniel Pearl.

¹¹ A. Cowell, 'London Journal: This Mild Schoolboy, Lost in the Islamic Inferno', *New York Times*, 11 October 2001.

¹² D. Jehl, 'Pakistan Turns Up Heat Under a Prime Suspect in a Reporter's Kidnapping', *New York Times* 9 February 2002.

Omar Sheikh's case raises several questions. How did a mild-mannered LSE student from a striving middle-class family become a notorious kidnapper and terrorist? Was Sheikh the kidnapper and the murderer? Did he receive a fair trial? Was Sheikh subject to harsh interrogation, coercion, and torture? Was his family threatened? Why was he not transferred to U.S. custody as many others had previously been?

I.2 Trial of Omar Sheikh

Ahmed Omar Sheikh was identified as the main suspect in the kidnapping and murder of Daniel Pearl and he was subsequently arrested in Lahore, Pakistan and then taken to Karachi for more questioning. Sheikh was evidently arrested after an intense manhunt in which his close relatives were questioned and detained in an effort to put pressure on Sheikh to turn himself in, which he did on 12 February 2002, roughly two weeks after Daniel Pearl's disappearance.¹³ Pakistani intelligence officials claimed that they initially found it difficult to make Sheikh talk because he was "running rings around the investigators," but a few days later he admitted to his involvement in the Pearl kidnapping case.¹⁴ It is not entirely clear why and how Sheikh suddenly confessed; it is widely believed that he might have been subject to harsh interrogation, torture, coercion and other pressure techniques to elicit information.

Sheikh confessed in a Karachi Court on 14 February 2002 that he was indeed involved; apparently he said, "I did this. Right or wrong, I had my reasons. I think that our country shouldn't be catering to America's needs."¹⁵ Sheikh's confession was made rather unexpectedly, even before he was formally sworn in and without the court recorder present. His lawyer argued that Sheikh's confession was not legally admissible because evidence collection was incomplete and that there was no direct connection between Sheikh and Daniel Pearl's death.¹⁶ In addition, his lawyer claimed that Sheikh had blurted out things because he was tortured and that his family was threatened. Sheikh's interrogation and his subsequent confession on 21 February 2002 did not provide any clues regarding the whereabouts of Pearl. After Sheikh's abrupt and unanticipated confession, talks were initiated regarding his extradition to the United States.¹⁷ Sheikh had been secretly indicted in U.S. courts for his role in the kidnapping conspiracy of an American citizen in New Delhi in 1994.

¹³ D. Jehl, 'Pakistan Officials Arrest a Key Suspect in Pearl Kidnapping', *New York Times*, 13 February 2002.

¹⁴ D. Jehl, 'A Suspect, Changing Story, Says American Reporter Is Dead', *New York Times*, 15 February 2002.

¹⁵ R. Bonner, 'Diplomats Expect Conviction in Pearl Case' *New York Times*, 10 May 2002; 'Confession Arises Again At Secret Trial', *New York Times*, April 24, 2002.

¹⁶ 'Confession on Pearl May Not Stand Up', *New York Times*, 21 February 2002.

¹⁷ D. Jehl, 'Pakistan Is Willing To Give Up Suspect In Reporter's Death', *New York Times*, 27 February 2002.

The U.S. government argued that there was a solid legal basis for the formal extradition of Sheikh to the United States. Moreover, the U.S. government officials also argued that handing over Sheikh to the Americans could heal the growing fissure between U.S. and Pakistani law enforcement agencies caused by Pakistan's unwillingness to track and hunt down Sheikh for his role in the 1994 kidnapping of British and American tourists in India and for several other transgressions. However, officials in the Pakistani government were opposed to turning over Sheikh and wanted to try him in Pakistan's anti-terror courts despite an aggressive push by the U.S. government including a public statement by then-President George W. Bush. A few high officials in the Pakistani government pointed out that Pakistan does not have a formal extradition treaty with the United States, but that has not stopped them from quietly transferring several terror suspects to U.S. custody.

The United States and Pakistani governments also exchanged prisoners in the case of Mir Aimal Kansi, for his role in the 1993 killings of CIA employees outside the Langley, Virginia headquarters (located outside Washington D.C.) and in the arrest and deportation of Ramzi Ahmed Yousef, the chief architect of the 1993 World Trade Centre bombings in New York City. Beside these two suspects, Pakistan has complied with U.S demands and handed over several Taliban and Al Qaeda figures, but Pakistani legal experts argued that such handovers were limited to the U.S. military operations related to Afghanistan and that they did not have any impact on this particular case or on other broader terror-related operations conducted in Pakistan. In addition, they also dismissed suggestions that Sheikh was an Al Qaeda operative because labelling Sheikh as an Al Qaeda member would have hastened demands for his transfer to the United States for a public trial.¹⁸

Despite some misgivings among the Pakistani officialdom, General Musharraf of Pakistan "agreed in principle" to "surrender the chief suspect in the killing of Daniel Pearl to the United States, but only after Pakistan concluded its criminal investigation."¹⁹ General Musharraf had apparently made this personal commitment to Wendy J. Chamberlin, the American Ambassador. Pakistani officials close to General Musharraf had suggested that handing over Sheikh could be easily achieved.²⁰ Based on such assurances, a Grand Jury in Trenton, New Jersey formally indicted Ahmed Omar Saeed Sheikh on 14 March 2002 on "charges of hostage-taking and conspiracy to commit hostage-taking resulting in a death."²¹ The unsealed indictment stated that Daniel Pearl had been executed even before the ransom note was emailed on 30 January 2002 to the

¹⁸ D. Jehl, 'U.S. Is in Talks on Handing Over Of Suspect in Reporter's Killing', *New York Times*, 26 February 2002.

¹⁹ D. Jehl, 'Pakistan Is Willing To Give Up Suspect In Reporter's Death', *New York Times*, 27 February 2002.

²⁰ Ibid.

²¹ P. Shenon, 'U.S. Indictment In Deadly Plot On Journalist', *New York Times*, 15 March 2002.

Wall Street Journal. In the note, Sheikh and his cohorts demanded that Pakistani militants captured in Afghanistan be immediately set free.

The indictment in New Jersey however did not charge Sheikh with personally killing Daniel Pearl, but it laid out additional charges that Sheikh “fought in Afghanistan alongside the Taliban and Al Qaeda terrorists,” he was “trained in military camps in Afghanistan,” and that he was “affiliated with radical, militant organizations.”²² Moreover, according to the indictment Daniel Pearl was dead even before the kidnappers sent the e-mail message on 30 January 2002 in which they indicated that Pearl would only be freed if a number of their demands were met. The indictment in the United States did not make the allegation that Sheikh murdered Daniel Pearl. Sheikh had always claimed that he did not kill Pearl and that a different group had taken over the command of the operations once it became known that Pearl was a Jew and it was unlikely that Pearl was going to be freed. The Al Qaeda-affiliated group that took over from Sheikh evidently wanted to make an example out of Pearl because he was an American Jew and they were not interested in ransom or other concessions.

The Bush administration officials in Washington D.C. suggested that they were willing to see investigations take their course in Pakistan before Sheikh was to be extradited. General Musharraf remarked during an interview with foreign journalists that Sheikh had “committed a terrible act in Pakistan, and he must be punished in Pakistan.”²³ The government of Pakistan announced its intention to try Omar Sheikh before acting on the American request to hand him over and the United States for its part signalled that they were willing to see the investigation and the trial in Pakistan follow its course, but that such a trial should not be dragged out. A United States Department of State spokesperson raised the possibility of consecutive trials—first in Pakistan, then in the United States—and pointed out that the American government was conducting talks with Pakistan on how to “sequence the trials.”²⁴ Meanwhile, some Pakistani officials expressed concern over the handling of the Sheikh case and argued that the decision to hand over Sheikh to the United States was a “political one” that would ultimately be made by General Pervez Musharraf, the Pakistani leader.²⁵ There was great concern that Pakistan did not want to be seen as surrendering its sovereignty to the United States in the eyes of its people; an accusation regularly levelled against the Pakistani government both by militants and ordinary citizens.

