



Case Western Reserve Journal of International Law

Volume 37 | Issue 2

2006

Volume 37 Issue 2 (2006)

CWRU Journal of International Law

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

Recommended Citation

CWRU Journal of International Law, *Volume 37 Issue 2 (2006)*, 37 Case W. Res. J. Int'l L. Iss. 2 (2006)

Available at: <https://scholarlycommons.law.case.edu/jil/vol37/iss2/23>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.



CASE

SCHOOL OF LAW

Volume 37 Nos. 2 & 3 2006

CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW

SYMPOSIUM: "TORTURE AND THE WAR ON TERROR"

THE ELEPHANT IN THE ROOM: FOREWORD: TORTURE AND
THE WAR ON TERROR

*Michael P. Scharf
Rory T. Hood*

TORTURING THE LAW

José E. Alvarez

DEFINING TORTURE

David Sussman

TORTURE IN DREAMLAND: DISPOSING OF THE TICKING BOMB

Henry Shue

TORTURE, MORALITY, AND LAW

Jeff McMahan

WAR BY PROXY: LEGAL AND MORAL DUTIES OF
'OTHER ACTORS' DERIVED FROM GOVERNMENT AFFILIATION

Michael A. Newton

TORTURE AND CONTRACT

Laura A. Dickinson

AMERICAN INNOCENCE

Robert N. Strassfeld

GHOST PRISONERS AND BLACK SITES: EXTRAORDINARY
RENDITION UNDER INTERNATIONAL LAW

Leila Nadya Sadat

COMBATING TERRORISM: ZERO TOLERANCE FOR TORTURE

Richard Goldstone

Continued on Back Cover

**Case Western Reserve
Journal of
International Law**

Volume 37, Nos. 2 & 3
2006



CASE WESTERN RESERVE
JOURNAL OF INTERNATIONAL LAW

2005-2006 Executive & Associates Board

Editor in Chief

Rory T. Hood

Executive Articles Editors

Valeria Kozhich
Daniel A. Scharf
Mary Schwebach
Michael A. Van Lente

Managing Editor

Andrea Kafka

*Executive Symposium &
Topic Development Editor*

Mark Pustay

Publisher

Mark McDougall

Executive Note Editor

Rachel Wyatt

Articles Editors

Emily Goetz
Eric Landen
Allison Marczak
Sang Park
Martin Pinhasi

Notes Editor

Alex R. McClean

Canada-United States Law

Journal Editor in Chief

David Greenspan

*Case Journal of
International Law/Book
Editor*

Martin Pinhasi

*Canada-United States Law
Journal Managing Editor*

Melissa Kassier

Associate Editors

Laura Ball
Kevin R. Carter
Christopher Y. Chan
Joshua Joseph
Jonathan Karas

Loren Kittilsen
Victoria E. Marquard
Kevin J. Mitchell
David Schachter
Ming-Ta Chiang

Jessica Skrebes
Joseph Stancati
Harper Jean Tobin
James T. Tsai
Matthew Wartko

Faculty Advisor

Hiram E. Chodosh

*International Research
Librarian*

Andrew Dorchak

The *Case Western Reserve Journal of International Law* (ISSN 0008-7524) is published three times a year at the Case Western Reserve University School of Law. Current subscriptions are priced at \$25.00 per volume for foreign and domestic subscriptions. Subscriptions are renewed automatically unless timely notice of cancellation is received. Single issues can be purchased at \$14.00 each by contacting the *Journal* directly. The *Journal* is indexed in the *Index to Legal Periodicals* and is available on WESTLAW™ and LEXIS.™ The *Journal's* policy requires that unless a claim for nonreceipt of a journal is received within three months after the mailing date, the *Journal* cannot be held responsible for supplying that issue without charge. Address all correspondence to the *Case Western Reserve Journal of International Law*, 11075 East Boulevard, Cleveland, Ohio 44106. Telephone: (216) 368-6141. Telefax: (216) 368-3310.

Submissions, manuscripts, and inquiries should be sent to the above address. Manuscripts should be typewritten and double-spaced. Footnotes should be prepared in accordance with *The Bluebook: A Uniform System of Citation* (18th ed.). Unpublished manuscripts are the property of the *Journal* and will not be returned unless postage is supplied by the author.

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, MA 01923, by phone: (978) 646-2600, by fax: (978) 646-8600, by e-mail: infoat@copyright.com, or online: www.copyright.com.

The opinions expressed herein are those of the respective authors and do not necessarily reflect those of the *Case Western Reserve Journal of International Law*.

The *Journal* is printed by Darby Printing Company, 6215 Purdue Drive, Atlanta, Georgia 30336.

Back issues of the *Journal* are available through William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209-1987. Additionally, back issues are also available in PDF format through HeinOnline at <http://www.heinonline.org>.

This issue went to press in May, 2006.

Cite as: CASE W. RES. J. INT'L L.

