

Post-9/11 US Intervention in Afghanistan: Challenges to Unprivileged Combatants' Rights

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Abstract

Following the September 11 attack on the US, the US launched military operations in Afghanistan to target terrorist groups like al-Qaeda and the Taliban, leading to the detention of numerous individuals classified as unprivileged combatants. These individuals, often non-state actors who engaged in asymmetrical warfare, were denied the protections afforded to lawful combatants and thereby raising significant legal and ethical questions. The article examines the legal framework governing the rights of unprivileged combatants, the rights and protections afforded to unprivileged combatants, US' practices and policies which violates the rights of unprivileged combatants, judicial and non-judicial decisions that addresses the legal challenges to the rights of unprivileged combatants and the impacts of these decisions, and lastly, an analysis of the lessons learnt from other international interventions and conflicts. It argues that the US intervention in Afghanistan has exposed significant gaps and inconsistencies in the application of International Humanitarian Law (IHL) and International Human Right Law (IHRL) to unprivileged combatants and calls for a re-examination of current legal norms to ensure the protection of human rights in contemporary conflict scenarios. By offering insights into the challenges faced by unprivileged combatants, this study contributes to the ongoing discourse on the need to balance security interests with the preservation of fundamental human rights in the context of global counter-terrorism efforts. The findings and arguments put forth in the study aim to influence how future conflicts and counter-terrorism measures are approached, emphasizing the importance of safeguarding human rights even in the face of security threats. Overall, the work calls for a critical reassessment of the legal frameworks to better protect human rights in the context of modern conflicts, where the lines between combatants and civilians are increasingly blurred.

Key Words

Human Rights, Armed Conflict, Intervention, Enemy Combatant, Unprivileged Combatant, International Humanitarian Law.

1. Introduction

1.1 Historical Context and Evolution of the concept of unprivileged combatant

The concept of an unprivileged combatant has evolved significantly over time, shaped by the development of International Humanitarian Law (IHL) and the changing nature of warfare. The formal distinction between lawful and unlawful combatants began to take shape with the

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development of IHL in the 19th and early 20th centuries. This period saw the codification of the rules of war in various treaties and conventions which include the Lieber Code,¹ the Hague Conventions,² the Geneva Conventions and the Additional Protocols to the Geneva Conventions,³ the post-9/11 Era and the War on Terror.⁴

1.2 Background of the Research Topic

Controversy arose in connection to the US military action in Afghanistan in the wake of the September 11, 2001 attacks under which the US former President Bush Administration decided to deny Prisoner-of-War (POW) status to Taliban and al-Qaeda detainees and to classify them as unprivileged combatants.⁵ This has brought under scrutiny the issue whether customary and conventional international law rules which prescribe conditions for entitlement to POW status apply to all or only specific categories of combatants.⁶ The intervention in Afghanistan brought significant attention to the treatment and legal status of unprivileged combatants. Controversial practices such as indefinite detention, enhanced interrogation techniques, the establishment of detention facilities like Guantanamo Bay and the targeted killings of Taliban and al-Qaeda detainees have raised critical questions about compliance with IHL and International Human Right Law (IHRL). These practices have sparked debates about the balance between security imperatives and the protection of individual rights.

1.3 Meaning of unprivileged combatant

An unprivileged combatant refers to an individual who directly and actively participate in hostilities without having the legal protections afforded to lawful combatants under IHL.⁷ This term generally describes persons who engage in combat activities but do not meet the criteria established by the Geneva Conventions III for being classified as lawful combatants.⁸ Unprivileged combatants are often distinguished from civilians, who are non-combatants, and lawful combatants, who have the right to participate directly in hostilities and are entitled to POW status if captured. Examples of unprivileged combatants including spies, mercenaries, members of irregular forces who do not wear uniforms or distinguish themselves from the civilian population, certain civilians accompanying the armed forces, and non-combatant members of the armed forces who in violation of their protected status, actively engaged in

¹ John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Free Press 2012) 498.

² Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (Weidenfeld and Nicolson 1980) 46

³ Sandra Krahenmann, 'Protection of Prisoners in Armed Conflict' in Fleck, Dieter (ed), *The Handbook of International Humanitarian Law* (3rd edn, Oxford University Press, 2013) 359

⁴ Jason Ralph, *America's War on Terror: The State of the 9/11 Exception from Bush to Obama* (Oxford University Press 2013) 114

⁵ Stephen D. Reese and Seth C. Lewis, 'Framing the War on Terror: The internalization of policy in the US press' (2009) University of Texas, USA <www.journalism.utexas.edu/sites/default/files/framing-war-on-terror-sagepub.pdf> accessed 14 January 2026

⁶ *ibid*

⁷ Christopher Greenwood, 'The Concept of War in Modern International Law' (1987) 36 *International and Comparative Law Quarterly* 40

⁸ Jelena Pejic, 'Unlawful/Enemy Combatants: Interpretations and Consequences' in Michael Schmitt and Jelena Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines, Essays in Honour of Yoram Dinstein* (Brill Nijhoff Publishers 2007) 16

hostilities.⁹ The legal status of unprivileged combatants is complex and not clearly defined under international law. Unprivileged combatants operate in a legal gray area, lacking the privileges of lawful combatants while still being entitled to basic human rights protections, and their treatment and status vary depending on the laws of the capturing state and the nature of the conflict.¹⁰ Unlike lawful combatants, unprivileged combatants do not enjoy combatant immunity, meaning that they do not qualify for POW status if captured and they can be prosecuted under domestic law for acts of violence they commit during armed conflict, even if those acts would be lawful if performed by a lawful combatant.¹¹

2. Overview of the Legal Framework Governing the Rights of Unprivileged Combatants in Relation to the US Intervention in Afghanistan

The legal framework governing the rights of unprivileged combatants in the context of the US intervention in Afghanistan is complex and multifaceted, incorporating a combination of IHL, IHRL, CIL, CIHL and US domestic laws. This overview focuses on the relevant bodies of law which regulates Unprivileged Combatants in respect to US' intervention in Afghanistan and how they intersect.

2.1 International Humanitarian Law (IHL)

IHL outline protections for different categories of individuals in conflict situations, including Unprivileged Combatants. Geneva Convention III and Additional Protocol I (API) play a critical role in regulating the rights of Unprivileged Combatants as follows:

Geneva Convention III: Under Geneva Convention III, lawful combatants are entitled to POW status upon capture, granting them specific protections. Unprivileged combatants on the other hand, such as the captured Taliban or al-Qaeda fighters, are generally not entitled to POW status.¹² However, the Geneva Convention III provides certain higher stringent conditions or requirement which must be fulfilled for POW status to be extended to unprivileged combatants. The stringent conditions or requirements include that they must belong to an organized group,¹³ that they group must belong to a party to the conflict,¹⁴ that the group must be commanded by a person responsible for his subordinates,¹⁵ that the group must ensure that its members have a fixed, distinctive sign recognizable from a distance,¹⁶ that the group must ensure that its members carry their arms openly,¹⁷ that the group must ensure that its members conduct their operations in accordance with the laws and customs of war.¹⁸

⁹ Ben Saul, *Defining Terrorism in International Law* (Oxford University Press 2006) 113

¹⁰ Knut Dormann, *The legal situation of "unlawful/unprivileged combatants"* (Cambridge University Press 2011) 69

¹¹ Emily Crawford, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict* (Oxford University Press, 2010) 134

¹² Third Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949) 75 UNTS 135 art 4A(2); Knut Dormann and Ors (eds), *ICRC Commentary on the Third Geneva Convention (III) Relative to the Treatment of Prisoners of War* (Cambridge University Press 2021) Note 998