²² Ibid.

²³ R. Bonner, ‘Diplomats Expect Conviction in Pearl Case’, *New York Times* 10 May 2002.

²⁴ P. Shenon, ‘U.S. Indictment In Deadly Plot On Journalist’, *New York Times* 15 March 2002.

²⁵ Ibid.

I.3 Concerns about Double Jeopardy

Pakistan was especially concerned that handing over Sheikh to the United States would reveal the links between the powerful Inter-Services Intelligence agency (ISI) and the extremist Islamic groups.²⁶ Sheikh was an important member of the terror group *Jaish-e-Muhammad* (JeM) or Army of Muhammad, a group that is covertly supported by Pakistan in its war against India in Kashmir. Although General Musharraf banned the organisation after the 9/11 terror attacks, *Jaish-e-Muhammad* continued to operate under different aliases without much interference from the Pakistani government. Pakistan was not particularly in favour of cracking down on groups such as *Jaish-e-Muhammad* or *Lashkar-e-Taiba* (LeT) because it was aimed at India and not against Afghanistan or the United States. *Jaish-e-Muhammad* fit into the larger Pakistani strategic paradigm, which differentiates between anti-India terror groups and other types of terror organisations; so these groups are nurtured and encouraged. Because *Jaish-e-Muhammad* and *Lashkar-e-Taiba* are favoured within the Pakistani military and intelligence circles for their strong anti-India stance some in Pakistan felt that the Pakistani government had deliberately filed charges against Sheikh to prevent his transfer to U.S. custody, which would have exposed the strong links between the intelligence agencies and terror groups.²⁷ If this information were to be publicly revealed during trial it would seem as if the government was somehow complicit in Daniel Pearl's murder and embarrass the Pakistani government.

Sheikh's lawyer argued that he should not be tried for the same crime twice—once in Pakistan and once in the United States—invoking the double jeopardy clause. Even the former U.S. Attorney-General John Ashcroft indicated that he was troubled by the double-jeopardy factor in this particular case.²⁸ Sheikh would have stood trial for the kidnapping and conspiracy to murder an American citizen in New Delhi in 1994 and for the kidnapping and involvement in the death of an American journalist in Pakistan in January 2002. Instead of making a formal extradition requirement, the United States had hoped that Pakistan would voluntarily repatriate Sheikh as it had done in other terror cases, which would have the added advantage of avoiding complicated extradition procedures delaying the transfer of the prisoner and the timely completion of trials.

Pakistan's leaders were concerned that Sheikh's voluntary transfer would be an affront to Pakistani sovereignty and that they would be seen as kowtowing to the United States.²⁹ Besides the apprehension that Sheikh might reveal the

²⁶ 'Suspect Linked to Regional Militants', *New York Times*, 25 February 2002.

²⁷ D. Jehl, C. W. Dugger & F. Barringer, 'Death of Reporter Puts Focus On Pakistan Intelligence Unit', *New York Times*, 25 February 2002.

²⁸ Raymond Bonner, 'Killing Suspect to Be Tried Under the Laws of Pakistan', *New York Times*, 22 March 2002.

²⁹ D. Jehl, 'No Immediate Turnover Of Suspect in Pearl Killing', *New York Times*, 6 March 2002.

links between Pakistan's intelligence agencies and the anti-India terror groups, there was also the fear of retaliation from armed groups if Sheikh was to be released into American custody. Such a threat was openly made by Sheikh during his 13 March 2002 appearance in a Karachi courtroom where he said that the United States would "suffer the consequences" of another kidnapping or hijacking if he was to be turned over to the Americans.³⁰

The Bush administration was highly confident that Sheikh would eventually be transferred to the United States, irrespective of the outcome of the trial in Pakistan. American legal experts also concurred that the double-jeopardy clause would not affect Sheikh's repatriation because this clause did not apply across jurisdictions, i.e. if a defendant was tried in another country (Pakistan) and then tried for the same crime again in the United States, then the double-jeopardy clause would be non-applicable.³¹ By early April, General Musharraf had decided not to hand over Sheikh to the Americans and allowed the trial to proceed in Pakistan. The trial of Sheikh and his three co-defendants began on 5 April 2002 behind closed doors under heavy security in the anti-terrorism court in Pakistan.³² Sheikh's sudden and unexpected confession was introduced as evidence of his guilt even though he subsequently recanted his confession. Sheikh's lawyers argued that the confession was obtained under duress and threats to his family, but the government prosecutors presented it as evidence anyway. The controversy surrounding the legality and admissibility of such a voluntary confession that was blurted out somewhat unexpectedly by Sheikh occupied much of the legal wrangling at the start of the trial.³³

In Pakistan, many independent lawyers and journalists raised doubts regarding the independence of the antiterrorism court because it operated behind closed doors based on laws that were biased against the defendants and devised to get quick convictions. General Musharraf made pre-emptive statements claiming that Sheikh was guilty and should be executed in Pakistan, contradicting American claims that he would be transferred to the United States once the trial in Pakistan was completed. Lack of concrete forensic evidence tying Omar Sheikh and his co-defendants to the killing of Daniel Pearl further delayed and complicated the case and increased the back-and-forth political dynamics between the government prosecutors and Sheikh's lawyers.³⁴

³⁰ R. Bonner, 'Suspect in Killing of Reporter Is Brash and Threatening in a Pakistani Court', *New York Times*, 13 March 2002.

³¹ P. Shenon, 'U.S. Confident of Suspect's Extradition From Pakistan', *New York Times*, 23 March 2002.

³² S. Mydans, 'Trial in Murder of Reporter Begins With Legal Maneuvers', *New York Times*, 6 April 2002.

³³ *Ibid.*

³⁴ S. Mydans, 'Trial in American Reporter's Death Is Adjourned, Raising Doubts About Swift Resolve', *New York Times* 13 April 2002.

By early May 2002, the Bush administration moved away from demanding the voluntary handover of Ahmed Omar Sheikh either because they became aware that Pakistan was highly unlikely to comply or because they were convinced that Sheikh would be executed in Pakistan; a far more certain outcome compared to the potentially long and drawn-out trail in the United States. Many in the Bush administration were led to believe that Sheikh would be executed and that in the Pakistani justice system the outcome of death was assured although the evidence against Sheikh was weak and inconclusive. It almost seemed that both Pakistan and United States wanted Sheikh dead for entirely different reasons. U.S. officials argued that a quick and guaranteed outcome, i.e. Sheikh's death, would bring much-needed closure to the case and give justice to the victims.³⁵

Around mid-May 2002 the police discovered the remains of Pearl's body, which provided a huge break in the investigations.³⁶ However, this discovery did not seem to have any direct impact on the court proceedings. As the case moved in fits of short bursts, followed by periods of silence and legal squabbling, the defence claimed that the case against Sheikh and his defendants was based on falsified and circumstantial evidence to secure a quick conviction to suit the political expediency of Pakistan and the United States.³⁷ Even Sheikh's lawyers were convinced that these arguments were unlikely to change the outcome of the case and that they were basically auditioning the arguments for future appeals.

Ahmed Omar Sheikh was convicted by a Pakistani anti-terrorism court on 14 July 2002 for the murder of Daniel Pearl and sentenced to death; the three co-defendants—Salman Saqib, Fahad Naseem and Shaikh Adil—were sentenced to life in prison. The trial began on 22 April 2002 and was over in less than two months with only a few court sittings. Much of the court deliberations took place behind closed doors and even before the DNA evidence confirmed that the remains discovered on 16 May 2002 were those of Pearl, a guilty verdict was reached. The confirmation of DNA evidence was not made official until 17 July 2002; few days after the four accused were sentenced. In early August, Pearl's body was flown out of Pakistan to the United States, abruptly ending the sordid drama of the Pearl kidnapping and murder case.³⁸ However, a decade later, Omar Sheikh continues to languish in a Pakistani jail. His appeal case is still under review with no end in sight regarding this matter, while the U.S. authorities on the other hand seem to have given up on the case.

