

KUALA LUMPUR WAR CRIMES TRIBUNAL

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS
(INCLUDING NOTES OF PROCEEDINGS)

Case No. 2 - CP - 2011

CHIEF PROSECUTOR OF THE
KUALA LUMPUR WAR CRIMES COMMISSION

v.

GEORGE WALKER BUSH *et al.*

JUDGMENT OF 11 MAY 2012

Kuala Lumpur Foundation To
CRIMINALISE



WAR IS ABOUT KILLING. MASSIVE KILLING



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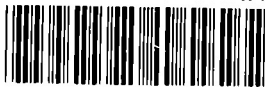
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Kuala Lumpur Foundation To
CRIMINALISE WAR
WAR IS RUDY HILLING. MASSIVE HILLING



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*Chief Prosecutor of the Kuala Lumpur War Crimes Commission
v. George Walker Bush et al.*

JUDGMENT



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- I. The Accused persons had wilfully participated in the formulation of executive orders and directives to exclude the applicability of international conventions and laws, namely the Convention against Torture 1984, Geneva Convention III 1949, Universal Declaration of Human Rights and the United Nations Charter in relation to the war launched by the US and others in Afghanistan (in 2001) and Iraq (in March 2003);
- II. Additionally, and/or on the basis and in furtherance thereof, the Accused persons authorised, connived in, the commission of acts of torture and cruel, degrading and inhumane treatment against victims in violation of international law, treaties and aforesaid conventions.
- 1.2 The indictment against the 8 Accused persons also sets out the particulars of the charge in paragraphs 1 to 22, of which paragraph 7 states that all the Accused persons *“are individually responsible for the crimes alleged against them”* under the charge and that they *“planned, ordered, committed, otherwise aided and abetted in the planning, preparation, or execution of these crimes”*. None of the Accused persons personally participated in actual acts of torture or inhumane treatment of the victims but facilitated and directed the implementation of torture and inhumane treatment through the issuing of memorandums, legal opinions and directives to, among others, their subordinates. They also did not prevent the commission of these acts after knowing or being in a position to know of the perpetration of such acts and treatment.
- 1.3 In paragraph 5 of the particulars of the charge, it is stated that the United States is, and was at all material times, a party to the Torture Convention 1984 and the Geneva Conventions including Geneva Convention III 1949.

- 1 1.4 In paragraph 6 it is stated that the first Accused, as
 Commander in Chief of the Armed Services, he
 exercised authority, direction and control over the entire
 Executive Branch.
- 5
- 1.5 In paragraph 7 it is stated that all the Accused persons
 are individually responsible for the crimes alleged
 against them under this charge. The Accused persons
 planned, ordered, committed, or otherwise aided and
10 abettted in the planning, preparation, or execution of
 these crimes.
- 1.6 In paragraph 8 of the particulars of the charge, it is stated
 that the 4th to the 8th Accused persons were complicit in
15 that they provided the legal opinions and justification
 for avoiding the obligations under the Convention
 against Torture 1984 and the Geneva Convention III of
 1949, thereby facilitating the implementation of torture
 and inhuman conduct when it was plain that the advice
20 they were giving was erroneous in law. They also knew
 that their advice, if accepted, would be acted upon.
- 1.7 In paragraph 9 it is stated that the first three named
 Accused persons were at all material times superiors
25 and had authorised the commission of acts in violation
 of the aforesaid Conventions, and in any event they
 knew or had reason to know that their subordinates
 were about to commit such acts and had done so, and
 they had failed to take the necessary and reasonable
30 measures to prevent such acts or to punish the
 perpetrators.
- 1.8 Paragraph 10 sets out the authorizations issued by the
 first Accused, with knowledge of the second Accused.
35 Paragraph 11 sets out the authorization issued by the
 third Accused person. Paragraph 13 states that the first
 and second Accused persons were aware of the memos,
 approvals and directives as aforesaid and that they
 would be, and were in fact, acted upon. They failed to
40 intervene to prevent any illegal activity conducted under
 these memos and approvals.