**Case Western Reserve
Journal of International Law**

VOLUME 37

NUMBERS 2 & 3

2006

Copyright © 2006 by the Case Western Reserve Journal of International Law

SYMPOSIUM: "TORTURE AND THE WAR ON TERROR"

THE ELEPHANT IN THE ROOM: FOREWORD: TORTURE AND THE WAR ON TERROR

Michael P. Scharf and Rory T. Hood 145

TORTURING THE LAW

José E. Alvarez 175

DEFINING TORTURE

David Sussman 225

TORTURE IN DREAMLAND: DISPOSING OF THE TICKING BOMB

Henry Shue 231

TORTURE, MORALITY, AND LAW

Jeff McMahan 241

WAR BY PROXY: LEGAL AND MORAL DUTIES OF 'OTHER ACTORS' DERIVED FROM GOVERNMENT AFFILIATION

Michael A. Newton 249

TORTURE AND CONTRACT

Laura A. Dickinson 267

AMERICAN INNOCENCE

Robert N. Strassfeld 277

GHOST PRISONERS AND BLACK SITES: EXTRAORDINARY RENDITION UNDER INTERNATIONAL LAW

Leila Nadya Sadat 309

COMBATING TERRORISM: ZERO TOLERANCE FOR TORTURE

Richard Goldstone 343

THE CRIME OF TORTURE AND THE INTERNATIONAL CRIMINAL TRIBUNALS <i>William A. Schabas</i>	349
WHY NOT THE COURTS? <i>John Hutson</i>	365
<i>ALI V. RUMSFELD</i> : CHALLENGING THE PRESIDENT'S AUTHORITY TO INTERPRET CUSTOMARY INTERNATIONAL LAW <i>Julian G. Ku</i>	371
THE INSTITUTIONALIZATION OF TORTURE UNDER THE BUSH ADMINISTRATION <i>M. Cherif Bassiouni</i>	389
THE UNHOLY TRINITY: INTELLIGENCE, INTERROGATION AND TORTURE <i>Amos N. Guiora and Erin M. Page</i>	427
THE DANGEROUS WORLD OF INDEFINITE DETENTIONS: VIETNAM TO ABU GHRAIB <i>Jennifer Van Bergen and Douglas Valentine</i>	449
NSA WIRETAPPING CONTROVERSY: A DEBATE BETWEEN PROFESSOR DAVID D. COLE AND PROFESSOR RUTH WEDGWOOD	509
THE ROLE OF MILITARY COMMISSIONS IN THE GLOBAL WAR ON TERRORISM <i>Morris D. Davis</i>	537

NOTES

GUANTANAMO AND CITIZENSHIP: AN UNJUST TICKET HOME? <i>Rory T. Hood</i>	555
MALE RAPE IN U.S. PRISONS: ARE CONJUGAL VISITS THE ANSWER? <i>Rachel Wyatt</i>	579

APPENDIX

THE WHITE HOUSE TORTURE MEMORANDA	615
---	-----

EDITOR'S NOTE

On October 7, 2005, the Frederick K. Cox International Law Center and the Institute for Global Security Law and Policy co-sponsored the "Torture and the War on Terror" symposium at Case Western Reserve University School of Law. This timely symposium addressed important issues including the morality of torture, outsourcing and extraordinary rendition, the White House Torture Memos, the role of international law and organizations, adjudicating torture in American courts and the legal, moral and policy implications of torture as a state policy and practice.

We are honored to publish contributions from Professors José E. Alvarez, David Sussman, Henry Shue, Jeff McMahan, Michael Newton, Laura A. Dickinson, Robert N. Strassfeld, Leila Nadya Sadat, William Schabas, Julian Ku, M. Cherif Bassiouni, Justice Richard Goldstone and Dean John Hutson. I thank the authors for their dedication to the topics raised at the symposium and presented in this issue.

This special double issue of the *Journal* also includes; an article co-authored by Professor Amos N. Guiora and Erin Page, an article co-authored by Jennifer Van Bergen and Douglas Valentine, an edited transcript of the *NSA Wiretapping Controversy* debate between Professor Ruth Wedgwood and Professor David D. Cole which took place at Case Western Reserve University School of Law on Thursday, February 9, 2006, an edited transcript of a lecture given by Colonel Morris D. Davis on *The Role of Military Commissions in the Global War on Terrorism* at Case Western Reserve University School of Law on Tuesday, March 7, 2006, and two student Notes written by Rachel Wyatt and I respectively.

I thank the thirty-two members of the *Journal* for a tremendous year of dedication and hard work. This special double issue embodies that determination. Their enthusiasm and effort is greatly appreciated.

We would like to thank Professor Michael P. Scharf for his support and guidance on this exciting project. Additionally, we thank Professors William Carter, Amos N. Guiora, Jessie Hill and Robert Strassfeld for assisting in organizing the symposium. We also thank Nancy Pratt Kantor and Alice Simon for their tireless efforts to keep the *Journal* running in an organized and professional manner; and Andrew Dorchak, for his guidance and research ability, which are unmatched.

Finally, this double issue is the final product produced under the tutelage of our faculty advisor Associate Dean Hiram Chodosh. We thank Dean Chodosh for years of invaluable support and inspiration and wish him success in his future endeavors.

Rory T. Hood
Editor in Chief, 2005-2006