³⁵ R. Bonner, 'Diplomats Expect Conviction in Pearl Case', *New York Times* 10 May 2002.

³⁶ F. Barringer, 'Police Are Led to Body Said to Be Pearl's', *New York Times* 17 May 2002.

³⁷ S. Mydans, 'Defendant in Pearl's Death Says Evidence Was Faked', *New York Times*, 22 June 2002.

³⁸ 'Reporter's Body On Way Home From Pakistan', *New York Times* 8 August 2002.

II. Who Really Killed Daniel Pearl

Khalid Sheikh Mohammed (KSM), a high-value target, was captured in Pakistan in a joint U.S.-Pakistani raid in Rawalpindi, Pakistan, a town less than fifty kilometres from the capital city of Islamabad in early March 2003. After his arrest and interrogation in Pakistan, Khalid Sheikh Mohammed was secretly transferred to American custody. He was held in several “black sites” all over the world, including a secret prison in Poland for a substantial period, and subjected to harsh interrogation before eventually being transferred to Guantánamo.³⁹ Khalid Sheikh Mohammed was allegedly waterboarded 183 times in an effort to extract information, which many argue is tantamount to torture.⁴⁰ Also, considerable doubt prevails about the veracity of information supplied by Mohammed because the information was extracted from him while he was under extreme duress. More than a year after Pearl’s killers were convicted and sentenced to death in Pakistan, a report surfaced on 21 October 2003 in which American officials announced that Khalid Sheikh Mohammed was “personally responsible for killing Pearl.”⁴¹ Although it was not clear whether the information was obtained during the harsh interrogation or not, U.S. government officials argued that they had correctly concluded that Mohammed was indeed singularly responsible for the execution of Daniel Pearl.

In his memoir, *In the Line of Fire*, General Musharraf, the former Pakistani President revealed that although Omar Sheikh had been arrested and convicted in the kidnapping and execution of Daniel Pearl, the real killer was Khalid Sheikh Mohammed, who had admitted to killing Pearl under interrogation.⁴² A transcript of a military hearing at Guantánamo Bay, Cuba released by the U.S. military on 15 March 2007 reports that Khalid Sheikh Mohammed said, “I decapitated with my blessed right hand the head of the American Jew, Daniel Pearl, in the city of Karachi, Pakistan. For those who would like to confirm, there are pictures of me on the Internet holding his head.”⁴³ Besides admitting that he executed Daniel Pearl, Khalid Sheikh Mohammed is also said to have confessed to the complete planning and operations for the 9/11 terror attacks on the United States and several other major terrorist plots all around the world, including involvement in the plot to assassinate the Holy Pope and blow up multiple planes over the Atlantic.⁴⁴ Although there is widespread scepticism regarding Khalid Sheikh Mohammed’s disclosure that he played a pivotal role in organising, coordinating, and carrying

³⁹ J. Mayer, ‘The Black Sites: A Rare Look Inside the C.I.A.’s Secret Interrogation Program’, *New Yorker*, 13 August 2007.

⁴⁰ S. Shane, ‘Inside a 9/11 Mastermind’s Interrogation’, *New York Times*, 22 June 2008.

⁴¹ D. Johnston, ‘U.S. Contends Qaeda Leader Executed Pearl’, *New York Times*, 22 October 2003.

⁴² P. Musharraf, *In the Line of Fire: A Memoir*, The Free Press: New York 2006, p. 228.

⁴³ United States Department of Justice, *Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10024*, Washington D.C., 15 March 2007.

⁴⁴ *Ibid.*

out twenty-three major terror attacks, his confession that he personally slaughtered Pearl gave Omar Sheikh a new lease of life. Sheikh's lawyers appealed to the Pakistani high courts to have the case against him dismissed.⁴⁵

According to a report known as the Pearl Project released by *Centre of Public Integrity* in January 2011, which was produced by a group of Georgetown students along with Daniel Pearl's long-time friend, collaborator, and former *Wall Street Journal* colleague, Asra Q. Nomani, Khalid Sheikh Mohammed personally executed Daniel Pearl. Yet as media reports surfaced in 2007 Asra Nomani was highly sceptical that Mohammed could have been personally involved.⁴⁶ However, the Pearl Project, relying on cutting-edge vascular technology and the process of vein-matching, was absolutely convinced that Daniel Pearl was slaughtered by Khalid Sheikh Mohammed and that when the videotaping failed the first time (when Pearl was actually killed) another attempt at killing Pearl was staged for the purposes of producing the video tape in which Pearl was decapitated.⁴⁷ The *Centre for Public Integrity* report throws into question the entire trial of Omar Sheikh and his involvement in Pearl's murder. Omar Sheikh had not intended Pearl's murder; all he wanted to do was to utilise Pearl's captivity to extract concessions from the American and Pakistani governments. The Pearl kidnapping was very similar to the operation that Sheikh ran in New Delhi in 1994 in which three British tourists and one American were kidnapped. However, according to General Musharraf the Pearl kidnapping had gotten completely out of control, which was when Omar Sheikh panicked and surrendered thinking that he "might be treated leniently."⁴⁸ Musharraf's comments in his memoir seemed contradictory to the statements he made in 2002 when he assured the world that Sheikh was indeed Pearl's kidnapper and killer and that he should be tried quickly and executed in Pakistan for his terrible crime.⁴⁹

The Pearl Project has authoritatively concluded that the kidnapping and execution of Daniel Pearl was a "multifaceted, at times chaotic conspiracy."⁵⁰ It has identified twenty-seven individuals who played a critical part in the events surrounding the case and three different terror groups that played an active role in the kidnapping and murder of Daniel Pearl. Omar Sheikh masterminded

⁴⁵ N. Shachtman, 'Pearl's Killer Appeals on KSM's Confession' *Wired Magazine*, 19 March 2007, at: http://www.wired.com/dangerroom/2007/03/pearls_killer_a/ (accessed on 14 November 2011).

⁴⁶ J. Mayer, 'The Black Sites: A Rare Look Inside the C.I.A.'s Secret Interrogation Program', *New Yorker*, 13 August 2007.

⁴⁷ B. Feinman Todd & A. Nomani, *The Pearl Project: The Truth Left Behind-Inside the Kidnapping and Murder of Daniel Pearl*, Center for Public Integrity, Washington D.C. 2001, at: http://treesaver.publicintegrity.org/Daniel_Pearl (accessed on 16 November 2011).

⁴⁸ P. Musharraf, *In the Line of Fire: A Memoir*, New York: The Free Press (Simon and Schuster) 2006, p. 228.

⁴⁹ R. Bonner, 'Diplomats Expect Conviction in Pearl Case', *New York Times*, 10 May 2002.