- 1.9 In paragraph 13 it is stated that the legal opinions mentioned in paragraph 8 were relied upon by the first three named Accused Persons and then translated into memos and directives which they issued to persons in charge of dealing with detainees at prisons run by, or under the supervision of US and its officials. 1
5
- 1.10 In paragraph 14 of the particulars of the charge, it is stated that as a result and on the basis of these authorizations by the first to the third Accused Persons relying upon the legal opinions of the 4th to the 8th Accused Persons, war crimes (that is, acts of torture and brutal, barbaric, cruel and dehumanizing acts) were perpetrated against, amongst others, the following named victims (detainees) – 10
15
- (a) Moazzam Begg of the United Kingdom (detained from January 2002 to January 2005);
- (b) Rhuhel Ahmad of the United Kingdom (detained from end of 2001 to March 2004), 20
- (c) Ali Sh. Abbas of Iraq (detained from October 2003 to March 2004); 25
- (d) Abbas Abid of Iraq (detained from August 2005 until September 2006);
- (e) Jameelah Abbas of Iraq (detained from January 2004 to June 2004). 30
- 1.11 In paragraph 15, it is stated that the detainees were subjected to a systematic pattern of abuse in the execution of these acts of torture in various detention centres. In paragraph 16, it is stated that the detainees were subjected to severe physical and mental pain, and cruel, inhuman and degrading treatment over long periods. These acts of torture etc. were designed to force the above detainees to confess to “crimes” they had no knowledge of, and / or were not involved in. 35

- 1 1.12 In paragraphs 18 and 19 of the charge, it is stated that
these acts of torture are in contravention of the Universal
Declaration of Human Rights and the Convention
Against Torture 1984. These acts also constitute cruel,
5 inhuman and degrading treatment in contravention of
Geneva Convention III of 1949 on the treatment of
combatants and civilians in any armed conflict and are
applicable to interrogations.
- 10 1.13 In paragraphs 20 and 21 of the charge it is stated that
the victims (detainees) were detained without just cause.
No due process of the law was applied. They were not
allowed access to justice including to legal counsel or
15 courts of law. They were not charged in a court of law
for any offence.
- 20 1.14 None of the 8 Accused persons was present at the trial
although all of them had been duly notified of the charge
against them in accordance with Chapter III Article 6(a)
of Part 2 of the Rules of Procedure and Evidence of the
Tribunal.
- 25 1.15 As provided for under Article 15 of Chapter V of the
Charter, all the Accused persons were represented by
Amicus Curiae.

2. Preliminary Objection

- 30 2.1 Before the prosecution began its opening statement, the
Amicus Curiae filed a preliminary objection to the
Tribunal's jurisdiction to hear this case against all the
Accused persons.
- 35 2.2 The substance of the preliminary objection was that the
Tribunal is a creature of a Malaysian statute and can
only hear cases which are governed by Malaysian law
or by treaties of which Malaysia is a signatory. The
40 crimes of which the Accused persons had been charged
are not found in any Malaysian Law nor subject of any
treaties of which Malaysia is a signatory.

- 2.3 In reply the prosecution submitted that the Kuala Lumpur War Crimes Tribunal is a tribunal of conscience exercising universal jurisdiction. Its jurisdiction to hear crimes against peace, war crimes and crimes against humanity are provided expressly in Article 7 of the Charter. 1
5
- 2.4 Article 4 of the Charter expressly states that the Tribunal has international legal personality and shall have such legal capacity as may be necessary for the exercise of their functions and the fulfilment of their purpose. 10
- 2.5 Having considered carefully arguments by both sides, the Tribunal ruled that it has jurisdiction to hear the charge against the Accused and dismissed the preliminary objection. 15

3. Prosecution's case

- 3.1 The prosecution made an opening statement indicating that he would call 3 witnesses who had formerly given testimony before the Kuala Lumpur War Crimes Commission and thereafter would submit statutory declarations of two witnesses who could not attend the hearing due to safety issues. 20
25

First Witness

- 3.2 The prosecution's first witness, Abbas Abid, a 48 year old engineer from Fallujah, Iraq, testified that he was abducted by a combined force of American forces and National Guard on 28 August 2005 and then taken to the Al-Muthanna Brigade headquarters (where he was detained for 4 weeks) and later taken to the Al-Jadiria prison. On 5 September 2006, he was brought to a court where the Judge ruled that he should be set free for lack of evidence. He was subsequently released on 2 October 2006. 30
35
- 3.3 In his testimony, the witness said that he was tortured by his tormentors in various manner – such as being

1 subjected to electric shocks in various parts of his body
especially his genitals, hanging him from the wall with
hanging weights from his genitals for long periods,
5 threatening to sexually abuse his wife and mother after
bringing them to prison, forcefully extracting his
fingernails, handcuffing his hands to the back and then
being hung from the wall for long hours until he fainted,
etc. He also testified that a bag was placed over his head
10 for over two months and that it was removed only when
he was given food. He also testified that other detainees
had similar bags over their heads for over 5 months. He
also testified that no medical care was available to the
detainees, and that some detainees were left to die from
15 their injuries as a result of the torture done to them.

