National Security

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I. The Year in Review-Shaped by Terrorism and Conflict

Terrorism and armed conflict permeated most all of the significant national security issues facing the United States in 2005. The year began with triple the number of serious international terrorist incidents than the year before,[1] suffering a total of 3851 international and domestic terrorist incidents worldwide that caused 11,696 injuries and 6232 deaths from January 1, 2005 through November 27, 2005.[2] Of these 3851 incidents, 228 were international incidents causing 454 injuries and 353 deaths.[3] Eight major armed conflicts and two dozen lesser conflicts also marred the globe in 2005.[4] While most all armed conflicts have national security implications for major global powers, the United States was directly involved in two of the three major armed conflicts during 2005 that are less than ten years

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1. Susan B. Glasser, *U.S. Figures Show Sharp Global Rise In Terrorism: State Dept. Will Not Put Data in Report*, WASH. POST, Apr. 27, 2005, at A1.

2. *See* National Memorial Institute for the Prevention of Terrorism, MIPT Terrorism Knowledge Base, http://www.tkb.org/IncidentDateModule.jsp?startDate=01%2F01%2F2005&endDate=11%2F27%2F2005&domInt=0&pagemode=month&imageField.x=45&imageField.y=9.

3. *Id.*

4. *See* GlobalSecurity.org, Military, The World at War, http://www.globalsecurity.org/military/world/war (last visted Feb. 27, 2006). Major armed conflicts are defined as "military conflicts inflicting 1,000 battlefield deaths per year." *Id.*

old.[5] In addition to over 211,028 U.S. active duty, reserve, and National Guard members deployed in *Operation Iraqi Freedom* in Iraq and Kuwait in 2005, the United States also had approximately 287,800 active duty members stationed in 144 nations.[6] As of November 27, 2005, the United States suffered 2108 military deaths in Iraq.[7]

Even a casual review of 2005 reveals literally hundreds of national security issues that could be highlighted in detail. From the indictment of Jose Padilla by a federal grand jury in Miami[8] or the efficacy, legality, and morality of torture,[9] to issues of leaking classified information,[10] or the renewal of the USA Patriot Act.[11] Equally important, the 2005 National Defense Strategy of the United States of America[12] or the 2005 National Intelligence Strategy of the United States of America[13] could be analyzed. Alternatively, this article could examine the diverse range of national security issues surrounding the evolving role of the U.S. military in homeland defense; domestic foreign intelligence; the role of the Department of Defense in domestic foreign intelligence collection; domestic intelligence reform and information sharing; international intelligence coordination and information sharing; torture prisons; rendition; universal jurisdiction; the proliferation of weapons of mass destruction; BioShield II legislation that provides private sector incentives to strengthen U.S. bioterror readiness; U.S. nonproliferation policies; United Nations (U.N.) reform; the promotion of democracy and the dangers of failed and failing states; the prosecution and treat-

5. *See* Renata Dwan & Caroline Holmqvist, *Major Armed Conflicts*, *in* SIPRI YEARBOOK 2005: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY ch. 2, *available at* http://yearbook2005.sipri.org/ch2/ch2. In 2005, the United States was involved in the conflict against al Qaeda and the conflict in Iraq; the third conflict that is less than ten years old is the conflict in Dafur, Sudan. *Id.*

6. *See* Congressional Research Service, U.S. Military Dispositions: Fact Sheet, http://www.fas.org/sgp.crs/natsec/RS20649.pdf (last updated Mar. 23, 2005).

7. Iraqi Coalition Casualties, Iraq Coalition Casualty Count, http://icasualties.org/oif (last visited Feb. 26, 2006).

8. Dan Eggen, *Padilla is Indicted on Terrorism Charges: No Mention Made of 'Dirty Bomb' Plot*, WASH. POST, Nov. 23, 2005, at A1.

9. *See, e.g.*, Evan Thomas et. al., *The Debate Over Torture*, NEWSWEEK, Nov. 21, 2005, at 26; Senator John McCain, *Torture's Terrible Toll*, NEWSWEEK, Nov. 21, 2005, at 34.

10. *See, e.g.*, Office of Special Counsel, *Full Text: U.S. v. Libby Indictment*, WASH. POST, Oct. 28, 2005, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2005/10/28/AR2005102801086.html.

11. USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001); *see, e.g.*, Dan Eggen, *Congress Urged to Renew Patriot Act*, WASH. POST, Apr. 6, 2005, at A17; Michael J. Woods, *Counterintelligence and Access to Transactional Records: A Practical History of USA Patriot Act Section 215*, 1 J. NAT'L SECURITY L. & POL'Y 37 (2005).

12. UNITED STATES DEPARTMENT OF DEFENSE, NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA iv (March 2005), *available at* http://www.au.af.mil/au/awc/awcgate/nds/nds2005.pdf. This strategy outlined an "active, layered approach to the defense of the nation and its interests" to counter mature and emerging threats and four strategic objectives to: secure the United States from direct attack, secure strategic access and retain global freedom of action, strengthen alliances and partnerships, and establish favorable security conditions. *Id.*

13. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, NATIONAL INTELLIGENCE STRATEGY OF THE UNITED STATES OF AMERICA 4 (2005), *available at* http://www.dni.gov/NISOctober2005.pdf. This strategy outlined five strategic mission objectives to:

1. Defeat terrorists at home and abroad . . . .
2. Prevent and counter the spread of weapons of mass destruction.
3. Bolster the growth of democracy and sustain peaceful democratic states.
4. Develop innovative ways to penetrate and analyze the most difficult targets.
5. Anticipate developments of strategic concern and identify opportunities as well as vulnerabilities for decision-makers. *Id.*

ment of terrorists and prisoners of war; the four Geneva Conventions of 1949; the role of contractors performing governmental functions; continuity of Executive and Congressional operations during catastrophic events; the First Amendment and prepublication clearance requirements by current and former U.S. government employees; or the protection of whistleblowers.

