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# What a 'toothless' tribunal can do

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## UNEQUAL JUSTICE:

Failure to uphold international laws has allowed nations like the US to get away with crimes against humanity, writes Mahathir Mohamad

**T**HE Kuala Lumpur Tribunal on War Crimes sat for five days in the courtroom at the Al-Bukhary Foundation to listen to charges against George W. Bush, Richard B. Cheney, Donald H. Rumsfeld, Alberto Gonzalez, David Addington, William Haynes II, Jay Byber and John Choon Yoo of the United States for the torture of detainees held in the Abu Ghraib and Guantanamo detention camps.

Many would ask of what use is this hearing by a toothless tribunal.

The answer is that the international community has failed in the proper implementation of international laws to which all countries have officially subscribed. Worse still, the laws are applied only against weak countries and their leaders who are judged and punished.

Thus, the International Criminal Court tried the president of Sudan in absentia and issued orders for his arrest. Today, he cannot visit many countries for fear of arrest.

During the sitting of the Kuala Lumpur Tribunal, three prisoners and detainees told of the tortures they suffered in Abu Ghraib and Guantanamo.

An Iraqi woman, Jameela Abbas Al-hifli, told how she was dragged by the hair from her brother's house by a detachment of Americans and Iraqis and taken to a jail. She was beaten with a kind of plastic-covered truncheon, she was banged against the wall; the hands were tied behind the back and then she was pulled up by a rope tied to the manacled hands.

She was stripped naked, hooded and taken to see her daughter. She was told that unless she confessed that she knew the "resistance people", they would kill her daughter. The hood was slipped on and then she heard shots being fired. However, when the hood was taken off, she saw that her daughter was alive.

In winter, water was thrown on the floor of her six-by-six cell, and she was stripped naked and made to crawl on the floor. Ice water was poured over the back. After six months of continuous torture, she was released. Her

gaolers had decided that she really had no knowledge of the resistance.

Another prisoner, Moazzam Begg, a British citizen, was water-boarded in addition to other forms of torture. Water-boarding involves covering the face and head with towels while the victim lies down and water is poured on the towel.

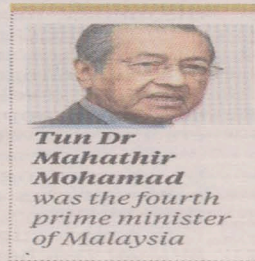
The prisoner feels that he is drowning as he breathes in water when he feels suffocated. It is a harrowing experience. The victim can die following this treatment.

A common way of torture was to undress the prisoner, put a hood over the head, make him stand on a stool and attach electrodes to various parts of the body, including the genitals. Any movement triggers electric shocks to the body. Nails were pulled out with pliers.

Jameela was flown in a helicopter with doors wide open so attackers will know that the prisoner will be killed if the helicopter is shot down. The use of human shields is forbidden by international law.

Some prisoners were flown from Iraq to Guantanamo, manacled, hooded and shackled, seated on the bare floor. They suffered horribly as the flight took hours. At other times, the prisoners were made to stand for hours with their hands stretched out.

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Tun Dr Mahathir Mohamad was the fourth prime minister of Malaysia



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# American leaders knowingly sanction torture

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They were deprived of sleep for days; and were held in isolation and cut off from daylight for months.

The sufferings were unimaginable. In the end, they were found to be innocent of the accusations against them and were released.

A three-hour video clip showed the prisoners undergoing torture and visually recorded the views of American leaders boldly declaring their rights to torture.

Today, a large number of prisoners are still in Guantanamo Camp, despite the election promise by US President Barack Obama that he would close the camp immediately upon his election as president. They have been incarcerated for more than 10 years without any recourse to legal representations.

The prosecution team of the Kuala Lumpur Tribunal cited the Geneva Convention on torture 1949, the Convention against Torture 1984, Universal Declaration of Human Rights and the United Nations Charter, the US Constitution itself and the rules of conduct of the US military to prove that the treatment of the prisoners constituted torture as understood and accepted by international laws.