Second witness

3.4 The prosecution's second witness, Moazzam Begg, 41
20 year old British citizen, testified that he was abducted
from his house in Islamabad, Pakistan, on 31 January
2002. A group of armed men in civilian clothes stormed
into his house, shackled his hands behind his back,
placed a hood over his head and took him to a waiting
vehicle. He was then brought to a place where he was
25 interrogated by Americans in civilian clothes. They
questioned him why he was in Pakistan and
Afghanistan. There were no specific allegations made
against him. After being held captive in Pakistan for 3
weeks, he was moved to a US military airbase in
30 Islamabad. The moment he was placed under US
military custody, he was shackled, hooded, choked and
thrown to the floor. He was carried on board a plane,
strapped down over the ankles and thighs, punched and
kicked, a knife pointed to his throat and threatened that
35 his throat would be slit if he spoke out.

3.5 He was flown to Kandahar in Afghanistan, dragged out
of the plane and thrown into the mud, kicked, punched
and choked with his hood. He was taken to a processing
40 area where he was continuously abused by soldiers. He
was then taken to a tent where he was interrogated by

- two FBI officials. They asked him when was the last time he saw Osama bin Laden and Mullah Omar. The witness replied that he did not know them. He was detained in Kandahar for 6 weeks before he was moved to Bagram airbase, which was actually an airport warehouse. He was not allowed to talk, walk, stand or make any movement whatsoever.
- 1
- 5
- 3.6 The witness was detained in Bagram for 11 months, where he was intensely interrogated by the CIA, FBI and US military intelligence. His legs and arms were hog-tied, and was threatened that he would be sent to Egypt. Conditions in Bagram were extremely poor. Medical care was dependent upon the level of co-operation of the detainees.
- 10
- 15
- 3.7 In February 2003 the witness was taken to Guantanamo Bay. During the 20 hour journey from Bagram to Guantanamo Bay, the witness was shackled in a “three-piece suit” of chains. A face mask was placed on his face, together with blackened goggles and ear muffs. The journey was very painful and the witness pleaded for a sedative from the soldiers, which was given.
- 20
- 3.8 At Guantanamo Bay, the witness was taken to camp Echo, a maximum security detention centre, and placed in solitary confinement. He remained there for 20 months, during which time he was subjected to various forms of torture.
- 25
- 30
- 3.9 The same interrogators who had earlier threatened to send him to Egypt (when he was questioned by them in Bagram) later met him in his cell and threatened that if he did not sign a document which they had showed him, he would either face a summary trial which could result in execution, or he would remain in Guantanamo Bay for decades without access to anyone and without legal process. The witness said that he then signed the document, after which he was treated a little better but nevertheless remained in solitary confinement.
- 35

1 3.10 The witness stated that his mental state was severely
 affected as a result of the long periods of solitary
 confinement. He was given drugs to treat his depression,
5 which he took but as a result he experienced
 hallucinations. In November 2004, he was removed from
 solitary confinement and placed in the other blocks with
 the other prisoners. Two months later he was released.

10 *Third witness*

15 3.11 The prosecution's third witness, Jameelah Abbas
 Hameedi, 57 year old woman, now living in Damascus,
 Syria, was the Head Chief of the Co-operation Unions
 in Kirkuk when she was abducted by American soldiers
 from her home on 13 January 2004. She was told that
 she had provided monetary assistance to the resistance.

20 3.12 The witness said that she was dragged by her hair out
 of her house at 1 am, her hands tied behind her back
 with wires, wearing only her night clothes. It was then
 the height of winter. Her home and all its contents,
 including her car, were completely destroyed by the
 soldiers.

25 3.13 Her head covered with a hood, the witness was then
 pushed into a military vehicle, where again she was
 kicked and treated as an animal. Soon after, she was
 dragged out of the vehicle and placed in a detention
 centre – which she subsequently discovered was part
30 of the Kirkuk military airport.