¹³ *ibid* Dormann Note 999-1000

¹⁴ *ibid* note 1001-1009

¹⁵ *ibid* note 1013-1014

¹⁶ *ibid* note 1015- 1020

¹⁷ *ibid* note 1021- 1023

¹⁸ *ibid* note 1024-1027

Additional Protocol I (API): AP1 primarily focus on enhancing the protections for civilians and lawful combatants and it touches on and expands the rights of unprivileged combatants involved in international armed conflicts.¹⁹ API has loosened the strict requirements under Geneva Convention III by introducing some flexibility regarding the requirement for combatants to distinguish themselves from civilians which is designed to accommodate guerrilla fighters who may not always be able to wear uniforms.²⁰ However, spies and mercenaries when captured while conducting their operations are considered unprivileged combatants and specifically denied POW status.²¹ While unprivileged combatants do not benefit from the full protections granted to lawful combatants, API still provide certain minimum standards of treatment in relation to Unprivileged Combatants including humane treatment,²² fair trial guarantees,²³ and prevention of unlawful punishments.²⁴

2.2 International Human Rights Law (IHRL)

IHRL offers additional legal framework to IHL and governs the rights and treatment of Unprivileged Combatants. It basically includes International Covenant on Civil and Political Rights (ICCPR) and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

International Covenant on Civil and Political Rights (ICCPR): The ICCPR adopted by the United Nations General Assembly (UNGA) in 1966, establishes a broad framework for the protection of human rights, including the right to life, freedom from torture, and the right to a fair trial.²⁵ While the ICCPR does not explicitly address the status of combatants, its provisions apply to all individuals within a state's jurisdiction, including unprivileged combatants. Key provisions relevant to unprivileged combatants include right to life,²⁶ freedom from torture,²⁷ right to liberty and security,²⁸ right to a fair trial,²⁹ and right to non-discrimination.³⁰

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): Unprivileged Combatants, like all individuals, are afforded protection against torture and other forms of ill-treatment under the CAT. The CAT applies regardless of the legal status of individuals involve in hostilities, making it an important international legal instrument for safeguarding the rights of individuals, including unprivileged combatants.³¹ The CAT adopted in 1984, is a comprehensive international treaty that aims to prevent torture and other cruel, inhuman, or degrading treatment or punishment under all circumstances and its provisions apply

¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977) 1125 UNTS 3 (AP1)

²⁰ *ibid* art 44(3)

²¹ *ibid* art 47

²² *ibid* art 75

²³ *ibid*

²⁴ *ibid*

²⁵ International Covenant on Civil and Political Rights (1966) UNGA Res 2200A 999 UNTS 171 (ICCPR)

²⁶ *ibid* art 6

²⁷ *ibid* art 7

²⁸ *ibid* art 9

²⁹ *ibid* art 14

³⁰ *ibid* art 26

³¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) UNGA Res 39/46 1465 UNTS 85 (CAT)

to all persons, without exception, including unprivileged combatants captured during armed conflicts.³² Relevant provisions of the CAT concerning unprivileged combatants include: prohibition of torture,³³ absolute prohibition of torture with no exceptions,³⁴ principle of non-refoulement,³⁵ obligation on states to prevent torture,³⁶ obligation of state to investigate allegations of torture,³⁷ and right to redress and compensation.³⁸

2.3 Customary International Law (CIL)

CIL consists of rules that have been developed over time through widespread and consistent state practice, accompanied by a belief that such practices are legally binding (*opinio juris*), and these rules apply to all states, even if they have not explicitly signed treaties on the subject.³⁹ While unprivileged combatants are not afforded the same legal protections as lawful combatants, they are still subject to certain customary legal norms, particularly regarding the treatment of detainees and the conduct of hostilities.⁴⁰ The key principles of CIL regarding Unprivileged Combatants include the following: no combatant privilege for Unprivileged Combatants,⁴¹ protection from torture and inhumane treatment,⁴² principle of distinction,⁴³ right to a fair trial,⁴⁴ and prohibition of indiscriminate attacks.⁴⁵

2.4 Customary International Humanitarian Law (CIHL)

CIHL, as identified by the International Committee of the Red Cross (ICRC), provides certain baseline protections that apply to all individuals involved in armed conflicts, including unprivileged combatants. Key protections include humane Treatment,⁴⁶ no unlawful confinement or punishment⁴⁷ and fair trial guarantee.⁴⁸

