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An Excerpt

Rendition and Extraordinary Rendition

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MISSION STATEMENT:

The Interdisciplinary Undergraduate Law Journal (IULJ) was born out of the desire to foster undergraduate scholarship in the field of law in the liberal arts. For decades, a number of well-known universities have published journals of this type. The IULJ stands alone among these journals, however, for its unique approach to the study of law. In keeping with the more general aims of the Department of Law, Jurisprudence, and Social Thought, the mission of the IULJ is to bring the best traditions of the contemporary humanities to bear on the most difficult and urgent juridical problems of our time.

With the saturation of everyday life by modern science and technology, the increasingly global and unequal flow of culture, capital, commodities and populations across nation-state boundaries, the transformation and even crisis of the basic concepts of modern law and politics, the worldwide recognition of human rights and the dismaying consistency of human rights abuses, and the constant depiction of law in diverse traditions of popular culture, literature, and film, we are faced with a host of new, troubling, and intriguing questions about law that cannot be fully posed, much less answered, within the narrow horizons of conventional legal training and/or the traditional social sciences.

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Editor's Note

With great pleasure, I present the first issue of the Amherst College Interdisciplinary Undergraduate Law Journal. A year in the making, this issue has been an educational experience for each of us involved in its development and implementation.

Today's difficult, juridical questions require an approach that goes beyond the scope of traditional legal training and scholarship. The IULJ seeks to fulfill the goal of the Amherst College Department of Law, Jurisprudence, and Social Thought in bringing a unique multi-disciplinary approach to answering these complex multi-faceted societal issues. We hope to publish articles that focus on a variety of areas, including history, philosophy, ethics, the law, popular culture, literature, and film, to more fully address these modern juridical problems.

I would like to offer my many thanks to all those who helped in the process of starting and producing this journal. I would like to thank: the Editorial Board for their tireless work in sending out the many calls for papers to colleges and universities across the globe and for reviewing, evaluating, and editing submissions; our advisor, Professor Adam Sitze, for his help in shaping the ideas I had in mind when starting this publication and for offering encouragement and guidance along the way to make this journal what it now is and will become; Professor Austin Sarat for his guidance and wisdom in the formulation and operation of the journal; Megan Estes, the department coordinator, for her help with countless essential administrative tasks; Professor Nasser Hussain, the Department Chair, for allowing the journal the opportunity to be associated with the LJST department; and finally all those that contributed articles to this issue.

We hope you enjoy the issue and find it informative.

Sincerely,

Adam Shniderman

Editor-in-Chief/Founder

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Rendition and Extraordinary Rendition

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Abstract:

Extraordinary rendition: some argue one of the most useful tools in intelligence gathering, while others argue that it is a means to one of the most despicable ends that exists, torture. In the global War on Terror, the United States' political and military leaders have been faced with the conundrum of weighing the moral issues of extraordinary rendition with the potential of saving American lives.

This article will analyze the practice of extraordinary rendition, particularly by the United States, from the international law perspective. It will focus on first, defining the terms rendition and extraordinary rendition; second, classifying the combatants in question; third, it will discuss arguments both for and against the practice; and finally, what tools the international system would have in curbing the United States' practice of extraordinary rendition.

The conclusion reached is that despite how distasteful or morally horrendous the action, the United States cannot be held legally accountable by the international system for these actions because of its place as a permanent member of the United Nations Security Council. However, there may be political consequences on the international stage that far outweigh any legal ramifications, or lack thereof.

**Disclaimer – This article contains the opinions of the author and does not express the views of the United States Air Force, United States Air Force Academy, or the United States Government in any way.

Introduction:

Extraterritorial jurisdiction. Many people see these words and cringe at the eleven syllable phrase, fearing that it is as hard to comprehend as it is to say. In reality, the fundamental issue of extraterritorial jurisdiction is not as complicated as it may seem. There are two primary terms that one must be able to understand and differentiate between in order to fully comprehend this concept. The first term is sovereignty. Sovereignty by definition is, "the right of a State to govern exclusively the affairs of its inhabitants, and to be free from

external control."[1] In other words, sovereignty is the right of a State to rule itself and have independence from the international system or control by another State. The second term, jurisdiction, "is the State's legal capacity to make, enforce, and adjudicate breaches of its substantive rules."[2] This term is more self-explanatory and simply deals with the ability of a state to create and carry out its rule of law. Sovereignty and jurisdiction are thus the two most important aspects of extraterritorial jurisdiction, as every state wants to feel as if it is in control of itself. However, in some circumstances, citizens of one state will violate the laws of another state while visiting or passing through. Herein lies a jurisdictional issue where the question becomes: who can prosecute that individual, the state whose country the individual is a citizen of, or the state where the crime was committed?