35 3.14 She was then interrogated by an American in civilian
 clothes who wanted to know about her relationship with
 the Baath party. She was accused of being part of the
 resistance, which the witness denied.

40 3.15 From her detention centre at the Kirkuk military airport,
 the witness was later taken to another detention centre
 which she later came to know as being the Baghdad
 Airport.

- 3.16 The witness testified that when she was interrogated by a black American female soldier, her clothes were removed and she was asked to sit on her knees and hands. Icy water was poured on her and she was asked to crawl from one side of the wall to the other. A plastic tube, with a piece of wood inserted into the tube, was used to beat her. When she dropped to the floor, she was kicked and she started bleeding on her shoulders, back, arms and legs. She was tortured in this fashion for many hours.
- 3.17 She was taken to her cell and was asked to stand straight. When she leaned on the wall, she was beaten. Her wounds were not attended to by the soldiers.
- 3.18 On another occasion, the witness was taken to a room where her nephew (then completely without clothes) was beaten by a black American soldier on his private parts whilst she herself was beaten by a black American female soldier. As a result of the beating, a broken piece of a plastic chair (used for beating) had embedded in her feet. She was told that they would continue to be beaten until she and her nephew confessed.
- 3.19 The witness said that her nephew was kept naked and later taken to Abu Gharib in the same condition. The witness also testified that she was later taken to Abu Gharib, where she was given a wrist band with a number. A hood was put on her head. She was later examined by a doctor who said that she was injured and needed urgent attention. However, her interrogators refused to give her the needed medical treatment.
- 3.20 She also testified that she was not given proper clothing, nor given medical treatment for her injured feet. She was in Abu Gharib prison for about 6 months. She was released on 22 June 2004.
- 3.21 The witness stated that as a result of the beatings and cruel treatment when she was detained, she is now

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1 unable to move her left leg freely; her left arm is also
2 similarly affected. She is still unable to wear shoes
3 because of her old injuries. She cannot endure cold
4 climate. Her injuries to her lower back need further
5 medical treatment but she is unable to afford the cost of
6 surgery.

Two statutory declarations of absent witnesses

10 3.22 After the three witnesses had given their evidence, the
11 prosecution tendered two statutory declarations – the
12 first by Ali Sh. Abbas (45 years old, currently living in
13 Jordan) and the second by Rhuhel Ahmed (27 years old,
14 currently living in Sandwell, England).

15 3.23 Ali Sh. Abbas deposed in his statutory declaration that
16 he was on his way to the mosque in Al-Amraya on 13
17 October 2003 when he was arrested by American
18 soldiers. His hands were tied at the back and a hood
19 was placed over his head and he was taken to a small
20 prison in a US military camp in Al-Amraya. He was told
21 by one Captain Philips that he had received orders to
22 arrest him but he did not know the reasons for the
23 arrest. Two days later, he was moved to Abu Gharib
24 prison when he was interrogated and a most cruel and
25 degrading treatment was meted out to him.

26 3.24 The deponent stated that his interrogators wore civilian
27 clothes, whilst the translator, an Afro-American, wore
28 American army uniform.

29 3.25 The deponent further stated that on one occasion, the
30 interrogators forcibly placed him on top of a carton box
31 containing canned food. They then connected electric
32 wires to his fingers and ordered him to stretch out his
33 hands horizontally; then they switched on the electric
34 power. The deponent said that he was tortured in such
35 manner on three separate sessions. Throughout this
36 torture session, the interrogators took photographs.

- 3.26 The deponent said that he was released in early March 2004. 1
- 3.27 In the second statutory declaration, Rhuhel Ahmad, the deponent said that he was detained from the end of 2001 until March 2004. He was 18 years old when he was detained. He was detained and tortured in Kandahar and later Guantanamo Bay. He was shackled, placed in solitary confinement, forced to take injections every 6 months (resulting in hallucinations), hooded and handcuffed and subjected to intense interrogations for 5 months from the middle of 2003. 5 10

Cross-examination by Amicus Curiae 15

- 3.28 The prosecution's three witnesses were cross-examined by the *Amicus Curiae* as provided for under Article 20 of Chapter V (Mode of Proceedings) of Part 2 (Rules of Procedure and Evidence of the Tribunal). 20
- 3.29 At the close of the cross-examination by the *Amicus Curiae*, the witnesses were re-examined by the Chief Prosecutor. 20