⁵⁰ B. Feinman Todd & A. Nomani, *The Pearl Project*, p. 12.

the kidnapping of Pearl and lured him into a trap, but it was Khalid Sheikh Mohammed who personally executed Pearl. He was assisted by two of his relatives—Ali Abdul Aziz Ali and Musaad Aruchi—both are currently in U.S. custody. In addition, careful examination of Pakistani police files and court records revealed major discrepancies in the investigation and trial. According to the Pearl Project, the trial and prosecution of Omar Sheikh were fixed and witnesses were forced to blatantly prevaricate in order to secure a quick conviction of Omar Sheikh and his three co-defendants. Out of the twenty-seven individuals thought to be involved in the Pearl kidnapping and murder conspiracy, at least fourteen men are still free, four are convicted, five are dead, and four are presumed dead or missing.⁵¹

II.1 The Case of Khalid Sheikh Mohammed (KSM)

Khalid Sheikh Mohammed (KSM) is a high-value target, described as the principal 9/11 mastermind. He has apparently admitted to at least thirty high-profile terror plots and attacks and is the self-confessed killer of Daniel Pearl. Undoubtedly Khalid Sheikh Mohammed is a sociopath and terrorist of the highest order and deserves to be brought to justice. However, much debate has erupted over the legality of Mohammed's rendition and incarceration in CIA-run black sites and over whether to trust the information elicited from Mohammed from intense and harsh interrogation. Khalid Sheikh Mohammed may have been subject to sleep deprivation, body slamming, waterboarding,⁵² and has been held in duress positions for long periods of time, which some argue is tantamount to torture; while defenders have argued that this is harsh interrogation and not torture. The whereabouts of Khalid Sheikh Mohammed from 2003 to 2007 were not publicly revealed until the United States announced that he was being held in Guantánamo. Mohammed's confessions obtained under severe duress are not admissible in a court and many believe that he was simply boasting and taking credit for terror plots to seek personal glory.

One of the oft-repeated arguments for relying on torture is that Khalid Sheikh Mohammed provided critical leads that eventually led to the elimination of Osama Bin Laden in May 2011. In an editorial in *USA Today*, John Yoo, the author of the infamous U.S. Justice Department torture memo, defended his former boss President George W. Bush and his views on employing harsh interrogation tactics on terror suspects. Professor Yoo argued that in the days following the September 11 attacks enhanced interrogation methods were defensible because "no president could afford to foreswear methods that were legal, even though tough, on the mistaken belief that anything beyond questioning amounts to torture."⁵³ He further went on to argue that

⁵¹ *Ibid.*, pp. 13-15.

⁵² Waterboarding is a controversial interrogation technique in which water is poured over a prisoner and the prisoner is immersed in water for brief periods of time simulating the experience of drowning.

⁵³ J. Yoo, 'Tough Interrogations Worked', *USA Today*, 10 May 2011.

information gathered through harsh techniques “when pulled together into a mosaic of intelligence, can snap the right targets into focus,” which eventually enabled the United States to track down Osama Bin Laden, who was safely hiding just a few miles from a major Pakistani military base.⁵⁴

Opponents of torture are steadfast in their position that torture is morally wrong, reprehensible, and that it is prohibited both by U.S. and international laws; hence it should not be permitted under any condition. Neoconservative foreign policy hawks, such as Professor Yoo, former U.S. Secretary of Defense Donald H. Rumsfeld, and several other members belonging to the administration of former President George W. Bush, including former Vice-President Dick Cheney, are still adamant that laws and policies should be adjusted and amended as a part of the counterterrorism strategy to aggressively pursue terror suspects. In an interview, former American Vice-President Dick Cheney expressed strong support for waterboarding, saying that he would not hesitate to employ that interrogation technique again on a high-value detainee if “that was the only way we could get him to talk.”⁵⁵

II.2 Torture, Extraction, Confession, and Terror Trials

Webster’s English Dictionary defines torture as “the anguish of body or mind or the infliction of intense pain (as from burning, crushing, or wounding) to punish, coerce, or afford sadistic pleasure.” According to the Convention on Torture (CAT), “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed.”⁵⁶ Common Article 3 of the Geneva Convention prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; and outrages upon personal dignity, in particular humiliating and degrading treatment.”⁵⁷ United States Legal Code defines torture as an act that is “specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or physical control.”⁵⁸ U.S. law is clear in stating that the “intentional infliction or threatened infliction of severe physical pain or suffering; 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; the threat of imminent death; or the threat that another

⁵⁴ Ibid.

⁵⁵ D. Jackson, ‘Cheney Still Backs Waterboarding’, *USA Today*, 29 August 2011.

⁵⁶ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>.

⁵⁷ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 12 August 1949, 75 UNTS 135, at: <http://www.unhcr.org/refworld/docid/3ae6b36c8.html>.

⁵⁸ United States Legal Code, Title 18, para. 2340.

person will imminently be subjected to death, severe physical pain or suffering is torture.”⁵⁹ International law and United States legal code explicitly define a range of situations that could be categorised as torture. After the 9/11 terror attacks, the Bush administration decided to push the bounds of both U.S. and international law by redefining torture and expanding the set of acceptable practices that could be employed to extract information from terror suspects.

A detailed memorandum authored by John Yoo and Robert J. Delahunty (Yoo-Delahunty memo), who served as the Deputy Assistant Attorney General in the United States Department of Justice during the first term of the Bush Administration, provided the legal justification for treating the Taliban and Al Qaeda as non-state actors and as a consequence denying them legal protections typically reserved for prisoners of war. According to the Yoo-Delahunty memo, the “international agreements governing war” “do not apply to the Taliban militia” and they “do not protect members of the al Qaeda organization.”⁶⁰ The memo further goes on to contend that “Al Qaeda is merely a violent political movement or organization and not a nation-state” and as a consequence “it is not eligible to be a signatory for any treaty.”⁶¹ Therefore, according to the Yoo-Delahunty memo “neither the Geneva Conventions nor the WCA regulate the detention of al Qaeda prisoners captured during the Afghanistan conflict.”⁶² The memo further suggested that the Taliban was not a government and since Afghanistan did not possess a functioning government, and therefore was not a functional state, the “Taliban militia are not entitled to enemy POW status under the Geneva Conventions.”⁶³ Since the Taliban militia is inextricably intertwined with Al Qaeda to the extent that it is “functionally indistinguishable from it”, the Taliban and Al Qaeda must be treated on the “same legal footing.”⁶⁴ In addition, the memo went on to point out that the President of the United States has the “constitutional authority to suspend our treaties with Afghanistan pending the restoration of a legitimate government capable of performing Afghanistan’s treaty obligations.”⁶⁵ Finally, the Yoo-Delahunty memo concludes that the “rules of customary international law, whatever its sources and content, does not bind the President, or restrict the actions of the United States military.”⁶⁶

⁵⁹ Ibid.

⁶⁰ Office of the Deputy Assistant Attorney General, John Yoo and Robert J Delahunty, Memorandum for William J. Haynes II, General Counsel, Department of Defense, *Application of Treaties and Laws to al Qaeda and Taliban detainees*, Department of Justice, Washington D.C., 9 January 2002.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

Another memo authored on 1 August 2002 by Jay S. Bybee of the Office of Legal Counsel to Alberto R. Gonzales, Counsel to the President, examining the Standards of Conduct for Interrogation under U.S. law, argues that the United States legal code “proscribes acts inflicting, that are specifically intended to inflict, severe pain or suffering, whether mental or physical.”⁶⁷ Importantly, the memo argues that these acts “must be of an extreme nature to rise to level of torture.” The Bybee memo argues that some “acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A’s proscription against torture.”⁶⁸ The intention of this memo was to examine all “possible defences that would negate any claim that certain interrogation methods violate” United States legal code.⁶⁹ This memo is further expanded to suggest that for “an act to constitute torture defined in Section 2340, it must inflict pain that is difficult to endure” and that physical “pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”⁷⁰ Importantly, the Bybee memo contends that certain “acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity” to fall within the definition of torture established by the United States. In other words, cruel, inhuman or even degrading methods are not to be regarded as torture; only acts of “requisite intensity” that produce extreme pain amounting to organ failure are to be considered torture. Therefore, the Bybee memo concludes by arguing that on the whole, only “extreme acts are prohibited” and only the most egregious conduct is criminally liable.

The Yoo-Delahanty memo and later the Bybee memo along with the United States Department of Defense (DOD) directive, laying out the policy on interrogation techniques applicable for those individuals seized in Afghanistan, effectively form the trifecta of legal authority enabling the United States military to employ counterterrorism methods that are potentially in violation of U.S. and international law. These legal documents do not necessarily violate the laws of the United States or international law per se (although some argue that they indeed do so), but they surely push the permissible legal boundaries to their farthest in which the meaning of the law is surely extended beyond its original intent. Such wide latitudes in interpretation of the established law were undertaken to facilitate the implementation of extreme measures on prisoners captured in Pakistan and Afghanistan, and in other parts of the world.