2.5 The US Domestic Law

US' domestic law also plays a pivotal role in defining the status and treatment of unprivileged combatants. Some of the key legal developments include the following:

³² *ibid*

³³ *ibid* Art 1

³⁴ *ibid* Art 2

³⁵ *ibid* Art 3

³⁶ *ibid* Art 10 & 11

³⁷ *ibid* Art 12

³⁸ *ibid* Art 14

³⁹ Kenneth Watkin, 'Warriors Without Rights? Combatants, Unprivileged Belligerents, and the Struggle Over Legitimacy' (2005) Program on Humanitarian Policy and Conflict Research, Harvard University Occasional Paper Series 30

⁴⁰ *ibid*

⁴¹ Knut Dormann, 'The legal situation of unlawful/unprivileged combatants' (2003) 85 IRRC 45

⁴² *ibid*

⁴³ *ibid*

⁴⁴ *ibid*

⁴⁵ *ibid*

⁴⁶ Jean-Marie Henckaets and Louise Doswald-Beck, *Customary International Humanitarian Databases* (Cambridge University Press 2005) 299, 306

⁴⁷ *ibid* 344

⁴⁸ *ibid* 352

Authorization for Use of Military Force (AUMF): Following the 9/11 attacks, US Congress passed the Authorization for Use of Military Force (AUMF), granting the US president broad authority to use military forces against those responsible for the attacks and their associates, such as the al-Qaeda and the Taliban. The AUMF has been the legal foundation for detaining unprivileged combatants, including those held at Guantanamo Bay. Individuals captured under the AUMF have been labeled as enemy combatants, and the AUMF has been interpreted by courts to allow indefinite detention of such individuals without trial, as long as hostilities continue.⁴⁹

Military Commissions Act (MCA): MCA was passed in 2006 and later amended in 2009 to provide the legal framework for the detention and trial of alien unprivileged enemy combatants (i.e., non-US citizens). This is done through military commissions rather than traditional courts.⁵⁰ The MCA defines unprivileged enemy combatants as individuals who have engaged in hostilities against the US or its allies, or who are members of forces engaged in such hostilities. It allows for the prosecution of these individuals for violations of the laws of war (e.g., terrorism, conspiracy, providing material support to terrorism) and provides limited procedural protections compared to regular criminal trials.⁵¹ The MCA was passed after the US Supreme Court ruled in *Hamdan v Rumsfeld* that the Combatant Status Review Tribunals were unconstitutional, but the MCA was struck down by the US Supreme Court in *Boumediene v Bush* on June 12, 2008.⁵²

Detainee Treatment Act (DTA): DTA was passed by the US Congress to provide standards for the treatment of individuals in US custody, including unprivileged combatants.⁵³ The DTA specifically prohibits cruel, inhuman, or degrading treatment of detainees, in line with US obligations under the CAT,⁵⁴ and limited some judicial review of detainee cases, with minimum standards of humane treatment.⁵⁵

Enemy Combatant Status Review Tribunals (CSRTs): After 9/11, the US government established CSRTs to determine whether individuals detained as enemy combatants at Guantanamo Bay were to be classified as “enemy combatants.”⁵⁶ These tribunals were non-judicial and conducted outside of the traditional court system. It has severally been criticized for providing limited procedural safeguards, including restricted access to evidence and the lack of a right to legal counsel for detainees.¹⁰⁷ However, the CSRT process was an attempt by the US government to provide some form of review for detainees classified as unprivileged combatants.⁵⁷

Detention and Habeas Corpus Rights: The US Supreme Court has addressed the rights of unprivileged combatants in several landmark cases, particularly regarding their detention at

⁴⁹ Jennifer Daskal and Stephen I. Vladeck, ‘After the Authorization for Use of Military Force’ (2013) Open Society Foundations <www.opensocietyfoundations.org/publications/after-authorization-use-military-force> accessed 16 January 2026

⁵⁰ Military Commissions Act (2006) PL 109-366

⁵¹ *ibid*

⁵² Human Rights Watch ‘Q and A: Military Commissions Act of 2006’ <www.hrw.org/legacy/backgrounder/usa/qna1006/usqna1006.htm#_Toc148852441> accessed 16 January 2026