Submission on statutory declaration by absent witnesses 25

- 3.30 Both sides, the prosecution and *Amicus Curiae* on behalf of the 8 Accused persons, submitted that the statutory declarations by the two absent witnesses are admissible pursuant to Article 24 of Chapter V of Part 2 of the Charter but they leave it to the Tribunal to decide finally on the total weight of such evidence. 30

4. Summary of witness's testimony

- 4.1 The prosecution submitted that the testimony of the three witnesses (corroborated by the statutory declarations of the two absent witnesses) clearly show a sustained and prolonged infliction of cruel and dehumanizing course of conduct on the part of those perpetrators. The evidence adduced before the Tribunal 35

1 clearly establishes the fact that the victims were
subjected to severe and mental pain as a result of
extreme interrogating techniques that were applied to
them cumulatively and over long periods.

5 4.2 The prosecution also submitted that the evidence clearly
shows that the American military and other personnel
were involved in the arrest, abduction and torture of
10 these witnesses. The United States was at all material
times the occupying belligerent power in Afghanistan
and Iraq (where these atrocities on the witnesses were
carried out) and they have an obligation under the
Geneva Conventions to ensure that no such acts are
15 inflicted on these persons who are under the law
“protected persons”.

20 4.3 The evidence also clearly shows that the witnesses in
the instant case were taken prisoners in respect of the
Afghanistan war as well as the Iraq war. They were held
in prisons in Afghanistan (Bagram) as well as in Iraq
(Baghdad International Airport and Abu Ghraib). Two
witnesses in this case, Moazzam Begg and Rhuheel, were
transported and detained in Guantanamo Bay.

25 5. Issues before the Tribunal

30 5.1 There are three issues for the determination of the
Tribunal in the instant case –

- 35 (1) Whether the acts perpetrated against the witnesses
amount to torture under the Torture Convention
Act 1984;
- (2) Whether the cruel, inhumane and degrading
treatment meted out to the witnesses in their place
of detention was in violation of Geneva
Convention III and IV, 1949, and the Common
Article III to the Geneva Conventions; and
- 40

(3) Who is liable for the acts of torture and the cruel, inhumane and degrading treatment meted out to the witnesses in this case? 1

5.2 Each of these issues is considered separately as stated below. 5

6. Whether the acts amounted to torture under the Torture Convention Act? 10

6.1 “Torture” is defined in the Torture Convention as “*the intentional infliction of severe pain or suffering, whether physical or mental, by or with the consent or acquiescence of a public official*”. The term “*public official*” includes the Head of a State. 15

6.2 In the *Pinochet case* (No. 3) [1999] 2 WLR 827, at p. 886D, the House of Lords held that the prohibition against torture is absolute. There can be no derogation from this rule, which has been long accepted as *jus cogens* – a peremptory norm of international law from which states cannot derogate. 20

6.3 Under Article 3 of the UN Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhumane and Degrading Treatment or Punishment of December 9, 1975, it is stated that not even exceptional circumstances can excuse torture – such as war on terror or public emergency. 25

6.4 The Torture Convention has been subscribed by 133 states. The United States is a party to the Convention, having implemented it through the passage of a domestic law, namely sections 2240-2340A of Title 18 of the United States Code. 30

6.5 In the aforesaid *Pinochet case*, the House of Lords said that the Torture Convention was agreed not to create an international crime which had not previously existed but “*to provide an international system under which the international criminal – the torturer – would find no safe haven*”. 40

1 6.6 Unlike the crime against humanity, which requires the
act as part of a widespread or systematic attack against
civilians as a measure of state policy, even a single act
of official torture is a crime under the Torture
5 Convention.

10 6.7 According to the UN Committee against Torture, which
is the UN body of independent experts that implements
the Convention Against Torture, the following
interrogation techniques constitute torture – namely,
restraining in very painful conditions, hooding under
special conditions, sounding of loud music for
prolonged periods, sleep deprivation for long periods,
15 threats including death threats, violent shaking and
extreme temperatures. The Committee therefore has
clearly shown that the interrogation techniques
authorised by the Department of Defence (as had been
meted out to the witnesses in the instant case) amount
to “torture” within the meaning of Article 1 of the Torture
20 Convention.

25 6.8 The same UN Committee had also declared that the use
of techniques such as shackling, the use of dogs and
internal examinations constitute torture or cruel,
inhumane or degrading treatment.