The answer to this question is not as difficult as one would imagine. This is not a new problem; most states across the globe have entered into bilateral agreements called extradition treaties. The purpose of an extradition treaty is to allow a state to retain jurisdiction over its citizens when they commit crimes while in another country. Although every extradition treaty is different, nearly all encompass a number of exceptions where a state will sacrifice its jurisdiction in order to allow the host nation to try an individual. The practice of extradition and extradition treaties dates back to ancient civilzations, as early as 1280 B.C. when Rameses II of Egypt and the Hittite prince, Hattushilish III, entered into a treaty, in which all "great men" would be extradited.[3] Another example of this practice in

[1] William R. Slomanson, *Fundamental Perspectives on International Law*. 5th ed. Belmont, CA: Thomson/Wadsworth, 2007.

[2] *Id.*

[3] Geoff Gilbert, *Transnational Fugitive Offenders in International Law: Extradition and Other Mechanisms*. The Hague: M. Nijhoff, Sold and distributed in North, Central and South America by Kluwer Academic, 1998: 17. "Great men" was to include political offenders, one of the classes of people that a state is now not legally obligated to extradite.

history can be seen in the Hindu Code of Manu (200 B.C.). There is also evidence that the Romans took part in this practice until 100 B.C.[4]

However, one may ask: who has jurisdiction if no treaty exists? The answer to this question is comprised of a complex entanglement of legal arguments, one of which will be discussed in this article. Assuming all states "play by the rules" or abide by their bilateral extradition treaties, criminals will be extradited as necessary. Over the years, however, modes somewhat analogous to extradition were formed and "rendition" was born. The legal definition of the term rendition is "the act of surrendering an individual to a foreign government, in the absence of any treaty."[5] If the average person were to consider only this definition, he/she would likely have trouble finding any glaring legal issues. However, from a legal perspective, in today's tumultuous world, the practice of rendition has become one of the largest controversies on the international stage. Rendition is a lawful use of extraterritorial jurisdiction; however, it may also be used as a legal "loophole" to bypass certain domestic laws of a state, or bilateral extradition treaties. In particular, the United States has utilized this form of extraterritorial jurisdiction, referred to as "extraordinary rendition," as a tool for its intelligence gathering agencies during the War on Terror. The United States is justified in using rendition and in particular, extraordinary rendition, because it is operating through a loophole in the international legal system, despite possible conflicting moral beliefs and distaste for the practice.

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[4] *Id.*

[5] Slomanson, *supra* n. 1, at 1.

Rendition vs. Extraordinary Rendition and Unlawful Combatants:

The difference between rendition and extraordinary rendition is the first and most important distinction that must be made. Although many people will use these terms interchangeably, they are different. Rendition, as described above, is the basic "act of surrendering an individual to a foreign government, in the absence of any treaty."[6] While extraordinary rendition is, "the use of force, rather than legal process, to take suspected 'terrorists' from one country to another for purposes of detention and interrogation."[7] For instance, if a state wishes to detain and possibly interrogate an individual in their country but they do not have the legal justification to do so, they may rendition that individual to another country, most likely an ally nation that does not afford the same individual liberties and protections. Clearly, without any substantial background anyone could read these definitions and determine that extraordinary rendition is the practice far less likely to escape legal and political consequences. However, extraordinary rendition, like rendition, also may be legally justified. In order to do so, we must first analyze the type of conflict and classification of combatants that the United States faces today in its War on Terror.

Today, in Iraq and Afghanistan, United States forces are engaged in counter-insurgency operations against an enemy that is extremely hard to locate or distinguish from the civilian population. These terrorist organizations operate throughout cities such as Baghdad and Balad, however they are also capable of retreating to the countryside where they can, and do, blend in with civilians. These insurgents, when captured, are not entitled to prisoner of war status as outlined in Article 4 of the Geneva Convention Relative to the

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[6] Slomanson, *supra* n. 1, at 1.

[7] John T. Parry, "The Shape of Modern Torture: Extraordinary Rendition and Ghost Detainees." *Melbourne Journal of International Law*, Vol. 6.2 (2005): 516.