⁶⁷ Office of the Assistant Attorney General, U.S. Department of Justice, Jay S. Bybee, Office of Legal Counsel, Memorandum for Alberto R. Gonzales, Counsel to the President, *Standards of Conduct for Interrogation Under 18 U.S.C paras. 2340-2340A*, Department of Justice, Washington D.C., 1 August, 2002.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

II.3 The Trial that Didn't Happen

On 14 November 2009, Eric Holder, the U.S. Attorney General, announced that Khalid Sheikh Mohammed would be prosecuted in New York City, just a few blocks from the World Trade Centre. In addition, the Attorney General pointed out that government lawyers would seek the death penalty for Mohammed and his four co-conspirators. The Obama administration's decision to hold terror trials in New York City for major terror suspects accused of the 9/11 attacks on the United States marked a significant shift from the Bush administration, which had long held the view that Al Qaeda members do not possess constitutional rights or rights accorded by international law.

When President Obama took office in January 2009 he wanted to reverse the practices of the Bush administration by shutting down the Guantánamo Naval base prison and move the detainee trials to civilian courts in the United States. Increasingly, however, the Obama administration is encountering strong legal and political resistance to the closing of the Guantánamo facility both from within the United States and from other countries that refuse to accept former terror detainees who are released. The Obama administration soon realised that it has to retain military commissions because of security concerns about revealing evidence gathered using sensitive intelligence mechanisms. It also faced the challenge of presenting evidence in civilian courts in public trials on certain terror detainees that may prove to be inadequate or possibly downright inadmissible. Opponents of civilian trials for terror mastermind Khalid Sheikh Mohammed were also concerned that it would give him "a platform to spew anti-American venom," and grandstand in front of a global audience as he raves and rants against the United States and U.S. policies.⁷¹ Most importantly, the administration faced significant pressure from U.S. legislatures about trying high-value terror suspects in the United States and potentially exposing the country to security risks. Three years after taking office, the Obama administration has not been able to close the Guantánamo facility or successfully prosecute detainees who are being held indefinitely without trial in civilian courts.

Early in the summer of 2009 President Obama enabled the prosecution of terror suspects in military commissions, but with additional protections that safeguarded the defendants' rights. President Obama's executive order in March 2011 requires the status of the terror detainees to be reviewed within a year after their initial imprisonment and from then on a review must be conducted every three years to identify whether the terror suspect continues to remain a threat and then accordingly present the case for trial or prepare the detainees for release. In addition, President Obama's executive order also requires that any detention should be compliant with the Geneva Conventions and the Convention on Torture that prohibit cruel and unusual treatment.⁷²

⁷² Ibid.

⁷² Ibid.

The newly established legal procedures allow detainees a range of legal protections that were not available to them heretofore, such as access to classified information that could be utilised in a trial on behalf of the detainees and access to legal representation. The Obama administration believed that a dual system in which some terror detainees could be tried in civilian courts and some others by military tribunals would be an ideal arrangement.

The U.S. Supreme Court ruled in the case of *Boumediene v. Bush* that prisoners held indefinitely in Guantánamo Naval Base could challenge their detention as enemy combatants in federal courts because they possessed the right of *habeas corpus* guaranteed by the Constitution of the United States.⁷³ Overall, judges in United States federal courts found in their review of the cases filed by Guantánamo inmates that twenty-nine of the thirty-five prisoners were being unlawfully detained.⁷⁴ The United States government has also lost eight of the fifteen cases that it had tried in civilian courts, largely because the information it had obtained from the defendants through coercive methods that ranged from verbal threats to enhanced interrogation and other forms of abuse that resulted in the violation of prisoner rights were inadmissible.⁷⁵ Even after the prosecution team went back and obtained confessions and statements that were untainted, i.e. in which coercive methods were not employed, still the cases were dismissed. The judges argued that any statement and confession, even when obtained through non-coercive means, “too are tainted by the earlier forcible methods.”⁷⁶ However, in most of these cases, Guantánamo detainees have not been set free, even after winning verdicts in their favour, because the federal government is appealing their cases and in some cases the defence department is figuring out how to process their release.

IV. Tortured Legacy of Military Commissions

Military tribunals were established immediately after President Bush began waging the Global War on Terrorism after the 9/11 terror attacks. The purpose of the military tribunals was to establish a rapid mechanism to bring terror suspects to justice. However, the legal troubles for tribunals began almost immediately because the Bush administration had created tribunals that were found not to adhere to the standards established by the Geneva Conventions,

⁷² Ibid.

⁷² C. Haberman, ‘Outside Court, a Failure to Be Fearful’, *New York Times*, 7 October 2010.

⁷² S. Shane & M. Landler, ‘Obama Clears Way for Guantanamo Trials’, *New York Times*, 7 March 2011.

⁷³ ‘Legacy of Torture’, *New York Times* August 26, 2010

⁷⁴ Chisun Lee, ‘More at Stake in Gitmo Court Orders Than Detainees’ Fates,’ *ProPublica*, 21 August 2009, at: <http://www.propublica.org/article/more-at-stake-in-gitmo-court-orders-than-detainees-fates-821> (accessed on 24 November 2011).

⁷⁵ Chisun Lee, ‘How Judges Are Ruling When Mistreatment Is an Issue’, *ProPublica*, August 13, 2010, at: <http://projects.propublica.org/tables/detainee-coercion-lawsuits> (accessed on 24 November 2011).

⁷⁶ Ibid.

nor compliant with other international laws. Former U.S. President George Bush's legal team argued that terror suspects are non-state enemy combatants and hence they are not entitled to the same protections offered to the legal combatants, especially the right of *habeas corpus*, and other rights that are typically conferred to prisoners of war (POWs). The Guantánamo Bay Naval Base prison was specifically created to hold prisoners indefinitely outside the jurisdiction of the federal judicial system because terror suspects were regarded as not fitting into the civilian judicial systems.

A series of legal challenges began with *Rasul v. Bush* and then *Hamdan v. Rumsfeld*. The Supreme Court of the United States ruled that the military tribunals established by the Bush administration did not comport with U.S. or International law. In response, a new law was passed—the Military Commission Act of 2006—which broadened the definition of non-state combatants to include non-citizens residing in the United States. The Military Commission Act of 2006 allowed for the introduction of materials seized in raids without warrants as evidence in formal court proceedings. Furthermore, this act severely limited the conditions for *habeas corpus* proceedings and facilitated the incorporation of information obtained through harsh interrogation. In the case of *Boumediene v. Bush* (June 2008) the U.S. Supreme Court rejected key portions of President Bush's law that asserted that non-citizens, labelled enemy combatants, do not have the same legal rights to challenge their detention in American courts. Moreover, in the *Boumediene v. Bush* case, the U.S. Supreme Court held that information obtained through torture, harsh interrogation, and coercion of any form was inadmissible in court.

When Attorney General Eric Holder announced that Khalid Sheikh Mohammed would be tried in a New York courtroom there was widespread expectation that this would be the first step in breaking with the tortured history of the Guantánamo prisons and closed military tribunals far away from the public eye. However, shortly after the Holder announcement, the Obama administration came under heavy pressure and criticism for holding Khalid Sheikh Mohammed's trial just a few blocks from the destroyed World Trade Centre towers. As a result, on 4 April 2011, nearly a year and a half after the announcement that Khalid Sheikh Mohammed would be tried in New York City, the Obama administration reversed its decision citing security, cost, and logistical considerations, but critically political factors were determinative in this reversal. Khalid Sheikh Mohammed's military commission trial is yet to be initiated and the legal uncertainty continues to prevail over the remaining detainees in the Guantánamo prison. It is quite possible that some detainees might be held indefinitely because they are considered too dangerous to be freed and they cannot be successfully tried in civilian courts because the cases have been tainted by history of rendition, coercion, and torture.