30 6.9 The International Committee of the Red Cross (ICRC),
in its Report of February 2004 stated that the
construction of the Guantanamo system, whose
objective is to extract intelligence information “cannot
be considered other than an international system of cruel,
unusual and degrading treatment and a form of torture”.

35 7. Whether the acts were in violation of the Geneva Conventions?

40 7.1 The four Geneva Conventions were created in 1949 after
World War II, setting out minimum standards that
everyone must comply. Each of these 4 Conventions has
three common articles, namely –

- Article 1 – respect for the Convention “*in all circumstances*”; 1
- Article 2 – applying the Convention not only to declared wars but also to “*any other armed conflict*”; 5
- Article 3 – prescribes a minimum of humane treatment in “*armed conflict not of an international character*” to all civilians and non-combatants. 10
- 7.2 These three Common Articles reflect international customary law. In *Hamdan v Rumsfeld* (2006) 548 US 557, the United States Supreme Court had clearly stated that the Common Articles must be interpreted “*as widely as possible*”. Consequently the court held that the three Common Articles apply to the detainees at Guantanamo Bay. Articles 3 and 5 of Geneva Convention III may be violated and were, as submitted by the prosecution, “*legally flawed*”. 15 20
- 7.3 Geneva Convention III protects all persons, whether they are captured or they surrendered, whether they are in uniform or not, and even if they do not take any part in the hostilities. In the instant case, the witnesses (victims) were abducted from the battlefields in Afghanistan and Iraq, as well as from other places (Pakistan) and then handed to the authorities in Afghanistan and Iraq. 25 30
- 7.4 Even if there is any doubt as to the status of any person detained, Article 5 of Geneva Convention III provides that such person “*shall enjoy the protection of the Convention until such time*” as the person’s status has been determined by a competent tribunal. 35
- 7.5 The evidence in this case clearly shows that the legal opinions and the advice given by the 4th to the 8th Accused persons to the first, second and third Accused persons (in that the Geneva Conventions were “*obsolete*” 40 45

1 they can be ignored, that Taliban militia are not
protected, Articles 3 and 5 of Geneva Convention III
may be violated) were, as submitted by the prosecution,
"legally flawed".

5 7.6 It is significant here to note that some years later, after
the occurrence of these events inflicted on the witnesses,
in January 2009 President Barack Obama had issued an
Executive Order 13491 directing that when conducting
10 investigations, no government official, employee or
agent can rely any more on "*any interpretation of the law
governing interrogations*" issued by the Department of
Justice under the Bush administration.

15 **8. Who is liable for the acts of torture, cruel, inhumane and
degrading treatment?**

20 8.1 If it is proven that an act of torture or cruel, inhumane
and degrading treatment had been perpetrated against
a victim by a particular individual, then that individual
is personally liable under the Torture Convention and
the Geneva Conventions as well.

25 8.2 In the case before the Tribunal, the 8 Accused persons
are not the individuals who actually committed these
tortures or inflicted the cruel, inhumane and degrading
treatment against the witnesses (victims) but their
superiors. The question for the Tribunal to decide is
therefore whether the 8 Accused persons can be made
30 liable for the acts of their subordinates?

9. Finding a *prima facie* case

35 9.1 At the close of its case, the prosecution submitted that
as "*there has been no submission that we have not established
a prima facie case, so we act on the assumption that this is the
final submission and the onus on us is to prove beyond
reasonable doubt that all of the Accused should be convicted
for the crimes as charged.*" (page 204, lines 15-30 Notes of
40 Proceedings) The prosecution then went on with the
summation of its case and to finally submit that it has

“proved beyond reasonable doubt” (sic) that all the 8 Accused persons were instrumental in inflicting torture and cruel, inhumane and degrading treatment against the witnesses (victims) that violated the Torture Convention as well as Geneva Convention III. The prosecution further submitted that the 4th to 8th Accused persons, as legal counsel advising the administration, had played a decisive role in subverting the system of international rules that should have protected all the detainees.