Treatment of Prisoners of War. According to Article 4, in order for these "combatants" to receive prisoner of war status and treatment they must fulfill four criteria: first, they must have a commander; second, they must have a "fixed distinctive sign recognizable at a distance;" third, they must carry their arms openly; and lastly, they must conduct their operations in accordance with the laws of war.[8] As these terrorists fulfill none of these criteria they are deemed unlawful combatants. Historically, as mentioned by R.C. Hingorani in his article *Prisoners of War*, "more often than not [unlawful belligerents are] treated as war or national criminals liable to be treated at will by the captor at his caprice. There are almost no regulatory safeguards with respect to them and the captor owes no obligation towards them."[9] Thus, as one can imagine, there is a shade of gray with regard to the rights to which these unlawful belligerents may or may not be entitled. These terrorists are then, in most cases, rendered to Guantanamo Bay detention camp where they are subsequently held and interrogated. This is an example of an instance in which the United States has used rendition to lawfully transport unlawful combatants to a United States facility in a different country. An example of extraordinary rendition, on the other hand, would be the renditioning of a "suspected terrorist" to another country so that the receiving country could interrogate that person under their domestic laws. A "suspected terrorist" could be anyone from a member of another country to a citizen of the United States.[10] Interrogation methods vary drastically, as different countries are subject to different laws based upon the principle of sovereignty.

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[8] Sean M. Watts, ed. *Law of War Documentary Supplement*. Charlottesville: International and Operational Law Department, the United States Army Judge Advocate General's Legal Center and School, 2007: 200.

[9] R.C. Hingorani, *Prisoners of War*. Published by N. M. Tripathi, 1963: 18.

[10] There are constitutional issues with rendering a citizen of the United States against his or her will; however, this paper will not discuss the potential domestic issues with extraordinary rendition, only the international issues.

Arguments against the Use of Extraordinary Rendition:

As extraordinary rendition is such a hotly debated subject, there are numerous arguments that the United States cannot legally, or should not morally, take part in this practice in order to gather intelligence for its War on Terror. The majority of these critics are members of other nations, who strongly disagree with the United States' War on Terror and United States' foreign policy in general. One of the primary arguments claims that the rendition of suspected terrorists to the United States or United States facilities to stand trial is, in essence, kidnapping. Critics argue this "kidnapping" of suspected terrorists is in direct violation of customary international law. However, the United States Supreme Court ruled that the so-called "kidnapping" was constitutional because the court "need not inquire as to how respondent came before it."[11] The Supreme Court reached this judgment based on two conclusions. First, the United States was not in violation of their extradition treaty with Mexico--the country in question--because, according to Chief Justice Rehnquist, "[T]he language of the Treaty, in the context of history, does not support the proposition that the Treaty prohibits abductions outside of its terms."[12] Furthermore, the lack of such language within the extradition treaty suggests that there was no such customary international law, as it surely would have been recognized. The only reasonable action to take from this point was to apply the *Ker Doctrine*, precedent from the case of *Ker v. Illinois,* 119 U.S. 436 (1886), a Supreme Court ruling that held, "forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence."[13] Additionally, because the United States is a sovereign state, it

[11] *United States v. Alvarez-Machain*, 504 U.S. 655, 662 (1992).

[12] *Id.* at 666.

[13] *Ker v. Illinois,* 119 U.S. 436, 444 (1886).

cannot be brought to an international court such as the International Criminal Court (ICC) or International Court of Justice (ICJ) without its consent. As a result, the ruling made by the United States Supreme Court is the ruling that the United States follows.

The critics' next argument focuses primarily on the intent of the United States in their renditioning of suspected terrorists. The United States, in these instances, renditions these suspected terrorists or unlawful combatants to allied countries with the specific intent and knowledge that foreign "interrogators are willing to use coercive tactics, sometimes rising to the level of torture, to obtain information."[14] The argument has been made that torture does not provide credible or actionable intelligence and is consequently a useless practice. However, no matter what approach taken, the overarching theme is the same: with extraordinary rendition comes torture.

When considering this argument, the most applicable form of international law that would apply is the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). The first article that these critics may cite is Article 2. Section Two of Article 2 explains that, "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[15] The primary issue that the United States faces with this section of Article 2 is that they may not even use a "state…or threat of war" as justification to torture unlawful combatants. However, Article 3 contains the most applicable language of the UNCAT. Section One of Article 3 explicitly maintains, "No State Party shall expel, return ("refouler") or extradite a person to another

[14] Parry, *supra* n. 7.

[15] United Nations Committee Against Torture. *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987.