⁵³ Detainee Treatment Act (2005) PL 109 -148 Sec. 1001-1006 as amended through PL 111-84

⁵⁴ *ibid* Sec 1003

⁵⁵ *ibid*

⁵⁶ Deputy Secretary of Defence, ‘Memorandum for the Secretary of the Navy, Subject: Order establishing combatant status Review Tribunal’ (2004) <www.supremecourt.gov/opinions/URLs_Cited/OT2005/05-184/05-184.pdf> accessed 16 January 2026

⁵⁷ *ibid*

Guantanamo Bay. The US Supreme Court has ruled that US citizens detained as enemy combatants have the right to challenge their detention through a habeas corpus petition, and the decision emphasized that due process rights apply even in cases of individuals classified as unprivileged combatants.⁵⁸ The US Supreme Court also held that foreign nationals held at Guantanamo Bay could challenge their detention through habeas corpus, extending certain rights to unprivileged combatants, regardless of their citizenship.⁵⁹ It is also the decision of the US Supreme Court that the detainees at Guantanamo Bay, even though they were classified as unprivileged combatants, had the constitutional right to habeas corpus to challenge the legality of their detention in Federal Courts particularly with regard to the conditions of detention, and this decision invalidate some sections of the Military Commissions Act of 2006 that sought to strip detainees of the right to habeas corpus.⁶⁰

3. Overview of the Rights and Protections Afforded to Unprivileged Combatants in the Context of Post-9/11 US Intervention of Afghanistan

While unprivileged combatants do not enjoy the same rights and protections as lawful combatants, they are still entitled to certain fundamental rights and protections under IHL, IHRL and CIHL. The nature and extent of these rights and protections varies depending on the context, but they generally cover the right to protection against unlawful detention, right to humane treatment, and right to fair trial.

3.1 Right to Protection against unlawful detention

IHRL provides for the right to protection of the personal liberty of unprivileged combatants in the context of their right not to be subjected to arbitrary arrest and detention. It permits for their detention in circumstances expressly provided by law, subject to strict adherence to the procedures defined under law.⁶¹ ICCPR is a key international human rights treaty and its provisions remain relevant to the protection of unprivileged combatants against unlawful arrest and detention and deprivation of personal liberty.⁶² CAT is another key international instrument that specifically prohibits torture and other forms of ill-treatment including unlawful detention.⁶³ Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) safeguards the right to liberty, security and protection against unlawful detention.⁶⁴ IHL on its part permits the detention of captured combatants based upon grounds and conditions allowed by law as provided under the Geneva Convention III which permits the internment of POW by a detaining power until the cessation of active hostilities, when they must be released and repatriated.⁶⁵ However, detainees against whom criminal proceedings for an indictable offence is pending may be detained until the end of such proceedings and if necessary, until the completion of punishment. While similar requirements are not expressly provided for

⁵⁸ Hamdi v Rumsfeld (2004) 542 US 507

⁵⁹ Rasul v Bush (2004) 542 US 466

⁶⁰ Boumediene v Bush (2008) 553 US 723

⁶¹ Rene Vark, 'The Status and Protection of Unlawful Combatants' (2005) <www.juridicainternational.eu/public/pdf/ji_2005_X_191.pdf> accessed 15 January 2026

⁶² ICCPR (n 25) art 9

⁶³ CAT (n 31) art 1, 2 & 11

⁶⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) 213 UNTS 221 (ECHR) art 5

⁶⁵ Third Geneva Convention III (n 12) art 5

unprivileged combatants, it is necessary for these requirements to be extended to them.⁶⁶ It has also been recognized that the rules and mechanisms under IHL in certain circumstances may prove insufficient to properly regulate the detention of victims of armed conflicts. During such circumstance, human rights supervisory mechanisms, including habeas corpus and comparable remedies under domestic law may necessarily supersede IHL where this is necessary to safeguard the fundamental rights of the detainees.⁶⁷ The United Nations has developed guidelines and principles that protects against detention of individuals, including unprivileged combatants.⁶⁸