- 9.2 In response, the *Amicus Curiae* for the 8 Accused persons submitted that the torture of Abbas Abid (the first witness) has not been proven to be linked to the Americans in any way by the prosecution.
- 9.3 In regard to the second witness (Moazzam Begg), the *Amicus Curiae* said that during cross-examination, it was discovered that Moazzam owned a bookstore, and had spent time at a training camp in Afghanistan. Why were these facts not disclosed in his statutory declaration?
- 9.4 In regard to the third witness (Jameelah), the *Amicus Curiae* submitted that *“We have no proof that she was detained at an American facility”*. He further submitted that her identification of her torturers as Americans “is also based on conjecture” from the assumption that since she was in the American part of Iraq, she was therefore assaulted by American nationals. This remains merely an assumption, and there is no actual identification, he submitted.
- 9.5 Turning his attention to points of law, the *Amicus Curiae* said that *“customary international law and jus cogens are like the snake-oil of international law”*. He submitted that *“international law really boils down to treaties”*, so forget *jus cogens*, and forget customary international law. States are only bound by treaties which they have signed or ratified.

1 9.6 The *Amicus Curiae* further submitted that “War is like a
black hole”. After 9/11, after the war on terror, under the
international law now, “Torture is OK”, because the
world has changed, international law has changed.

5 9.7 Proving a *prima facie* case, compels the conclusion sought
to be proven, unless evidence sufficient to rebut the
conclusion is produced. The *Amicus Curiae* made no
attempt to do so. This is clearly fatal omission on his
10 part. In a case of trial by Jury, the burden falls on the
Jurors to then decide whether the case against the
Accused has been proven beyond reasonable doubt see
Commonwealth v. Pauley, 368 Mass. at 291-292, 331 N.E.2d
at 904-906; *Commonwealth v. Crosscup*, 369 Mass. 228, 239-
15 240, 339 N.E.2d 731, 738-739 (1975) *Commonwealth v.*
Leinbach, 29 Mass. App. Ct. 943, 944, 558 N.E.2d 1003
(1990). In our present case, however, we have sufficient
judicial precedents to conclude that an un rebutted
finding of *prima facie* case amounts to proof beyond
20 reasonable doubt see *PP v. Sidek* [Criminal Trial no: 47-5-
1999] 31 January 2005.

25 9.8 In its rebuttal of the submission by the *Amicus Curiae*,
the prosecution said that the reasoning by the *Amicus*
is “so faulty at its core” that it should be rejected. In any
case, the prosecution pointed out that the United States
is a party to the Torture Convention as well as to the
Geneva Conventions.

30 9.9 The prosecution then submitted that in presenting its
case to the Tribunal it had described specific acts of
breaching the Geneva Convention committed by the 8
Accused Persons but the defence had not responded to
them. Neither had the defence responded to many other
35 matters raised in the prosecution’s case.

40 9.10 Rebutting the *Amicus Curiae*’s contention that after 9/
11 “Torture is OK”, the prosecution reiterated that even
after 9/11 “the prohibition of torture remains absolute”. The
prosecution stated that the defence can mock
international customary law, but that is not the way the

United States Supreme Court sees it. In the *Hamdan case*, the court held that the Common Article 3 of the Geneva Convention apply to Taliban and Al-Qaeda.

9.11 The prosecution also submitted in rebuttal that the stand taken by the Pentagon is that the laws of war “*have not changed*” since 9/11. The Pentagon has been consistent in its stand in this matter.

9.12 Having considered all the evidence adduced by the prosecution and the submissions put forward by both the prosecution and the defence, the Tribunal unanimously finds that a *prima facie* case has been proved and the *Amicus Curiae* is invited to present its case for the 8 Accused persons.

10. The defence case

10.1 Upon being invited by the Tribunal to present the defence’s case after its finding that a *prima facie* case has been made out by the prosecution, the *Amicus Curiae* informed the Tribunal that he has no more submission to make. His early submission in response to the prosecution’s case was his “final submission” on the matter.

10.2 The prosecution likewise informs the Tribunal that it has no intention to make any further submission, in the light of the stand taken by the *Amicus Curiae*. In the light of these statements by both the prosecution and the defence, the Tribunal adjourns the hearing, reserving its verdict – to be delivered on the following day (on 11 May, 2012).