Many of these issues overlap the jurisdiction of other committees and may be addressed elsewhere in this Year-in-Review issue. We have chosen, however, to focus on six topics that concern the judicial review of classified agreements, the impact of U.N. Security Council Resolution 1540, the legality of extraordinary renditions, the Nuclear Nonproliferation Treaty 2005 Review Conference, the law of occupation as it applies to Iraq, and whether international rights under the 1949 Geneva Conventions can be enforced in U.S. federal courts.

II. Supreme Court Affirms *Totten* Rule

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Reviewing an issue that first arose over 100 years ago, the U.S. Supreme Court ruled in March 2005 on the validity and scope of the *Totten* rule—an obscure rule that bars judicial review of claims against the U.S. government when the claims are based upon the existence of a secret espionage relationship or agreement.[14] The case at issue, *Tenet v. Doe*, involved an alleged secret agreement between the Central Intelligence Agency (CIA) and two foreign assets—spies working on behalf of the CIA.[15] The spies contended that the CIA reneged on its agreement to provide lifetime financial and other support to them, and they sought declaratory, injunctive, and mandamus relief, including a directive that the CIA resume its payments to them.[16] The Ninth Circuit Court of Appeals determined that the complaint was not governed by *Totten* and need not be dismissed.[17] The Supreme Court reversed that decision and found that *Totten* squarely governed the suit, affirming the continued validity of the *Totten* rule.[18]

In reaching its decision, the Court clarified that *Totten* was not so limited as only to bar breach of contract claims, but served as a categorical bar to all suits that depend on clandestine spy relationships.[19] Importantly, the Court also distinguished the *Totten* rule from the state secrets privilege, noting that the *Totten* rule cannot be "reduced to an example of the state secrets privilege."[20] While an assertion of the state secrets privilege—an evidentiary privilege that, when upheld by the courts, forbids the disclosure of classified infor-

14. *See* Totten v. United States, 92 U.S. 105 (1876).
15. *See* Tenet v. Doe, 125 S. Ct. 1230, 1233, 1236 (2005).
16. *See* Doe v. Tenet, 329 F.3d 1135, 1138, 1140 (9th Cir. 2003).
17. *Id.* at 1145-46.
18. Tenet, 125 S. Ct. at 1233.
19. *Id.* at 1236-37.
20. *Id.* at 1237.

mation during civil litigation[21]—can potentially foreclose litigation of a claim,[22] its assertion does not necessarily result in a complete dismissal of a case.[23] The successful invocation of *Totten*, however, must result in dismissal since such a lawsuit is "altogether forbidden."[24] This affirmation of *Totten* may be bad news for foreign spies hoping to enforce their agreements with the CIA, but it should not impact covert CIA employees, even though their identities may be secret, because the existence of their employment relationships with the CIA is not.[25]

III. U.N. Security Council Resolution 1540

The U.N. Security Council adopted Resolution 1540 (UNSCR 1540)[26] under chapter VII of the U.N. Charter. Negotiation of UNSCR 1540 was brief (albeit contentious) and adoption was unanimous. The Resolution was prompted by the discovery of Dr. Khan's global network for distributing nuclear weapons capabilities to Iran, North Korea, and Libya, and it reflected growing concerns that non-state actors "may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery."[27] Significantly, UNSCR 1540 recognizes "the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security."[28] In operative part, UNSCR 1540 requires every state to prohibit non-state actors from acquiring or using weapons of mass destruction (WMD) and to prevent proliferation by establishing controls over WMD related materials, and submit reports within six months on "steps they have taken or intend to take to implement this resolution" to a specially established Security Council Committee.[29]

A. Gap That UNSCR 1540 Fills

Before UNSCR 1540, the international system to control WMD proliferation did not directly criminalize efforts to abet non-state acquisition of WMD. Both the Chemical Weapons Convention and the Biological Weapons Convention (BWC) obligate States Parties to prohibit private entities from engaging in treaty-prohibited conduct. But there is less than universal adherence to the WMD treaties and many States Parties have not implemented requisite penal measures. Non-state actors within the jurisdiction of non-States Parties or of States Parties that have not implemented penal measures are unaffected by a treaty prohibition.

21. *See* Halkin v. Helms, 690 F.2d 977, 990 (D.C. Cir 1982) (citing United States v. Reynolds, 345 U.S. 1, 7 (1953) (the modern and seminal decision validating the state secrets privilege)).
22. *See* Trulock v. Lee, 66 Fed. Appx. 472, 473 (4th Cir. 2003) (dismissing defamation claim after invocation of the state secrets privilege).
23. *See* DTM Research, L.L.C. v. AT&T Corp., 245 F.3d 327, 335 (4th Cir. 2001) (government's assertion of the state secrets privilege did not mandate dismissal of the case).
24. Tenet, 125 S. Ct. at 1236.
25. *Id.* at 1237 n.5.
26. S.C. Res. 1540, U.N. Doc. S/RES/1540 (Apr. 28, 2004).
27. *Id.*
28. *Id.*
29. *Id.* ¶ 4.

More important, these non-proliferation treaties do not contain extensive obligations to prevent private persons from diverting WMD materials.[30] The worst situation involves biological weapons because the BWC's primary prohibitions are so vague, it is wholly ineffective for preventing non-state actors from cultivating pathogens, assembling equipment critical to weaponization, or transferring highly refined and lethal disease agents. Indeed, until adoption of UNSCR 1540, it has been perfectly legal in most states to prepare lethal biological agents for dissemination.

The realization that motivated consideration of UNSCR 1540 was this gap in international law—that widely appreciated constraints on state behavior do not apply to non-state behavior. As perception of the threat from non-state actors has grown, so has the realization that, in most states (especially states of greatest concern), accumulation of WMD precursor materials or critical equipment has not been legally proscribed, no domestic authority is mandated to supervise access to such materials or equipment, and neither domestic law nor international law is violated by the transnational transfer of such items.

B. Fulfilling UNSCR 1540's Requirements

UNSCR 1540 does not require much of technologically advanced states (e.g., members of the Organisation of Economic Co-operation and Development or the Australia Group). Many of these states already have enacted measures that substantially fulfill the resolution's mandates. But of the roughly 150 remaining states, some have substantial gaps in their legal infrastructure.