3.2. Right to Humane Treatment

Both IHRL and IHL provide for the right to humane treatment for unprivileged combatants which is predicated on the fundamental respect for dignity of the human person. Various legal instruments and principles under IHRL ensure that unprivileged combatants are treated with humanity and respect for their dignity, regardless of their status. Foremost among the right to humane treatment is the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment,⁶⁹ which has been further elaborated upon with specific provision that no exceptional circumstances whatsoever may be invoked as a justification for torture.⁷⁰ IHL on its part provides for similar provision with even more specific humane treatment and protections against torture or other cruel, inhuman or degrading treatment or punishment.⁷¹ CIHL similarly provides for the humane treatment of all combatants including unprivileged combatants who have been captured or otherwise placed under the control of the opposing party.⁷²

3.3. Right to Fair Trial

Unprivileged combatants, if prosecuted, are entitled to a fair trial. A detailed catalogue of substantive and procedural fair trial rights are guarantees under IHRL⁷³ CIHL similarly plays a critical role in reinforcing fair trial rights for unprivileged combatants and it is crucial in protecting unprivileged combatants from summary execution and arbitrary punishment⁷⁴ IHL on its part provides for fair trial rights which are similar to those provided under IHRL.⁷⁵ However, there are several fundamental fair trial procedures included in Article 14 of ICCPR which are not explicitly enumerated in Article 75 of API. That notwithstanding, the same protection should be considered applicable in penal prosecutions against unprivileged combatants detained during international armed conflicts, and considered to fall within the parameters of broader protections that are included.⁷⁶ There is also a preclusion of the said Article 75 from being construed so as to

⁶⁶ Knut Ipsen, *Combatants and Non-Combatants in Dieter Fleck (ed) The Handbook of Humanitarian Law in armed Conflict* (4th edn, Oxford university Press 1995) 326

⁶⁷ Theodor Meron, *The Humanization of Humanitarian Law* (Cambridge University Press, 2017) 239

⁶⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) UN General Assembly Resolution 43/173

⁶⁹ ICCPR (n 25) arts 4(2), 7 & 10; ECHR (n 77) arts 3 & 4

⁷⁰ CAT (n 31) arts 2 & 16

⁷¹ API (n 19) art 75 (2) (ii); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (977)1125 UNTS 609 (AP2) art 4

⁷² Henckaets (n 46)

⁷³ ICCPR (n25) arts 14 & 15; Universal Declaration of Human Rights (1948) UNGA Res 217 A III arts 10 & 11; ECHR (n46) arts 6 & 7

⁷⁴ Henckaets (n 46)

⁷⁵ API (n19) art 75(4)

⁷⁶ *ibid*

limit any other more favourable provision granting greater protection under any applicable rules of international law to persons covered by the provisions.⁷⁷ The US cannot therefore rely on the absence of the above protections from the said Article 75(4) as the basis for denying right to fair trial to unprivileged combatants when same has already been guaranteed under Article 14 of ICCPR.⁷⁸

4. An Overview of US' Practices and Policies which Violates the Rights of Unprivileged Combatants during the Post-9/11 US Intervention of Afghanistan

US treatment of the Taliban and al-Qaeda detainees classified as unprivileged combatants has been a subject of intense scrutiny, controversy and criticisms. There are allegations of US detention system, abuse of US interrogation techniques, unfair trial process, targeted killings of Taliban and al-Qaeda detainees and other human rights violations which have been leveled against the US government.