IV. 1 The Curious Case of Dr. Aafia Siddiqui

One of the most tragic cases caught up in the global counterterrorism operations is that of Dr. Aafia Siddiqui, a Pakistani national with a bachelor's degree in neuroscience from Massachusetts Institute of Technology (MIT) and a doctorate from Brandeis University in cognitive behaviour.⁷⁷ Dr. Siddiqui was commonly referred to as *Lady Al Qaeda* and as the *Mata Hari of Al Qaeda* in the American news media. She was portrayed as a neuroscientist who was determined to carry out dirty bomb attacks and biological warfare against the United States.⁷⁸ However, Dr. Siddiqui's case is extraordinarily strange and raises some serious questions about the nature of charges levelled against her and the complicity of both the United States and Pakistan in her disappearance along with her children in 2003 in Pakistan, her arrest in 2008 in Afghanistan, and her sentencing in the United States in 2010.

Aafia Siddiqui entered the United States in 1990 as an undergraduate student at the University of Houston in Texas where Siddiqui's brother then resided. Later she received a scholarship to study at MIT in Cambridge, Massachusetts, where she earned a bachelor's degree in biological sciences and moved to the neighbouring Brandeis University in Waltham, Massachusetts to earn a doctoral degree in cognitive sciences. Meanwhile, her parents in Pakistan were concerned that a highly educated Pakistani woman might not be able to secure a good husband and so they arranged a marriage with a Boston area medical student, Amjad Mohammed Khan. Aafia Siddiqui married Khan, whom she had never met in person, in a ceremony solemnised over the telephone in 1995. Fauzia Siddiqui, Aafia's sister, also a medical doctor, was in Boston along with her family; hence at that time the match between Aafia and Khan seemed ideal because they could manage both their professional lives and sustain close family ties.⁷⁹ By all accounts Aafia Siddiqui was a bright and focused student. Her colleagues described her as an austere but not an assertive person, who was trying to manage the challenges of a professional and family life. Siddiqui was active in the local Islamic community and passionate about spreading Islamic teachings and engaging in charitable work.

During her time in Boston, she had two children with Dr. Khan, a son (Ahmed born in 1996) and a daughter (Miriam born in 1998). All seemed well with Dr. Siddiqui's life in the Boston area: relatives, two children, a successful career and an active social and cultural life, but it was during this time that her marriage to Dr. Khan began to fall apart. Later reports of frequent quarrelling

⁷⁷ K. Ozment, 'Who's Afraid of Aafia Siddiqui?', *Boston Magazine*, October 2004, at: http://www.bostonmagazine.com/articles/whos_afraid_of_aafia_siddiqui/ (accessed on 7 November 2011).

⁷⁸ H. Yusuf, 'Lady Al Qaeda: Pakistan Reacts to Aafia Siddiqui Conviction in US Court' *The Christian Science Monitor*, 4 February 2010, at: <http://www.csmonitor.com/World/Asia-South-Central/2010/0204/Lady-Al-Qaeda-Pakistan-reacts-to-Aafia-Siddiqui-conviction-in-US-court>.

⁷⁹ Ozment 2004, *supra* note 78, p. 37.

between the two emerged and there were incidents of alleged violence and domestic abuse.⁸⁰ After the 9/11 terror attacks, Siddiqui is said to have felt unsafe in the United States and decided to move back to Pakistan. She is also said to have expressed an interest in doing charity work in Pakistan and Afghanistan, which was a source of contention between her and Khan. Meanwhile, Siddiqui and Khan hit the radar of the U.S. law enforcement authorities because they had purchased several thousand dollars' worth of military equipment, such as night vision glasses, body armour, and military manuals (*The Anarchist's Arsenal*, *Fugitive*, *Advanced Fugitive*, and *How to Make C-4*).⁸¹ When questioned by the FBI, Siddiqui's then-husband Amjad Khan is said to have claimed that all the gear and manuals were for big game hunting for relatives back home. The couple had also rented out their apartment to two Saudi men—Abdullah Al Reshood and Hatem Al Dhahri—and they were wired \$20,000 by the Saudi government, which gave rise to suspicion among U.S. counterterrorism investigators.⁸² However, the money wired by the Saudi government was supposedly intended for medical expenses for Al Reshood's wife who was seeking medical treatment in Boston. On 26 June 2002, Siddiqui and Khan returned to Karachi, Pakistan and it was there their marriage unravelled. Khan accused Siddiqui of being an Al Qaeda sympathizer and involved in *jihadi* activities and he informed her of his intention to divorce her, which eventually caused Siddiqui's father so much consternation that he died of cardiac arrest in August 2002. In the following month Siddiqui gave birth to their third child, Suleman, and she divorced Khan in October 2002.⁸³

In December 2002, Siddiqui returned to the United States, apparently in an effort to look for jobs to support her three children and potentially resettle there. Unable to find any suitable position, she returned to Karachi in January 2003. It is reported that as late as March 2003, she maintained email communication with some universities and research labs in the Baltimore area, where her sister Fauzia Siddiqui lived, looking for jobs. In late March or early April 2003, Siddiqui abruptly announced to her mother that she was going to visit her uncle in Islamabad along with her three children, Ahmed, Miriam, and Suleman; that was the last her family heard from her until her arrest in Ghazni, Afghanistan on 17 July 2008. Somewhere on the way to Islamabad, Siddiqui and her three children disappeared in late March or early April 2003. It is widely believed that she was abducted by the Pakistani intelligence agency (ISI) and then subsequently handed over to the United States, who held her and her children at the secret prison in Bagram airfield in Afghanistan.⁸⁴ The United States and Pakistan strenuously deny ever arresting her, but media reports and

⁸⁰ P. Bartosiewicz, 'The Intelligence Factory: How America Makes its Enemies Disappear', *Harper's Magazine*, November 2009.

⁸¹ *Ibid.*

⁸² Ozment 2004, *supra* note 78, p. 37.

⁸³ *Ibid.*; Bartosiewicz 2009, *supra* note 81, p. 39.

⁸⁴ A. Nadeem, 'The Grey Ghost Of Bagram', *The Telegraph*, 12 August 2008, at: http://my.telegraph.co.uk/asif_nadeem/asif/4885445/The_Grey_Ghost_Of_Bagram/ (accessed on 7 November 2011).

new evidence strongly suggest that she indeed disappeared in March/April 2003 and that she was tortured and humiliated during her captivity.

IV.2 Lady Al Qaeda or Caught in the Global Terror Dragnet?

One of the biggest mysteries is what happened to Dr. Siddiqui during the five-year period that she disappeared (April 2003 to July 2008). Where was she? What was she up to? What happened to her three children? Filling in the missing five-year period of Dr. Siddiqui's life has become a battleground for opponents and detractors of Dr. Siddiqui. It is the contention of the United States that Dr. Siddiqui was an Al Qaeda operative, while her defenders claim that she was detained at the Bagram detention facility in Afghanistan along with her children.⁸⁵ There is strong suspicion that Aafia Siddiqui was prisoner No. 650 at Bagram and she is also referred to as the Grey Ghost of Bagram.⁸⁶ Dr. Siddiqui was apparently routinely tortured: a claim made by some former Bagram detainees, who also allege that they could hear her piercing screams every night. Supporters of Dr. Siddiqui maintain that she was abducted by Pakistani intelligence and interrogated and transferred to U.S. authorities who held her incommunicado for five years in the secret detention facility at the Bagram military base controlled by the United States.⁸⁷ The whereabouts of Dr. Siddiqui's three children were also not clear until her son (Ahmed) was found to be in her company when she was arrested in Ghazni, Afghanistan on 17 July 2008. He was handed over to her sister Fauzia's custody.⁸⁸ Her daughter, Miriam, mysteriously appeared in front of her sister's Karachi home with a note around her neck sometime in early April 2008, and the fate of her third child, Suleman, is still unknown, but he is presumed dead. It is alleged that both Ahmed and Miriam were held as prisoners in Afghanistan, but Aafia Siddiqui was not aware that her children were also imprisoned. But it is still not clear how Ahmed, her oldest child, appeared along with her while she was loitering outside the governor's mansion in Ghazni province, Afghanistan.