To fulfill UNSCR 1540's requirements, each nation's laws should prohibit development, acquisition, or transfer of WMD-critical items and should make it a crime to violate that prohibition for hostile purposes. Thus, WMD proliferation should be illegal everywhere, powerfully reinforcing the norm against acquisition of such weapons as well as facilitating law enforcement and transnational legal cooperation. The scope of legal jurisdiction over such crimes should broadly reach the behavior of legal entities in transnational smuggling and weapons development conspiracies. Legal controls of the export and trade in sensitive WMD materials are essential to security. However, export controls pertain only to license seekers; resolute terrorists are not likely to seek an export license for their desired items. Toughening standards has limited utility against covert smuggling. Therefore, there will have to be effective measures of transnational information sharing and intelligence gathering to prevent WMD smuggling that is not remotely on the horizon at this time.

Every state must strengthen physical security and containment measures as well as restrict access to facilities having WMD-relevant items. The challenge is how to keep critical expertise, materials, and equipment from terrorists without unduly constricting those items' non-hostile applications. Promulgation of effective regulations will require careful and effective balancing of a myriad of considerations on a global scale. Actualizing these legislative and regulatory initiatives is complex. States will have to consider whether to establish official supervisory bodies, information management and reporting systems, and linkages to related policies for advancing scientific progress. To know the extent of compliance within their jurisdiction, each state will need to implement a system for monitoring relevant activity and

30. The Convention on the Physical Protection of Nuclear Material goes further than any international agreement in specifying anti-diversion measures, but the vast majority of states are not party to this Convention.

penalizing non-compliance. Notably, UNSCR 1540 calls upon international organizations to assist states in setting up and enforcing these regulatory systems.

C. Compliance Concerns

In the debates preceding adoption of UNSCR 1540, various delegates expressed concern about what actions might be taken to enforce compliance. The resolution does not authorize action to be taken against states to compel compliance, but it was adopted pursuant to chapter VII and is of the highest concern to international peace and security. The resolution's proponents asserted that the resolution does not contemplate enforcement action that would require a new Council decision.

What is clear is that a state may no longer claim, in defense of its nonfeasance, that it did not know it had a legal obligation to take preventive action. Arguably, prior to UNSCR 1540's adoption, a state where terrorists or proliferators operated could distinguish between state support of terrorism and state neglect to counteract terrorism—although terrorists successfully gained WMD capabilities from insecure facilities, the state was not responsible because it took no action to encourage or enable that diversion. Now, the defense of purported ambiguity as to whether a state has nonproliferation responsibilities is not available. In the final analysis, if a state does not avail itself of support from states with relevant capabilities or from international organizations, or if it does not adopt essential measures to satisfy UNSCR 1540, then the Security Council could determine that the state has breached its obligations and impose sanctions.

D. The Security Council's Assumption of Authority

UNSCR 1540 poses a historically-significant question concerning the Security Council's authority: may the Security Council legitimately carve out an issue from a broader strategic framework and impose obligations on states that have been neither negotiated nor ratified and as to which states have no choice but to comply? UNSCR 1540 is a decision of fifteen states, including the P-5 members who possess not only veto authority but nuclear weapons as well. Obligations are imposed on all without counter-balancing efforts to adjust discrepancies of wealth or power. Moreover, no state can legally refuse to abide by the Resolution's mandate; its refusal to consent is irrelevant regardless of whether it believes that its interests are jeopardized.

This action raises a critical question of process and authority. In the most fundamental sense, may the mandate of an international body displace the treaty-negotiation process among sovereign nations? Of course, the Security Council has the legal authority to respond to threats to international peace and security, but imposing legislative and regulatory obligations on states in order to reduce the risk of a potential but as yet unrealized threat may be something altogether different. Each weapons control treaty is the product of a separate negotiation whereby security concerns, the burden of verification, and access to peaceful technology are all in play. But a Security Council resolution involves no such negotiation and certainly no such bargaining.

This is precisely why UNSCR 1540 is an important development in international law. Perhaps in another context requiring implementation of domestic legal measures might be accomplished through a treaty, but here the Security Council can (and, according to the Charter process, does) trump the treaty-making process precisely because the Security

Council is better able to shear away extraneous considerations from the treaty negotiation process and make decisions more quickly that have more direct and exclusive bearing on resolving the security threat.

Ultimately, when the Security Council, acting pursuant to chapter VII, signifies that the threat is a matter of international peace and security, the process is not meant to epitomize participatory democracy of sovereign states; it is meant to get the job done. Thus, UNSCR 1540 should be received as a unprecedented assertion that the Security Council may impose international peace and security obligations-extending to a broad set of regulatory measures to reduce horrific but as yet only potential threats-regardless of states' consent.

IV. Extraordinary Renditions: Violations of International Law?

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Much light has been shed on extraordinary renditions and the potential torture of suspected terrorists rendered by the U.S. government with CIA involvement during 2005. Extraordinary renditions—the capture and extradition of persons from one nation to another for the purpose of interrogation and potential prosecution—are not novel operations and have been used in the past as an "alternate form of rendition," often involving the "abducting [of] fugitives from foreign states and returning them to prosecuting states."[31] When characterized as the return of fugitives from justice for lawful prosecution, extraordinary renditions may appear to be a potentially valid exercise of police power in the interest of fighting crime.[32] More recently, however, these operations have concentrated on capturing suspected terrorists and detaining them in foreign jails, either operated by the foreign governments or the CIA, where they are reported to be tortured during interrogations.[33] These operations have also become the focus of an Italian court[34] and raise the issue of whether extraordinary renditions violate international law.

The case that has garnered much attention in Italy and around the world concerns an Egyptian-born imam, Hassan Mustafa Usama Nasr, also known as Abu Umar, who was snatched in broad daylight off a street in Milan, Italy, on February 17, 2003, and flown to Cairo, Egypt.[35] Abu Umar, who was released by the Egyptians but then rearrested and whose whereabouts are currently unclear, told his wife in a telephone conversation intercepted by Italian authorities that his interrogators tortured him.[36] His claims are not unique

31. Jacqueline A. Weisman, *Extraordinary Rendition: A One-Way Ticket to the U.S. . . . Or Is It?*, 41 Cath. U. L. Rev. 149 (1991) (discussing the legality of extraordinary renditions of fugitives from justice).