State where there are substantial grounds for believing that he would be in danger of being subjected to torture."[16] This language seems to expressly forbid the practice of extraordinary rendition that the United States takes part in by focusing on extradition for the purpose of torture. The United States, upon ratifying this convention, filed certain "declarations, reservations, and understandings, including a declaration that [the Convention was] not self-executing, and therefore required domestic implementing legislation."[17] However, the Foreign Affairs Reform and Restructuring Act of 1998 provided this legislation. Thus, through use of UNCAT Article 3, Section One and the Foreign Affairs Reform and Restructuring Act of 1998, it would seem as if the United States was bound to the notion that extraordinary rendition for the purpose of torture is unlawful.

The last arguments posed by those who criticize the use of rendition or extraordinary rendition address the moral and political consequences of the issue. As Michael Trapido, a specialist criminal attorney and journalist, writes,

> Morally this method of circumventing the American justice system in order to inflict torture as a means of extracting information is totally bankrupt. If it were otherwise, its proponents would have sought to introduce Bills to allow for these practices to be conducted in the US. The fact that they are so barbaric that no one would even dare to suggest it sums up most people's feelings on the subject.[18]

This perspective rests heavily on the fact that the policy of the United States when renditioning detainees to other countries is promoting the torture and violation of these individuals' human rights. A counter argument to this, as made by Oliver Kamm is that, "Rendition does not mean torture. It means moving someone from one country to another without reference to a formal

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[16] *Id.*

[17] Michael J. Garcia, *The U.N. Convention against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*. CRS Report for Congress. Immigrant Law Publisher, 2004: 4.

[18] Michael. Trapido, "No, Mr. Kamm, Rendition is Never Justified." *Thought Leader*. 2008. 6 May 2008 <http://www.thoughtleader.co.za/traps/2008/03/11/no-mr-kamm-rendition-is-never-justified/>.

extradition treaty."[19] Thus, the practice of *rendition* is not the legal or moral issue at hand. The issue at hand is suspected torture, which has never been supported by the United States government.

The political debate that these practices have created is unprecedented. The United States is under pressure, not only from domestic organizations such as the American Civil Liberties Union, but other international organizations such as the United Nations, the Council of Europe, the European Union, and others.

One organization in particular, The Council of Europe, is extremely concerned with the United States' use of extraordinary rendition is. The Council of Europe is comprised of 46 European states, all of which have ratified the European Convention on Human Rights (ECHR).[20] At one point, allegations were made that a number of member states (who happen to be signatories to the EHCR) were participating in extraordinary rendition by hosting and interrogating detainees. These countries were then subject to an Article 52 investigation of the EHCR by the Secretary General of the Council, Terry Davis. As a result of this inquiry, numerous state sponsored investigations were conducted regarding the "adequate controls" of their territory to prevent the "unacknowledged deprivation of liberty" that may have occurred.[21]

Incidents such as this have placed enormous amounts of pressure upon the United States' closest allies, particularly those in Western Europe, causing a loss of support for the

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[19] Oliver. Kamm, "Ordinary Rendition." *The Guardian*. 2008. 6 May 2008 <http://www.guardian.co.uk/commentisfree/2008/mar/11/ciarendition.usa>. Oliver Kamm is a British writer and newspaper columnist. After writing his book, *Anti-Totalitarianism: The Left-wing Case for a Neoconservative Foreign Policy* (2005), he was appointed lead writer for one of the United Kingdom's most prestigious newspapers, *The Times.*

[20] Margaret L. Satterthwaite, "Rendered Meaningless: Extraordinary Rendition and the Rule of Law". *George Washington Law Review* Vol. 75 (2007): 1348.

[21] Satterwhaite, 1348.

Global War on Terror. The alienation of potential allied support is decimating the multinational coalition, placing the majority of the financial and operational burden on the United States. In other words, by utilizing the practice of rendition and extraordinary rendition, the United States is unintentionally placing political pressure on their allies and losing crucial support for the War on Terror.