The acts were cruel, inhuman and degrading. The accused were proven to have authorised, connived in the commission of acts of torture and cruel, degrading and inhuman acts

against victims in violation of international laws, treaties and conventions.

The prosecution also gave details of the action by the accused, through their memos, approvals and directives for the torture of the prisoners.

Former president George W. Bush declared that al-Qaeda was not a party to the conventions or agreements and was, therefore, not protected by them. Further, it was argued that should these prisoners capture American personnel, they would treat their captives in the same way.

The defence in mitigation said that the situation after the 9/11 attacks on the Twin Towers rendered existing conventions, treaties and laws invalid. The accused were entitled to act in contravention of all laws, treaties and conventions.

The prosecution refuted this statement as there is no provision for the suspension of any conventions, laws or agreements simply because of the so-called acts of terror against the United States. Nor may any country unilaterally refute their commitments to these undertakings.

After four days of hearings, the tribunal adjourned to consider the verdict. On the fifth day, that is, 24 hours after the hearings ended, the tribunal gave a 19-page written judgment, finding that the prosecution had established beyond reasonable doubt that the accused had "en-

gaged in a web of instructions, memos, directives, legal advice and action that established a common plan and purpose, joint enterprise and/or conspiracy to commit the crimes of torture and war crimes, including and not limited to a common plan and purpose to commit the following crimes in relation to the "war on terror" that was launched by the US and others in Afghanistan and Iraq:

**TORTURE;**  
**CREATING,** authorising and implementing a regime of cruel, inhumane and degrading treatments;

**VIOLATING,** customary international law;

**VIOLATING,** the Conventions against Torture 1984;

**VIOLATING,** the Geneva Convention III and IV 1949;

**VIOLATING,** the common article III, the Geneva Convention of 1949; and

**VIOLATING,** the Universal Declaration of Human Rights and the United Nations Charter."

Yes, we cannot enforce the decisions of the Kuala Lumpur tribunal. But the world must know through the hearings that the leaders of a country that frequently takes the high ground to lecture the world on human rights, the rule of law, etc are no better, but are worse than the many leaders and countries they condemned as not adhering to acceptable behaviour, practice and respect for the norms of modern civilisation.

Malaysia had the Internal Security Act. Malaysia did detain people without trial. But it should be noted that there is a law providing for this. The US government of former president Bush detained people before there was any law providing for such detentions.

Malaysia never sanctions torture. Certainly, the Malaysian government never spelt out the kind of torture that could be inflicted on the prisoners. But the US leaders knowingly sanction torture and describe the kind of torture to be carried out, even as they condemn others of being oppressive against their own people.

It is a pity that not many people attended the hearings. They would be horrified at what the leaders of the foremost democracy in the world have sanctioned and are guilty of.

That in this day and age, there are still leaders of governments who break laws and legalise behaviour incompatible with modern civilisation is mind chilling. That this country is the greatest military power in the world is truly frightening.

These are not leaders of primitive failed states. These are educated, knowledgeable leaders aware of the laws, international and national which govern their rights and limitations of their power.

Yet they are prepared to perpetrate these atrocities believing that the power they wield will protect

them from any legal actions to be taken against them for their crimes.

Everyone subscribes to the belief that everyone should be equal before the law. It is sad indeed that in the implementation of international laws, there is no such equality, that inequality of treatment is the essence.

The Kuala Lumpur War Crimes Tribunal is a court of conscience. It may not have the power to have its findings implemented. But there can be no doubt that without the hearing before the tribunal, the crimes of the leaders of powerful countries will never be exposed to the world.

The findings of the court will be communicated to all governments, will be broadcast to the whole world through the Internet, and via international non-governmental organisations.

The people of the US are well known for their insularity. They know little about the world beyond their borders. They believe that they are always right.

One hopes via NGOs and the Internet, they will learn about the guilt of their leaders through the findings of the Kuala Lumpur Tribunal on War Crimes.

P.S. I have with me the videos of the tortures carried out and the justification claimed by US leaders who approved these tortures. I would be happy, if there is a demand, to show the video takes.