32. *See id.* at 152-53.

33. *See* Douglas Jehl & David Johnston, *Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails*, N.Y. Times, Mar. 6, 2005, at 11.

34. *See* Tracy Wilkinson, *Italy Orders Arrest of 13 CIA Operatives*, Seattle Times, Jun. 25, 2005, at A1.

35. *Id.*; *see also* Italy seeks 'CIA Kidnap Agents', BBC News, June 24, 2005, http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4619377.stm (referring to the imam as Osama Mustafa Hassan).

36. *Id.*

and other individuals subjected to extraordinary renditions have also complained of being tortured while they were imprisoned in foreign jails.[37]

An Italian prosecutor sought arrest warrants for those persons—believed to be CIA operatives—involved in Abu Umar's abduction, and an Italian judge issued the first arrest orders in June 2005 for thirteen operatives,[38] and later issued an additional nine orders,[39] totaling twenty-two persons sought for arrest in Italy under warrants that may be valid throughout the European Union.[40] Ironically, the Italian prosecutor also has formally sought the extradition of the twenty-two operatives to Italy to face charges.[41] Germany, Sweden, Spain, and Iceland have additionally instigated investigations into these extraordinary renditions.[42]

The indictments and investigations highlight the issue of whether these extraordinary renditions violate any international laws. For example, the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits torture and cruel, inhuman or degrading treatment by parties to CAT.[43] It additionally prohibits the expulsion, refoulement (transfer or return), or extradition of a person to another nation where there are substantial grounds for believing that the person would be in danger of being subjected to torture.[44] The United States has ratified CAT and it entered into force on November 20, 1994, making the United States subject to the refoulement provision.[45] Thus, if the United States has substantial grounds for believing that a suspected

37. *See* Center for Human Rights and Global Justice, Beyond Guantanamo: Transfers to Torture One Year After Rasul v. Bush (2005), *available at* http://www.nyuhr.org/docs/Beyond%20Guantanamo%20Report%20FINAL.pdf (outlining the extraordinary rendition of two Egyptians from Sweden to Egypt where, according to human rights groups, they were tortured and ill-treated; and the extraordinary rendition of an Australian citizen from Pakistan to Egypt where he was allegedly severely tortured) [hereinafter CHRGJ Report].

38. *See* Wilkinson, *supra* note 34.

39. *See* Associated Press, *Italy Seeks 3 More Purported CIA Operatives*, MSNBC, Sep. 30, 2005, http://www.msnbc.msn.com/id/9540036/ (Italian court issued arrest warrants for thirteen persons, then an additional six persons, and finally three more persons-bringing total sought for arrest to twenty-two persons).

40. *See* Wilkinson, *supra* note 34 (quoting a U.S. official who said that the Italian warrants would probably be considered valid by Europol, the European Union police agency, meaning that the operatives could potentially be arrested anywhere within the European Union).

41. *See* Craig Whitlock, *Italy Seeks Extradition of 22 CIA Operatives*, Wash. Post, Nov. 12, 2005, at A19 [hereinafter Whitlock, *Italy Seeks*].

42. *See Germany and Italy Want to See the CIA in Court*, Spiegel Online, Nov. 14, 2005, http://www.spiegel.de/international/0,1518,384885,00.html (reporting that Germany has instigated preliminary proceedings against secret service personnel and that the airplane carrying Abu Umar allegedly landed in Ramstein, Germany); Craig Whitlock, *New Swedish Documents Illuminate CIA Action*, Wash. Post, May 21, 2005, at A01 (Swedish investigator probing extraordinary rendition of two Egyptians from Sweden to Egypt finds renditions violated Swedish law); The Press Association, *Spain Probes Alleged Airport Use*, Scotsman.com, Nov. 14, 2005, *available at* http://news.scotsman.com/latest.cfm?id=2240932005 (Spanish National Court receives prosecutors report of investigation on CIA use of Spanish airport for extraordinary renditions); Jim Bronskill, *Plane Allegedly Linked to CIA Front Landed in Canada*, Recorder & Times (Ontario), Nov. 19, 2005, http://www.recorder.ca/cp/national/051119/n111949A.html (Iceland probing allegations that CIA used their air facilities for extraordinary rendition).

43. *See* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Res. 39/46, art. Z, U.N. Doc. A/39/51 (Dec. 10, 1984).

44. *Id.* at art 3.

45. *See* United Nations High Commissioner for Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: United States of America, (Nov. 20, 1994), *available at* http://www.unhchr.ch/TBS/doc.nsf/22b020de61f10ba0c1256a2a0027bale/80256404004ff315c125638b005e98f9?OpenDocument.

terrorist captured in Italy and taken to an Egyptian jail would be in danger of being subjected to torture, the United States would be violating CAT.

Some groups have argued generally that extraordinary renditions violate CAT and that the specific renditions to Egypt certainly violate it since the U.S. Department of State's annual human rights reports acknowledge that Egypt is known as having a history of torturing detainees.[46] The Bush Administration, however, has argued that CAT's ban on cruel, inhuman, and degrading treatment does not apply to suspected terrorists being interrogated overseas and that the U.S. Constitution grants the President plenary powers to override CAT when he is acting in the nation's defense.[47] Other international laws and norms, including territorial sovereignty, may also be violated by extraordinary renditions. For example, if a rendition operation is not aided or sanctioned by the foreign nation where the rendition occurs, the foreign nation may protest the rendition as a violation of its sovereignty.[48] If the foreign nation, however, has cooperated with the extraordinary rendition, it too may be violating CAT or violating other multilateral treaties, such as the European Convention on Human Rights.[49] As more information concerning the extraordinary renditions is revealed, the debate about its legality under international law is certain to continue.