It is not clear how, when, and why Dr. Siddiqui was released from the Bagram detention centre. Was she really held at Bagram? The United States strongly denies that this was the case and that they had anything to do with her between April 2003 and July 2008. What exactly was Aafia Siddiqui doing on that fateful day she was arrested in Ghazni Province of Afghanistan in July 2008 along with her son? At the time of arrest, she was allegedly carrying materials on her about a variety of terror plots, including excerpts from the *Anarchist's*

⁸⁵ Bartosiewicz 2009, supra note 81, p. 39.

⁸⁶ S. Goldenberg & S. Shah, 'Mystery of 'ghost of Bagram' - Victim of Torture or Captured in a Shootout?', *The Guardian* 5 August 2008, at: <http://www.guardian.co.uk/world/2008/aug/06/pakistan.afghanistan> (accessed on 7 November 2011).

⁸⁷ Bartosiewicz 2009, supra note 81, p. 39.

⁸⁸ V. Brittain, 'The Siddiqui Case', *CounterPunch*, 14 February 2011, at: <http://www.counterpunch.org/2011/02/14/the-siddiqui-case/> (accessed on 7 November 2011).

Arsenal, diagrams and plans for bombs and explosive devices, target lists of several American buildings and locations, computer storage devices with emails and correspondence with terror leaders.⁸⁹ Afghan authorities claimed that she was plotting to attack the provincial governor of the Ghanzi province, whereas the U.S. authorities contend that she was plotting to target key landmarks in the United States.

Aafia Siddiqui hit the U.S. terror radar soon after Khalid Sheikh Mohammed was captured on 10 March 2003 in Rawalpindi, Pakistan. It is alleged that during the initial interrogation Mohammed had apparently thrown around her name and revealed that she was married to his nephew Ammar al-Baluchi, another Al Qaeda operative, after she divorced Dr. Khan in October 2002. When Aafia Siddiqui visited the United States in December 2002 and early January 2003 presumably to look for jobs, the FBI alleges that she opened a post office box for a Majid Khan, who was plotting bomb attacks on gas stations and underground fuel-storage tanks in the Baltimore/Washington DC area. Based on this information, the FBI added Aafia Siddiqui to their most-wanted terrorist list in May 2004. Former U.S. Attorney General John Ashcroft described her as an Al-Qaeda operative who posed a “clear and present danger to the U.S.”⁹⁰

The story surrounding Dr. Siddiqui’s arrest and eventual transfer sounds equally murky. Dr. Siddiqui was held at the Ghazni police headquarters in Afghanistan for interrogation; while the U.S. authorities were visiting to question her, she apparently pounced from behind a curtain where she was sitting unbeknownst and unrestrained, and she grabbed an unsecured M-4 assault rifle and discharged several rounds at her captors while yelling and cursing. The rounds did not hit anyone, but she was shot several times by an American soldier causing serious injuries that required surgery. Within couple of weeks after her surgery she was evacuated to the United States to stand trial for attempting to kill U.S. servicemen.

IV.3 The Trial of Dr. Siddiqui

Aafia Siddiqui was arraigned in New York City on 9 August 2008 not on charges of terrorism, but for attacking FBI agents and U.S. military personnel with an army rifle that she picked up from the floor.⁹¹ Although the claim was that Aafia Siddiqui was a terrorist who was plotting terror attacks on the United States, she was not charged with any terror-related claims at all; instead, the charge was that she tried to attack U.S. military personnel who were going to

⁸⁹ United States Department of Justice (DOJ), ‘Aafia Siddiqui Arrested for Attempting to Kill United States Officers in Afghanistan,’ *US DOJ Press Release*, 4 August 2008.

⁹⁰ A. Rodriguez, ‘Is she a victim of the U.S. or is she ‘Terror Mom’?’ *Los Angeles Times*, 3 February 2010.

⁹¹ B. Weiser, ‘Indictment Hints of Plan to Attack Landmarks’, *New York Times*, 3 September 2008.

interrogate her even though only Aafia was seriously injured and none of her captors were hurt.

Dr. Siddiqui's lawyers argued that she was "suffering from a delusional disorder and depression" based on statements that she had made that pointed to "her delusional thought process" and that she was not fit to stand trial.⁹² U.S. government prosecutors and psychologists argued that Dr. Siddiqui was "competent to stand trial" and that she was "malingering" in an "attempt to avoid responsibility" for her crimes."⁹³ The judge in the New York court found that Dr. Siddiqui was mentally fit to stand trial and that she most likely faked the symptoms of mental illness to avoid responsibility for the crimes she had committed.⁹⁴ New York City Federal District Court Judge Richard Berman agreed with the U.S. government prosecutors that Dr. Siddiqui was "rational" and that she possessed "a factual understanding of the proceedings against her."⁹⁵

The Pakistani government is reported to have spent over two million dollars on defending Dr. Siddiqui by hiring a high-priced legal team. Aafia Siddiqui displayed erratic behaviour throughout the trial such as sudden outbursts and the launch of racist attacks on Jews, which ultimately did not help her defence. During one such hearing she yelled, "I was never planning to bomb it!" Another time as she was being taken away from the court she screamed, "You're lying!"⁹⁶ During one trial hearing Dr. Siddiqui was removed twice from the courtroom for her outbursts in which she protested her innocence.⁹⁷ Aafia Siddiqui was finally allowed to speak her turn in the courtroom on 29 January 2010 and during this presentation she defended herself articulately. She argued that she "was merely trying to escape from the station because she feared being tortured" and that she did not have any intention of killing her American interrogators. Dr. Siddiqui added that she did not know how to make a dirty bomb, that she could not even kill a rat and that she had trouble getting rid of lab animals after experiments and had to ask others to do it for her.⁹⁸ But the prosecution dismissed all her claims as self-propagating lies introduced as a calculated strategy to escape the consequences of her actions.

⁹² B. Weiser, 'Court to Hear New Reports on Pakistani Scientist's Fitness for Trial', *New York Times*, 6 July 2009.

⁹³ B. Weiser, 'Pakistani Is Ruled Fit for U.S. Trial in October', *New York Times* 30 July 2009.

⁹⁴ B. Weiser, 'Scientist in Afghan Terror Case Faked Her Mental Illness, Prosecutor Says', *New York Times* 27 March 2009.

⁹⁵ Weiser 2009, *supra* note 95, p. 44.

⁹⁶ C. J. Hughes, 'Outburst From Defendant in Afghan Shooting Trial', *New York Times*, 20 January 2010.

⁹⁷ C. J. Hughes, 'Outbursts and Ejections in Afghan Shooting Trial', *New York Times*, 26 January 2010.

⁹⁸ C. J. Hughes, 'Neuroscientist Denies Trying to Kill Americans', *New York Times*, 29 January 2010.