4.1. US' Detention System of Taliban and al-Qaeda Detainees

Many Taliban and al-Qaeda detainees were held indefinitely at various facilities located at Guantanamo Bay, Bagram Air Base, Black Sites and other locations without formal charges or trials for years. US government categorized these individuals as unprivileged combatants arguing that they could be detained indefinitely under the laws of war and deprived of their basic legal and fundamental rights.⁷⁹ The grounds for criticism reflect deep concerns about the legal, moral, and ethical implications of the US' actions in its treatment of Taliban and al-Qaeda detainees, with lasting impacts on the US' legal framework, human rights reputation, and global standing. The US has also been heavily criticized based on several grounds including denial of due process,⁸⁰ violation of international law,⁸¹ lack of transparency and accountability,⁸² damage to US reputation,⁸³ and ethical concerns.⁸⁴

⁷⁷ *ibid* art 75(8)

⁷⁸ Kasey McCall-Smith, 'How Torture and National Security Have Corrupted the Right to Fair Trial in the 9/11 Military Commissions Journal of Conflict and Security Law' (2022) 27 *Journal of Conflict and Security Law* 83-116 <www.doi.org/10.1093/jcsl/krac002> accessed 15 January 2026

⁷⁹ Harold Hongju Koh, 'Authorization for Use of Military Force after Iraq and Afghanistan' (2014) The US Senate Foreign Relations Committee <www.foreign.senate.gov/imo/media/doc/Koh_Testimony.pdf> accessed 15 January 2026

⁸⁰ Elizabeth Haight, '22 years of justice denied' (2024) Amnesty International' <www.amnesty.org/en/latest/news/2024/03/22-years-of-justice-denied> accessed 15 January 2026

⁸¹ Amnesty International, 'Guantanamo: Lives Torn Apart— The Impact of Indefinite Detention on Detainees and Their Families' (2006) AMR51/007/2006 <www.amnesty.org/en/documents/amr51/007/2006/en/> accessed 15 January 2026

⁸² UN Experts 'Guantanamo Bay: "Ugly chapter of unrelenting human rights violations"' (2022) United Nations <www.ohchr.org/en/press-releases/2022/01/guantanamo-bay-ugly-chapter-unrelenting-human-rights-violations-un-experts> accessed 15 January 2026

⁸³ Letta Tayler and Elisa Epstein, 'Legacy of the 'Dark Side', The Costs of Unlawful US Detentions and Interrogations Post-9/11' (2022) Human Rights Watch <www.hrw.org/news/2022/01/09/legacy-dark-side> accessed 15 January 2026

⁸⁴ Nigel S. Rodley, 'Detention as a response to Terrorism' in Ana María Salinas de Frías, Katja LH Samuel, and Nigel D White (eds), *Counterterrorism International Law and Practice* (Oxford university Press 2012) 457

4.2. US' Interrogation Techniques of Taliban and al-Qaeda Detainees

The interrogation techniques used by the US on Taliban and al-Qaeda detainees have been the subject of significant controversy, criticism and legal scrutiny. The interrogation techniques such as the Enhanced Interrogation Techniques (EITs) used by the CIA to elicit information from detainees include waterboarding,⁸⁵ sleep deprivation,⁸⁶ stress positions and physical coercion⁸⁷ walling,⁸⁸ and exposure to extreme temperatures.⁸⁹

4.3. US' Unfair Trial Process of Taliban and al-Qaeda Detainees

The US' trial process of Taliban and al-Qaeda detainees held by the US have been widely criticized on several fronts, with concerns focusing on legal, ethical, and human rights issues.⁹⁰ Some of the key criticisms include trial by US Military Commissions,⁹¹ evidence obtained through torture,⁹² limited access to legal representation,⁹³ lack of public trials,⁹⁴ and restricted appeals process.⁹⁵

4.4. US' Targeted Killings of Taliban and al-Qaeda Detainees

Targeted killings of Taliban and al-Qaeda detainees have been a significant and controversial aspect of US counterterrorism efforts, especially following the events of September 11, 2001.⁹⁶ These actions have been carried out by various means, including drone strikes, special operations raids, and other covert operations primarily conducted by the CIA and the US military.⁹⁷ An overview of the key aspects and controversies surrounding these targeted killings include violation of international law,⁹⁸ bypass of due process and human rights violation,⁹⁹ precedent

⁸⁵ Farnoosh Hashemian, 'Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact' (2008) Torture, United States <www.phr.org/our-work/resources/broken-laws-broken-lives> accessed 15 January 2026