V. Nuclear Nonproliferation Treaty Background and 2005 Review Conference

Nuclear weapons pose the greatest threat to the survival of humanity and their destructive capacity is so enormous that it is difficult to comprehend.[50] The very first resolution of the U.N. General Assembly called for the elimination of atomic bombs.[51] The bomb used against Hiroshima was about 12.5 kilotons, the equivalent of 12,500 tons of TNT. By the mid-1950s, both the United States and the Soviet Union developed nuclear weapons in the megaton range, equivalent to 1,000,000 tons of TNT, some in excess of 20 megatons. One

46. *See* CHRGJ Report, *supra* note 37, at 30, 32; Whitlock, *Italy Seeks*, *supra* note 41 (Swedish Helsinki Committee for Human Rights says it is quite clear Swedish and international laws were broken by the rendition).

47. *See* Jane Mayer, *Outsourcing Torture: The Secret History of America's "Extrodinary Rendition" Progam*, The New Yorker, Feb. 14, 2005, *available at* http://www.newyorker.com/fact/content/?050214fa_fact6 (noting that during Attorney General Alberto Gonzales's confirmation hearings, he argued that CAT does not apply to terrorist suspects being interrogated overseas; noting that then Deputy Assistant Attorney General John Yoo argued that the U.S. Constitution grants the President plenary power to override CAT when acting in the nation's defense).

48. *See* Weisman, *supra* note 31, at 162-63.

49. *See* Whitlock, *Italy Seeks*, *supra* note 41 (Swedish officials asked the CIA for help in rendering two suspected terrorists to Cairo, which according to a human rights group, violates Swedish, European and international laws).

50. "The UN in its 1991 report found that '(n)uclear weapons represent a historically new form of weaponry with unparalleled destructive potential. A single large nuclear weapon could release explosive power comparable to all the energy released from the conventional weapons in all past wars.'" Charles J. Moxley, Jr., Nuclear Weapons and International Law in the Post Cold War World 398 (2000) (quoting, World Health Organization, United Nations, Effects of Nuclear War on Health and Health Services 7 (2nd ed. 1987)). *See also*, U.N. Department for Disarmament Affairs, *Nuclear Weapons: A Comprehensive Study* 7, U.N. Doc. A/45/373 (Sept. 18, 1990).

51. Resolution 1 (I) was adopted unanimously on January 24, 1946 at the First Session of the General Assembly of the United Nations. G.A. Res 1 (I) (Jan. 24, 1946).

megaton would compare to a freight train stretching from New York to Los Angeles loaded with TNT.[52] Thousands remain on hair trigger alert and over 30,000 remain in the world.

The Nuclear Nonproliferation Treaty (NPT),[53] the central legal instrument containing and constraining their spread, is essential to international security. According to Ambassador Robert T. Grey, a former U.S. arms control negotiator, the NPT is "in many ways an agreement as important as the UN Charter itself."[54] But for the NPT, dozens more may now threaten civilization, creating a nightmarish world where it would clearly be impossible to keep these devices out of the hands of terrorists and where nearly every crisis would risk "going nuclear."[55] The Treaty came into force in 1970 and has effectively constrained proliferation. Its success is based on a careful bargain. As Ambassador Thomas Graham, Jr., who led the U.S. negotiating team at the 1995 Extension Conference of the NPT, stated,

> [i]n exchange for a commitment from the non nuclear weapons states (today, some 182 nations) not to develop or otherwise acquire nuclear weapons and to submit to international safeguards intended to verify compliance with the commitment ([a]rticle 2), the NPT nuclear weapon states promised unfettered access to peaceful nuclear technologies (e.g., nuclear power reactors and nuclear medicine; [a]rticle 4), and pledged to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals ([a]rticle 6).[56]

At the 1995 Extension Conference, many Non Nuclear Weapon States (NNWS) were extremely dissatisfied with the progress on disarmament of the Nuclear Weapon States (NWS)—the United States, Russia, the United Kingdom, France, and China—and argued that they would not accept the inequity of a dual global system of nuclear haves and have-nots. They demanded, and obtained, a bargain that was expressed in a *Statement of Principles and Objectives for Nuclear Nonproliferation and Disarmament*, which politically, if not legally, conditioned the indefinite extension of the treaty. The statement pledges to complete a Comprehensive Test Ban Treaty by the end of 1996, reaffirm the commitment to pursue nuclear disarmament, and commence negotiations for a treaty to stop production of nuclear bomb materials. The statement also pledges to reduce sharply global nuclear arsenals, encourage the creation of nuclear weapons free zones, vigorously work to make the treaty universal by bringing in Israel, Pakistan, and India, who have nuclear weapons and remain outside the treaty, enhance IAEA safeguards and verification capacity, and reinforce negative security assurances already given to NNWS against the use or threat of use of nuclear weapons against them.[57] The bargain to extend the treaty centered around a strengthened review process with near yearly preparatory conferences and a rigorous review every five years to ensure the promise of the NWS to achieve the "determined pursuit by the nuclear-weapon states of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons."[58]

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52. Ambassador Thomas Graham, Jr., Commonsense on Weapons of Mass Destruction 10 (2004).

53. *See* Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483; *see also* Douglas Roche, An Unacceptable Risk, n.4, 99-105 (1995) [hereinafter Roche, Unacceptable Risk].

54. *See* Bipartisan Security Group, Status of the Nuclear Non-Proliferation Treaty, Interim Report Preface (2003).

55. *See* Graham, *supra* note 52, at 10.

56. *Id.* at 52.

57. *See id.* at 53.

58. Nicola Butler et al., *1997 NPT PrepCom: Principles and Objectives on the Agenda* (Feb. 1997), *available at* http://www.basicint.org/pubs/Papers/BP19.htm.