United States' Arguments for Use of Extraordinary Rendition:

In order to fully understand the United States' stance on extraordinary rendition, one must be able to comprehend the situation it is currently facing. On September 11, 2001, four American aircraft, loaded with passengers, were hijacked by terrorists and used as missiles to attack United States infrastructure (the World Trade Towers and the Pentagon). After suffering thousands of civilian casualties and billions of dollars worth of damage, there was clear justification for the United States to respond in self-defense, as provided for in Article 51 of the United Nations Charter.[22] As such, the War on Terror was declared. However, there was an unprecedented problem with this declaration by then-President, George W. Bush, to stage a War on Terror: there was no state actor to combat. A war on terror was to consist of rooting out those involved with terrorist activity and destroy them. The only problem with this is that finding an enemy that could at one moment be firing a rocket-propelled grenade at a convoy of troops and the next appear to be farming, is an extremely difficult task. The counter-insurgency tactics conventional United States soldiers are being asked to employ are extremely difficult without copious amounts of actionable intelligence. Based on this difficult situation, extraordinary rendition has become something that intelligence gathering agencies, such as the CIA, rely on heavily. Reports from the

[22] "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs..." *Charter of the United Nations* art 51.

American Civil Liberties Union (ACLU) estimate the number of individuals who have been rendered by the United States to a foreign government at 150.[23]

The United States argues that those who commit crimes within the jurisdiction of the United States courts may be brought to the U.S. and charged appropriately. The United States Supreme Court ruled that they, "need not inquire as to how [the defendant] came before [them]."[24] There has been no legislation to the contrary passed by the United States Congress. Thus, the Supreme Court ruling is the law upon which United States officials are basing their actions. Unlike extraordinary rendition, with this practice there is set precedent that clearly outlines the law, therefore it is rarely refuted.

In response to the second argument posed by the international community and others, the United States denies all allegations that they knowingly render individuals to foreign governments with the intent that they will be tortured. US officials determine that the members of the receiving country will not torture those whom they have rendered through diplomatic assurances. According to a publication by *Human Rights Watch*, "High-level U.S. administration officials have defended the practice of transferring detainees by rendition in the 'war on terrorism' to other countries for interrogation, but have also insisted that in all such cases they seek assurances that the detainees will not be tortured."[25] Some argue that these diplomatic assurances are more of a formality by which no one is expected to actually abide; however, the United States tries to apply diplomatic pressure to assure that no one violates international law. President George W. Bush was quoted as saying, "It's in our country's interests to find those who

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[23] "Fact Sheet: Extraordinary Rendition." *American Civil Liberties Union*. 2005. 5 Apr. 2008 <http://www.aclu.org/safefree/extraordinaryrendition/22203res20051206.html>.

[24] *United States v. Alvarez-Machain*, *supra* note 11, at 662.

[25] "Developments Regarding Diplomatic Assurances Since April 2004." *Humans Rights Watch Publications* (2005). 6 May 2008 <http://www.hrw.org/reports/2005/eca0405/5.htm>.

would do harm to us and get them out of harm's way. And we will do so within the law, and we will do so in honoring our commitment not to torture people. And we expect the countries where we send somebody to, not to torture, as well."[26] This statement by President Bush carries enormous weight. As the president, he is the chief diplomat and the most influential person in determining United States foreign policy. By making this statement, he is telling the rest of the world that the United States does not condone torture, nor do we intend to have those who we render abroad be tortured.

The United States also argues that the applicable Human Rights treaties and laws do not apply outside of the territorial United States. If one is to ignore the fact that the United States does not condone torture by foreign governments to whom we render detainees for questioning, this argument will justify its actions. For example, the International Covenant on Civil and Political Rights states, "Each State Party to the present Covenant undertakes to respect and to ensure to individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant."[27] The language specifying "within its territory and subject to its jurisdiction" creates an enormous loophole for the United States. According to this treaty, if an individual is renditioned to another country, the U.S. would not be responsible for any torture or humans rights violations that may occur because the detainee would be outside of U.S. territory and no longer subject to its jurisdiction.

Other human rights treaties, on the other hand, never address the "geographical scope of application"[28] and are dependent upon achieving an overall outcome, not protecting individuals' rights. Examples of treaties that fall into this category include the International Covenant on

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[26] George W. Bush, Address. The East Room, Washington D.C. ONLINE. 2005. Available: http://www.whitehouse.gov/news/releases/2005/04/20050428-9.html [14 Apr. 2008]

[27] Satterthwaite, 1358. Emphasis mine.

[28] Satterthwaite, 1352.

Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

The last, and quite possibly least legally defensible, argument posed by the United States is that its actions are justified because, although extraordinary rendition and the ensuing torture may be distasteful, it is for the greater good in saving American lives. President Bush and his administration have taken extreme measures to ensure national security, one of which is extraordinary rendition. During one of his press conferences President Bush was quoted as saying. "But let me say something: the United States government has an obligation to protect the American people…when we find somebody who might do harm to the American people, we will detain them and ask others from their country of origin to detain them. It makes sense. The American people expect us to do that. We [are] still at war."[29] Intelligence is without a doubt one of the most essential pieces to counter-insurgent operations and absolutely key when attempting to protect the United States from another terrorist attack. Thus, the argument made by the Bush administration is that certain intelligence collection agencies, such as the CIA, are justified in utilizing extraordinary rendition as one of their tools for gathering intelligence that will protect American lives.