11. Torture and War Crimes

11.1 After considering the defence case, the Tribunal finds that the prosecution had established beyond a reasonable doubt that the Accused persons:

U.S. President George W. Bush and his co-conspirators

Richard B. Cheney, former U.S. Vice President
Donald H. Rumsfeld, former Defence Secretary
Alberto Gonzales, then Counsel to President Bush
David Addington, then General Counsel to the
Vice-President
William Haynes II, then General Counsel to
Secretary of Defense
Jay Bybee, then Assistant Attorney-General
John Choon Yoo, former Deputy Assistant
Attorney-General

had engaged in a web of instructions, memos, directives, legal advice and action that established a common plan and purpose, joint criminal 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*" and the wars launched by the U.S. and others in Afghanistan and Iraq:

- (a) Torture;
- (b) Creating, authorizing and implementing a regime of Cruel, Inhumane, and Degrading Treatment;
- (c) Violating Customary International Law;
- (d) Violating the Convention Against Torture 1984;
- (e) Violating the Geneva Convention III and IV 1949;
- (f) Violating the Common Article 3 of the Geneva Convention of 1949;
- (g) Violating the Universal Declaration of Human Rights and the United Nations Charter.

12. Joint and Individual Criminal Liability

- 12.1 The Tribunal finds that the prosecution has established beyond a reasonable doubt that the Accused persons are individually and jointly liable for all crimes committed in pursuit of their common plan and purpose

under principles established by Article 6 of the Charter of the International Military Tribunal (the Nuremberg Charter), which states, *inter alia*, “*Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit war crimes are responsible for all acts performed by any person in execution of such plan.*” The Principles of the Nuremberg Charter and the Nuremberg Decision have been adopted as customary international law by the United Nations. The government of the United States is subject to customary international law and to the Principles of the Nuremberg Charter and the Nuremberg Decision.

13. Complainant War Crime Victims

13.1 The Tribunal finds that the prosecution has established beyond a reasonable doubt that the Accused persons have committed the crimes set out in paragraph 9 hereof, including but not limited to Torture and Cruel, Inhumane, and Degrading Treatment, against the following Complainant War Crime Victims who appeared before this Tribunal by statutory declaration and/or in person under oath:

- (a) Abbas Abid;
- (b) Moazzam Beg;
- (c) Jameelah Abbas Hameedi;
- (d) Ali Sh. Abbas (alias Ali Shalal);
- (e) Rhuhel Ahmed.

Each of these Complainant War Crime Victims is a civilian, who was released without charge after extended periods of time, after being subjected to Torture and Cruel, Inhumane, and Degrading Treatment for which the Accused persons are criminally liable.

14. Irreparable harm and injury, pain and suffering

14.1 The Tribunal finds that the prosecution has established beyond a reasonable doubt that each of the Complainant War Crime Victims has suffered irreparable harm and

injury, and pain and suffering due to the criminal acts of the Accused persons, as set out in their respective sworn testimony and statutory declarations presented at the Trial.

14.2 The Tribunal also notes the attempt by the *Amicus* during cross-examination to highlight the fact that the witnesses Abbas Abid and Jameelah Abbas Hameedi were high-ranking officials in the previous government of Iraq and may have had “*an axe to grind*” and thus may have embellished their accounts of the torture they had endured to have not been followed through during his final submissions. The Tribunal finds these attempts of the *Amicus* mere conjecture and therefore accepts the evidence of both witnesses *in toto*.

14.3 With regard to whether Ali Sh. Abbas (alias Ali Shalal) was the man under the hood in the photograph and whether this irreparably damaged his credibility, the Tribunal finds that this is immaterial to the fact that he was a civilian in occupied Iraq who was detained by the occupying force led by the Americans. Further, no attempt was made by the *Amicus* to challenge his detailed testimony regarding his treatment during detention. The Tribunal therefore accepts the testimony of Ali Sh. Abbas (alias Ali Shalal) [and that of Ruhel Ahmed] in accordance with Article 24 of the Rules of Evidence and Procedure of the Tribunal, but with a note of caution as there was no opportunity for cross-examination afforded to the *Amicus* for these 2 witnesses.

15. **Absolute prohibition on Torture and Cruel, Inhumane and Degrading Treatment**

15.1 The Tribunal finds there is an absolute prohibition on Torture and on Cruel, Inhumane and Degrading Treatment in international law and in the relevant laws and regulations of the United States of America and of the U.S. Army (including Army Field Manual 2710), all of which were violated by the Accused persons. As stated by Prof. Jordan J. Paust in “*The Absolute Prohibition*



*Scenes from the Kuala Lumpur War Crimes Tribunal Hearing
from 7 - 11 May 2012*

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