It has been argued that honoring these commitments under this review process determines whether good faith compliance with the treaty is taking place.[59] At the 2000 Review Conference, thirteen practical steps were unanimously agreed upon to satisfy concerns about the balance between nonproliferation and disarmament.[60] Space limitations do not permit an analysis of these commitments here. But it is nonetheless important to acknowledge that the commitments that produced the consensus in 2000 later lost the support of the United States and without U.S. leadership, hopes for progress on nuclear nonproliferation and disarmament were dashed at the very outset of the 2005 Review Conference.[61] The States Parties were unable to even generate a timely working agenda and fifteen out of twenty days were eaten up by procedural battles that masked real political dialogue and debate, despite four preparatory conferences beginning in 2002, and all this largely because of the intransigence of only a few states. Warnings of this deadlock came as early as the Preparatory Conference of 2003 when North Korea was withdrawing, Iran was under severe criticism for its fuel program, and the U.S. administration was pushing to advance its new bunker buster nuclear weapon. At the commencement of the 2005 Review Conference, Secretary-General Kofi Annan asked delegates "to imagine, just for a minute," the consequences of a nuclear catastrophe on a great city. He predicted the basis for the ensuing impasse when he stated that "[s]ome will paint proliferation as a grave threat. Others will argue that existing nuclear arsenals are a deadly danger."[62]

The agenda was stalled along several fault lines. For example, the United States would not permit the commitments already made under the treaty review process to be the basis for a working agenda and focused on the proliferation threats posed by Iran and North Korea; Egypt demanded clear expositions based on commitments and specifically to work to make the treaty universal; and Iran bated the NWS on their failures to make progress on disarmament, specifically the United States for development of low yield nuclear weapons and pursuit of space weaponization. In the end no consensus document was generated.[63] The unwillingness of the United States to respond specifically to demands to have its commitments reviewed placed the very integrity of the institution of the NPT at risk. For if commitments made yesterday need not be held to account today, why should commitments made to the body of the NPT today be taken seriously? Nonproliferation goals universally respected were not seriously negotiated, not because of a poverty of valid proposals,[64] but

59. Peter Weiss et al., *The Thirteen Practical Steps: Legal or Political?* (May 2005), http://www.lcnp.org/disarmament/npt/13stepspaper.htm. Serious arguments have been made that such compliance has not been forthcoming. Non-governmental Organizations' Statements to the States Parties to the Seventh Review Conference of the Treaty on the Non-proliferation of Nuclear Weapons (2005), *available at* http://www.lcnp.org/disarmament/npt/ArtVIcompliance.pdf.

60. *Id.*

61. Jimmy Carter, *Erosion of the Nonproliferation Treaty*, Int'l Herald Tribune, May 12, 2005, *available at* http://www.iht.com/articles/2005/05/01/opinion/edjimmy.php.

62. Roche, Unacceptable Risk, *supra* note 53.

63. *See* Rebecca Johnson, *Politics and Protection: Why the 2005 NPT Failed*, Disarmament Diplomacy, Autumn 2005, *available at* http://www.acronym.org.uk/dd/dd80/80npt.htm. For a full exposition of the statements of the participating states, reports on the proceedings and non-governmental organization statements, the web site of Reaching Critical Will is outstanding, and has gained wide spread praise from many diplomats. Reaching Critical Will: The Nuclear Non-Proliferation Treaty, http://www.reachingcriticalwill.org/legal/npt/nptindex1.html.

64. *See* International Atomic Energy Agency, Strengthening the NPT and World Security (2005) *available at* http://www.iaea.org/NewsCenter/News/2005/npt_2005.html (for example, listing seven practical issues that could have been reviewed to good effect).

because of a failure of political will. Effective means of addressing threats posed by states leaving the treaty, or, like Iran, using the treaty to develop nuclear energy with the potential for using technical advances and fissile materials to develop weapons, as well as the failure of NWS to fulfill their pledges to take practical steps toward elimination, were not achieved. The consequences of this failure are serious.

The U.N. High-Level Panel on Threats, Challenges and Change issued a report in December 2004, entitled *A More Secure World: Our Shared Responsibility*.[65] The panel included former national security adviser Brent Scowcroft and former Russian Prime Minister Yevgeny Primakov. It stated in relevant part that "[w]e are approaching a point at which the erosion of the [nuclear regime] could become irreversible and result in a cascade of proliferation."[66] Without U.S. leadership in arms control and cooperative security agreements, Heads of State will remain stymied and be unable to effectively address proliferation issues through diplomacy. On September 13, 2005, during the September 2005 Summit at the U.N. of Heads of State in reference to their Final Statement, Secretary-General Kofi Annan said that "[t]he big item missing is non-proliferation and disarmament. This is a real disgrace. We have failed twice this year: we failed at the NPT [Conference], and we failed now."[67] This institutional deadlock has arisen from a failure of political will to work cooperatively. It cannot be ignored. When diplomacy fails, use of force, war, violence, and bloodshed may result. Ambassador Paul Meyer of Canada summed up the situation by stating that

> [w]e have let short term, parochial interests override the collective long term interest in sustaining this Treaty's (NPT) integrity. We have witnessed intransigence from more than one State on pressing issues of the day, coupled with the hubris that demands the priorities of the many to be subordinated to the preferences of the few . . . . If there is a silver lining in the otherwise dark cloud of this Review Conference, it lies in the hope that our leaders and citizens will be so concerned by its failure that they mobilize behind prompt remedial action. This is a Treaty worth fighting for and we are not prepared to stand idly by while its crucial supports are undermined.[68]

We are well advised to work with our friends to rebuild cooperative security through the rule of law.

VI. The Law of Occupation and Iraq

A. Overview

The Coalition Provisional Authority (CPA), as the occupation authority in Iraq, promulgated 100 Orders. These Orders had the force of law during the period of the occupation. Furthermore, pursuant to article 26(C) of the Law of Administration for the State of Iraq for the Transitional Period (TAL), following the transfer of authority to the Interim

65. United Nations High-level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility (2004) *available at* http://www.un.org/secureworld/report2.pdf.

66. *Id.*

67. Press Release, United Nations Information Service, Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters (Sep. 13, 2005) *available at* http://www.un.org/News/briefings/docs/2005/sgsm10089.doc.htm.

68. Douglas Roche, Beyond Hiroshima 75-76 (2004).

Iraqi Government, these Orders continue to remain in force until rescinded or amended by the Iraqis. Since the transfer of authority, the Iraqis have further implemented many of these Orders through the promulgation of Ministerial Instructions. The Iraqis have also enshrined the economic principles behind many of these Orders in article 25 of the Iraqi Constitution, which was approved by referendum in October of this year.