However, rendition and extraordinary rendition were not practices that were founded under the Bush administration in light of the Global War on Terror. Rather, rendition and extraordinary rendition had been used for years prior to the Bush Administration, dating back to 1995 with President Clinton. In a briefing before the House Committee on Foreign Affairs, Michael F. Scheuer, the former chief of the Bin Laden Unit for the CIA addressed the issue of rendition and the CIA's Rendition Program. At one juncture he stated,

[29] President Bush, *supra* note 27

> The Rendition Program has been the single most effective counterterrorism operation ever conducted by the United States government. Americans are safer today because of the program…If there are those in this Congress, in the media, in this country, or in Europe who believe that we would be safer if Khalid Shaykh Muhammed, Abu Zubaydah, Mr. Hambali, Ibn Shaykh al-Libi, Khalid bin Attash, and several dozen other senior al-Qaeda leaders were still free and on the street, then the educational systems and the reservoirs of common sense on both sides of the Atlantic are in much more dilapidated shape than I thought.[30]

Based upon Mr. Scheuer's experience with this practice and the results it has yielded, it is no great stretch to call him one of the leading experts in the nation, if not the world, in this area. His belief and reliance on this practice and its ability to save lives gives enormous support to the argument that these practices should be used in furtherance of the United States' national security policy.

Holding the United States Accountable:

For the international legal system to work, each state is required to sacrifice a certain amount of state sovereignty in order to serve the "collective interest."[31] In essence, the international system is horizontal, as opposed to hierarchical. Therefore, in order for a State to be tried or convicted by an international court, such as the ICC or ICJ, the State must first consent to the courts' jurisdiction. In this case, the United States would need to agree to be taken to court and possibly subjected to "punishment." The problem then, should the international community (*i.e.*, the member states of the United Nations) wish to impose some type of sanctions or pass a resolution to uphold supposed violations of UNCAT, they would need to convince the United States to, in effect, punish themselves. The United States is one of the five permanent members of the United Nations Security Council. Thus, they hold the power to veto any

[30] Michael F. Scheuer, Briefing Before the House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight Subcommittee on Europe. *Extraordinary Rendition in U.S. Counterterrorism Policy: the Impact on Transatlantic Relations*. ONLINE. 2007., House of Representatives. Available: http://www.globalsecurity.org/security/library/congress/2007_h/070417-scheuer.htm [5 May 2008].

[31] Slomanson, *supra* note 1, at 1.

sanctions or resolutions proposed against them. Therefore, as one can see, *even if* the international community had substantive evidence that the United States was in direct violations of human rights laws, the U.S. would need to consent to be brought before an international court. Lastly, if in some outlandish turn of events the United States was brought before a court, it would be impossible under the current system to impose any type of resolution or sanction against it. The ability of the United States to act unilaterally, even when opposed by the international community, exemplifies how useless the United Nations truly is. The horizontal system allows for each state to act in a realist manner in which its only concern is protecting their interests, even if it involves unlawful means.

Conclusion:

Extradition of the current day is similar to the extradition of the ancient Romans and Egyptians.. When all those involved play by the "rules," criminals are extradited properly and there are no qualms. However, the creation of rendition and extraordinary rendition has provided states with alternative means to accomplish the same end. These practices give the more powerful states in the international community the ability to operate unilaterally, through a legal loophole that is essentially untouchable.

The United States' use of these practices in its Global War on Terror has been extremely controversial and has faced dissent ranging from violations of International Human Rights law, to moral and political challenges. However, the United States maintains that its use of these practices is not only justified, but not a violation of any international law, nor is it intentionally contrary to moral or political posture. The measures taken in receiving "diplomatic assurances" and clearly stating intolerance for human rights violations such as torture, allegedly, clears them of any liability in the matter. As stated previously, the United States, even if it was acting in

violation of the law or contrary to moral and political feelings, would be immune to prosecution or punishment for these crimes. The final question then is this: has the practice of extraordinary rendition been effective and provided intelligence for numerous potential attacks and in effect protected an untold number of American lives? Or, has this practice actually led to countless human rights violations and only served to further alienate our allies and the international community?