For her part Dr. Siddiqui also played a rather divisive role in her own defence; she prevented her defence team from representing her, she interfered in the defence process, and she sought to represent herself. Some commentators have argued that Dr. Siddiqui wanted to prevent the legitimatisation of her trial, while others suggest that she had developed a paranoid mistrust of judicial and law enforcement agencies given her experience of being tortured in prison in Pakistan and Afghanistan. Despite a vigorous defence, Aafia Siddiqui was convicted on 4 February 2010 for attempting to murder American military officers while she was in police custody. A ninety-pound woman was convicted of unlocking and firing several rounds from the M-4 military assault rifle on American serviceman that she had apparently grabbed from the floor, that was apparently left fully loaded and unattended. No forensic evidence such as the discharged bullet casings or fingerprints on the M-4 rifle was found in the detention room to independently corroborate the claims made by the U.S. government prosecutors. Furthermore, Judge Berman had allowed the introduction of evidence not directly related to the case, such as the documents that were in her possession at the time of her arrest that showed that she was a terrorist and that she intended to kill Americans and bomb key American landmarks.⁹⁹ Mentions of secret prisons and torture during her trial were ignored and even a few jurors were removed because of their alleged improper behaviour. On 23 September 2010, Aafia Siddiqui was sentenced to 86 years in prison; while Siddiqui's lawyers "requested a sentence of 12 years; federal prosecutors had pressed for life imprisonment."¹⁰⁰ The presiding judge argued for "significant incarceration" because there was the likelihood of "recidivism and difficulty of rehabilitation for the defendant." She is currently being held in isolation in Carswell Federal Medical Centre at Fort Worth, Texas.

Dr. Siddiqui's case raises pertinent questions on prosecuting terror suspects in that it presents some challenges from the perspective of international criminal law. What is the appropriate national jurisdiction for prosecuting Dr. Siddiqui—Afghanistan, Pakistan or the United States, considering that she is a Pakistani national committing a crime on Afghan soil against her potential American captors? Does pointing a gun or threatening to shoot at armed U.S. military personnel warrant an 86-year sentence for a woman who very well may have been mentally unstable? Is this miscarriage of justice due to overzealousness on the part of prosecutors and an apprehensive jury that was ready to believe the prosecution's case without any doubts or concerns? Or was the sentencing an outcome of the selection of New York City as a venue for her trial, which fundamentally biased the judge and jurors against the defendant? Most importantly, Dr. Aafia Siddiqui claims that she had been tortured, subject to vicious humiliation, held without trial for five years in a secret prison in Afghanistan and forcibly separated from her children. One child is still missing. This information was ignored by the jury and by the presiding judge.

⁹⁹ P. Bartosiewicz, 'Al-Qaeda Woman? Putting Aafia Siddiqui on Trial', *Time Magazine*, 18 January 2010.

¹⁰⁰ B. Weiser, 'Pakistani Sentenced to 86 Years for Attack', *New York Times*, 23 September 2010.

Interestingly, Dr. Siddiqui was not charged with the crime of terrorism at all, although she was apprehended in Ghazni, Afghanistan with a treasure trove of information on her person that suggested her involvement in several terror plots. Despite allegations concerning Dr. Siddiqui's terror links, the government prosecutors did not demonstrate them during the trial, but alluded to them tangentially and pointed to circumstantial evidence.

V. Analysis of the Three Cases

The three different cases point to different challenges in employing extra-legal practices as counterterrorism strategies. In the case of Ahmed Omar Sheikh, it is very clear that he was wrongfully convicted of Pearl's murder and that both the Pakistani judicial system and the United States authorities were not keen on following up on the new leads. Sheikh should surely be convicted and sentenced for masterminding Pearl's kidnapping, which led to his murder, and for the kidnapping in India in 1994 of three British citizens and one American national. However emerging evidence suggests that he did not participate in Pearl's execution. Thus fourteen individuals who may have played a significant part in Pearl's brutal execution are presumed free and in Pakistan.

There is very little doubt that Khalid Sheikh Mohammed masterminded the 9/11 terror attacks for which he should be tried and sentenced. However, none of the evidence has been presented publicly. Particularly, the most concerning aspect of Khalid Sheikh Mohammed is that he was tortured and held in secret prisons without any charge for more than four years before his relocation to Guantánamo. Hence, it would be a challenge to try him in federal courts in the United States because much of the evidence gathered through torture and harsh interrogation is not admissible and it could result in the case being dismissed. At any rate this point is moot since the Obama administration decided not to try him in the New York federal courts. Nonetheless, trying him in front of a military commission would also be a travesty because the United States would not be able to demonstrate the veracity of their claims to the world.

Aafia Siddiqui may very well have been a terrorist or a fervent Islamist with terror intentions and a highly troubled personal life, but there is little demonstrable evidence that she actually was a terrorist and that she took steps to carry out terror attacks. Surely she suffered major personal tragedies and may have become mixed up with some unsavoury individuals, her ex-husband Dr. Khan included, who may have spread stories about her terror connections due to the bitterness of divorce and being separated from his three children.¹⁰¹ Recently revealed evidence suggests that Dr. Siddiqui was a foil for the Pakistani intelligence (ISI) and that they apprehended and questioned her before transferring her to the U.S. authorities because she was not valuable to Pakistani intelligence.¹⁰² Aafia's case has been a *cause célèbre*

¹⁰¹ Brittain 2011, supra note 89, p. 41.

¹⁰² Ibid.

in Pakistan, with major politicians and a broad swath of the population rallying in her support.¹⁰³ When popular opinion turned against the Pakistani government during Dr. Siddiqui's trial in the United States, the government of Pakistan changed its tune and referred to Dr. Siddiqui as the daughter of the nation, spending several millions of dollars on her unsuccessful defence.

Conclusion

The United States-led Global War on Terror (GWOT) has generated new vocabulary with terms such as extraordinary rendition, black sites, enhanced interrogation, waterboarding, disappearance, extra-judicial execution, terror detainees, unlawful combatants and enemy combatants. An argument made consistently and repeatedly by the Bush administration is that these harsh tactics are important and necessary tools to confront the scourge of global terrorism. Violent terrorists need to be dealt with in an equally violent manner so that they halt their practices and reverse this trend towards terrorism. Torture or torture-like practices should be permitted as long as they serve the larger objective of saving lives, i.e. this argument falls into the category of 'the ends justify the means.'

It is not entirely clear whether these harsh tactics that stand in stark contrast to international law and United States legal code have had the desired effect beyond reducing the global stature of the United States as a protector of human rights. In addition, it is also quite possible that these severe methods employed by the United States, including the detention and abuse of prisoners in Afghanistan and Iraq, have only further enraged men and women who now are willing to take up arms to fight what they perceive as American hegemony and imperialism.

Defenders of harsh interrogation methods and extra-legal detention in secret and special prisons contend that without such tactics the 9/11 terror mastermind Khalid Sheikh Mohammed would not have confessed or provided the information that triggered the arrest of Aafia Siddiqui, identified some of the terror cohorts involved in Daniel Pearl's murder, and that the information he provided may have played a part in the execution of Osama Bin Laden in Abbottabad, Pakistan. However, the Global War on Terror has eroded carefully crafted international laws meant to protect individuals from overzealous governments in its wake and made it more difficult to engender a sustained global discourse on human rights. As the Lord of Appeal in the United Kingdom, Johan Steyn, put it, "In the context of a war on terrorism without any end in prospect this is a sombre scene for human rights."¹⁰⁴ Opponents of harsh

¹⁰³ D. Walsh, 'Pakistan Erupts After US Jailing of 'Daughter of the Nation' Aafia Siddiqui', *The Guardian* 24 September 2010 at: <http://www.guardian.co.uk/world/2010/sep/24/pakistan-aafia-siddiqui-jailed-protests> (accessed on 7 November 2011).

¹⁰⁴ Johan Steyn, *Twenty-Seventh FA Mann Lecture*, British Institute of International and Comparative Law and Herbert Smith, Lincoln's Inn Old Hall, 25 November 2003.

methods also strongly favour a safer and secure world, but they believe that counterterrorism strategies could be carried out within the bounds of existing laws without the fear that the bad guys will get away. Furthermore this would only further prove that states that are at the forefront of this GWOT are rule-bound actors, intent on protecting the international legal architecture. A court, established as a part of the International Criminal Court (ICC) to try terror suspects might be a great addition to the global justice system. Such a court could function as an unbiased and neutral beacon for dealing with the plague of global terrorism that is showing no signs of subsiding.