In promulgating these Orders, the CPA relied upon both the traditional law of occupation and United Nations Security Council resolutions. Under article 42 of the Regulations Annexed to the Convention Respecting the Laws and Customs of War on Land,[69] (the Hague Regulations), "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army." Thus, whether a country is occupied is a question of fact. Consistent with article 42 of the Hague Regulations, U.N. Security Council Resolution 1483 (UNSCR 1483)[70] specifically recognized the "authorities, responsibilities, and obligations under applicable international law"[71] of the CPA.

B. Enactment of Reforms

UNSCR 1483 provided that the CPA should assist the people of Iraq through "promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions."[72] This authority was broader than many traditionally ascribed to an occupation authority.[73] Article 43 of the Hague Regulations provides that

> [t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.[74]

While there appears to be general agreement that article 43 does not mean that the occupying power must enforce all of the laws of the occupied territory and it is generally recognized that an occupation authority is legally empowered to promulgate orders for governance of the occupied territory,[75] under the Hague Regulations, an occupying power's ability to change the law of the occupied territory is limited.

Pursuant to UNSCR 1483, the CPA promulgated Orders that enacted economic reforms designed to enable Iraq to transition from a planned economy to a market economy, in accordance with widely-accepted economic theory. These reforms were initially developed in consultation with individuals with knowledge of relevant Iraqi economic conditions and Iraqi law, including Iraqi business leaders and lawyers, and were further developed in co-

69. Convention Respecting the Laws and Customs of War on Land, art. 42, Oct. 18, 1907, 36 Stat. 2277 [hereinafter Hague Regulations].

70. S.C. Res. 1483, U.N. Doc. S/RES/1483 (May 22, 2003).

71. *Id.*

72. *Id.* ¶ 8(e).

73. *But see* Gerhard von Glahn, The Occupation of Enemy Territory 97 (1957).

74. Hague Regulations, *supra* note 69, at art. 43.

75. *See* von Glahn, *supra* note 73, at 8. For example, laws that discriminate on the basis of color, race, political opinion, or religious creed may be suspended on the grounds that such legislation does not serve to promote public order and safety.

ordination with the Coalition Governments, the International Monetary Fund, and the World Bank, and were approved by the Iraqi Governing Council. The Orders were then submitted to the Administrator of the CPA, Ambassador L. Paul Bremer, III, for his approval, and were published, in Arabic and English, in the Iraqi Official Gazette. Similar provisions in UNSCR 1483 provided the CPA with the authority to create "conditions in which the Iraqi people can freely determine their own political future."[76] This allowed the CPA to promote the development of democracy in Iraq, including through the establishment of the Iraqi Governing Council, and subsequently through providing in the TAL a mechanism for election of the Interim Iraqi Government, drafting of the permanent constitution of Iraq, approval of that constitution through national referendum, and election of the permanent government of Iraq.

C. Post-Occupation

As indicated, article 26(C) of the TAL provided that the reforms remain the law of Iraqi until rescinded or amended. The Interim Iraqi Government has continued these reforms, and in fact has taken steps to further implement them through the promulgation of ministerial instructions. The Iraqis have generally accepted the principles of these reforms. For example, since the promulgation of CPA Order No. 64, which amends the Company law to make it easier to establish private businesses, over 21,000 new Iraqi companies have been registered, significantly more than were registered during the entire sixty-year history of the company registry prior to March 2003. Furthermore, the continuance of these reforms is referred to in article 25 of the Iraqi Constitution, which provides that "[t]he State guarantees the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources and the encouragement and the development of the private sector."[77]

The reforms enacted by the CPA therefore, represent a new development in international law. An occupying power, pursuant to U.N. Security Council resolutions, undertook reforms to assist the occupied country to become a democracy and to develop its economy. While reforms under such circumstances are a new development, they are also consistent with the statement in 1957 by noted authority on occupation law, Gerhard von Glahn, that

> the secondary aim of any lawful military occupation is the safeguarding of the welfare of the native population, and this secondary and lawful aim would seem to supply the necessary basis for such new laws as are passed by the occupant for the benefit of the population and are not dictated by his own military necessity and requirements.[78]

D. Conclusion

Upon the transfer of authority, the occupation of Iraq came to an end. The Coalition forces remain in Iraq as guests of the government of Iraq. Iraq's sovereign powers with regard to the negotiation and execution of treaties and international agreements (to include

76. S. C. Res. 1483, *supra* note 70, ¶ 4.

77. Iraqi Constitution, art. 25, *available at* http://www.iraqidustour.com/english/latest-constitution.htm (last visited Mar. 3, 2006).

78. von Glahn, *supra* note 73.

treaties and international agreements with Coalition nations) and to the formulation of national security policy were contained in article 25 of the TAL and subsequently enshrined in article 107 of the Iraqi Constitution.

Iraq continues to struggle to achieve internal security, to build its democratic institutions, and to reform its economy. However, in a remarkably short period of time it has gone from dictatorship, through occupation, to nascent democracy. It is hoped that Iraqi people will achieve their national goal, as stated in the preamble of their Constitution,

> to respect the rules of law, to establish justice and equality to cast aside the politics of aggression, and to tend to the concerns of women and their rights, and to the elderly and their concerns, and to children and their affairs and to spread a culture of diversity and defusing terrorism.[79]

VII. Detention and Prosection of Non-State Actors

In response to the September 11, 2001 attacks on the United States, President Bush issued a Military Order to provide for the detention of suspected al Qaeda members and individuals who have engaged or assisted in acts of international terrorism or who have knowingly harbored such individuals.[80] The Order aims to ensure "the effective conduct of military operations and prevention of terrorist acts."[81] The Order provides for trial of these individuals exclusively by military commission.[82] It relies upon a mixture of constitutional and legislative authority,[83] and that of case precedence[84] to lawfully establish procedural due process for those detained pursuant to its provisions, including those captured in Afghanistan. Individuals detained under this arrangement have challenged their detentions in the federal courts and have raised issues of executive authority, civil and military jurisdiction, and treaty application. The application of precedents relative to these individuals, who are detained as terrorists rather than enemy combatants, has been problematic. A cluster of cases, however, involving the applicability of the four Geneva Conventions of August 12, 1949, the Uniform Code of Military Justice (UCMJ), and other laws has helped to define the procedural rights of these prisoners.[85]

The most recent legal volley regarding these issues, including procedural due process rights, is *Hamdan v. Rumsfeld*,[86] which is unlike previous cases involving military tribunals because Hamdan is reported to be a member of al Qaeda, an informally aligned group of

79. *See* Iraqi Constitution, *supra* note 77, at preamble.

80. Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57833 (Nov. 13, 2001).

81. *Id.*

82. The procedural rights of detainees are set forth in the Military Order and in the Military Commission Orders.

83. Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (Sept. 18, 2001). Congress authorized the President to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks, or harbored those organizations or persons responsible.

84. This committee previously provided a historical perspective of the military tribunal, also referred to as military commissions. *See* John R. Burroughs et al., *Arms Control and National Security*, 36 Int'l Law 471, 477-81 (2002).

85. *See*, *e.g.*, Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Rasul v. Bush, 542 U.S. 466 (2004).

86. Hamdan v. Rumsfeld, 126 S. Ct. 622 (2005) (petition for writ of certiorari to the U.S. Court of Appeals for District of Columbia granted).

non-state aggressors. The distinctions lie with the application of international law. The Supreme Court has granted certiorari to hear this case, the resolution of which will establish the forum for the trials of other al Qaeda prisoners.

In November 2001, local Afghan militia apprehended Salim Ahmed Hamdan and passed him to U.S. forces, which in turn transferred him to Guantanamo Bay Naval Base in Cuba. After his capture, Hamdan signed an affidavit confessing his role as aide and personal driver to Usama bin Ladin. In July 2003, President Bush designated Hamdan for trial by military commission, pursuant to the Order.[87] Nine months later, Hamdan filed a habeas corpus petition in U.S. federal district court, after the Secretary of Defense ruled that the UCMJ did not apply to his case.[88] The district court granted his petition in part, but the D.C. Circuit reversed and the case is now before the Supreme Court.

Hamdan alleges that the length and nature of his pretrial detention violates the Third Geneva Convention and Common article 3 of the Geneva Conventions,[89] and as relief, seeks an order preventing his trial before a military commission. Additionally, he claims that his trial should be in accordance with the UCMJ, pursuant to the Geneva Conventions. The government argues that the Geneva Conventions do not apply and that the commissions are lawfully established under article II of the Constitution.[90]

While questions concerning domestic law are at issue in the case, the main issue concerning international law is whether Hamdan, and other prisoners, can obtain judicial enforcement-in an article III federal court via a writ of habeas corpus-of rights that are protected under the Geneva Conventions.[91] The two lower courts that considered this issue of international law differed in their outcomes. The district court interpreted the location of the conflict as controlling, rather than the disposition of the combatant, in determining whether Geneva Convention procedural protections apply. Because Afghanistan, where Hamdan was apprehended, is a party to the Geneva Conventions, the district court ruled that he may avail himself of a private right of action, inherent within the terms of the Convention, for treaty enforcement in federal courts. The D.C. Circuit, however, ruled that while the Geneva Conventions provide for individual rights, these rights are not judicially enforceable in federal courts.[92] The appellate court relied upon case law that provides that "responsibility for observance and enforcement of these rights is upon political and military authorities."[93] The court reasoned that a treaty, if violated, "'becomes the subject of international negotiations and reclamation,' not the subject of a lawsuit."[94]

87. *See* 66 Fed. Reg. 57833.

88. Feb. 23, 2004, Ruling by the legal advisor to the Appointing Authority. The Secretary of Defense may designate an Appointing Authority to issue orders establishing and regulating military commissions. Establishment of Military Commissions, 32 C.F.R. § 9.2 (2002).

89. Hamdan also challenged the Military Order on Constitutional grounds, arguing that Congress did not authorize the Executive Branch to establish military tribunals.

90. The U.S. government also requested the court stay any proceedings until proceedings under the military commission are completed, based upon principles of exhaustion and comity provided between civilian and military courts, and that the President was authorized to establish the tribunals under article II of the U.S. Constitution. A discussion of these arguments is outside the scope of this article.

91. Supreme Court, Hamdan v. Rumsfeld, No. 05-184, Questions Presented, (Nov. 7, 2005) *available at* http://www.supremecourtus.gov/qp/05-00184qp.pdf.

92. *See* Hamdan v. Rumsfeld, 415 F.3d 33 (D.C. Cir. 2005).

93. Johnson v. Eisentrager, 339 U.S. 763 (1950); Holmes v. Laird, 459 F.2d 1211, 1222 (D.C. Cir. 1972).

94. Hamdan, 415 F.3d at 38, 39.

The appeals court also found that even if the Geneva Conventions could be enforced in a federal court, it does not apply to Hamdan since the Geneva Conventions, by their own terms, do not apply to the kind of armed conflict al Qaeda is waging against the United States. In this regard, the conflict with al Qaeda is neither one with another nation state nor a civil war "occurring in the territory of one of the High Contracting Parties."[95] Since al Qaeda is neither a state nor a party to the Convention, and the scope of the conflict is not limited to Afghanistan, the appeals court determined that Hamdan does not fall within the scope of the Geneva Conventions.

Beyond *Hamdan*, there is an ongoing debate within Congress and the Executive as to what treatment these prisoners are entitled to-whether, for example, their status precludes the right to petition for habeas corpus, whether torture should be expressly prohibited, and the alleged maintenance of secret foreign prisons. The question presented to the Supreme Court in the context of international law is whether *Hamdan* can obtain judicial enforcement from an article III court of rights protected under the Geneva Conventions in an action for a writ of habeas corpus challenging the legality of his detention. At stake for Hamdan is the right to procedural due process accorded under the UCMJ, which includes rights that the U.S. government believes undermines its fight against terrorism. One nuance of *Hamdan* is the need to characterize the enemy, and the case may establish a common law definition of the enemy in the international fight against terrorism. Such a definition and the procedures that follow will likely have an impact on how the military processes alleged terrorists in the future, and perhaps also on combatants of concurrent or future armed conflicts around the world.

95. Office of the High Commissioner for Human Rights, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Oct. 21, 195), *available at* http://www.unhchr.ch/html/menu3/b/92.htm.