⁸⁶ Karen J. Greenberg and Joshua L. Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press 2005) 23

⁸⁷ Human Rights Watch 'Getting Away with Torture: The Bush Administration and Mistreatment of Detainees' (2011) Human Rights Watch <www.hrw.org/report/2011/07/12/getting-away-torture/bush-administration-and-mistreatment-detainees> accessed 15 January 2026

⁸⁸ *ibid*

⁸⁹ Human Rights Watch, 'Enduring Freedom: Abuses by US Forces in Afghanistan' (2004) Human Rights Watch <www.hrw.org/report/2004/03/08/enduring-freedom/abuses-us-forces-afghanistan> accessed 16 January 2026

⁹⁰ Jonathan Tracy, 'Detention and Prosecution of Alleged Terrorists and Combatants' <www.corteidh.or.cr/tablas/R22254.pdf> accessed 15 January 2026

⁹¹ Amnesty International, 'USA: Justice Delayed and Justice Denied? Trials Under the Military Commissions Act' (2007) <www.refworld.org/reference/countryrep/amnesty/2007/en/91983> accessed 15 January 2026

⁹² Detlev F. Vagts, 'Why Courts should try persons accused of terrorism?' (2003) *European Journal of International Law* <www.ejil.org/pdfs/14/2/417.pdf> accessed 15 January 2026

⁹³ Jonathan Hafetz, *Habeas Corpus after 9/11: Confronting America's New Global Detention System* (NYU Press 2011) 81

⁹⁴ *ibid*

⁹⁵ *ibid*

⁹⁶ Himi Shamsi, 'Targeted Killing' and the Rule of Law: The Legal and Human Costs of 20 Years of US Drone Strikes' (2022) *American Civil Liberties Union* <www.judiciary.senate.gov/imo/media/doc/Shamsi%20Testimony.pdf> accessed 16 January 2026

⁹⁷ *ibid*

⁹⁸ *ibid*

⁹⁹ *ibid*

for state-sponsored assassinations,¹⁰⁰ collateral damage,¹⁰¹ counterproductive effects,¹⁰² and lack of accountability.¹⁰³

5. Decisions of the US Domestic Courts and International Courts and Human Rights Bodies that Addresses the Legal Challenges of Unprivileged Combatants and their Impacts

5.1. Decisions of US' Domestic Courts

The US judicial system played a crucial role in addressing the legal challenges brought by detainees held in the context of the Afghanistan intervention. Several landmark decisions of the US Supreme Court which affect the rights of detainees and limits US executive power include the following:

Hamdi v Rumsfeld: Yaser Hamdi, a US citizen captured in Afghanistan, was designated as an "enemy combatant" and detained without charges or access to legal counsel, and detained indefinitely without trial.¹⁰⁴ The US Supreme Court ruled that while the government had the authority to detain enemy combatants, even US citizens, detainees must be afforded a meaningful opportunity to challenge their detention before an impartial tribunal. This decision underscored the need for due process rights, even in cases involving national security concerns.¹⁰⁵

Rasul v. Bush: This case involved foreign nationals detained at Guantanamo Bay. The central question was whether US courts had jurisdiction to hear habeas corpus petitions filed by non-citizens detained outside the mainland US.¹⁰⁶ The US Supreme Court held that US Federal Courts have jurisdiction to consider habeas corpus petitions filed by foreign nationals held at Guantanamo Bay. This ruling effectively allowed detainees to challenge the legality of their detention in US Courts, marking a significant check on executive powers.¹⁰⁷

Hamdan v Rumsfeld: Salim Ahmed Hamdan, a Yemeni national and former driver for Osama bin Laden, challenged the legality of the military commissions set up to try Guantanamo detainees, arguing that they violated both the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions.¹⁰⁸ The US Supreme Court ruled that the military commissions as constituted violated US law and the Geneva Conventions, and the ruling emphasized that even enemy combatants are entitled to minimum standards of trial fairness and that the US executive arm of

¹⁰⁰ *ibid*

¹⁰¹ *ibid*

¹⁰² *ibid*

¹⁰³ *ibid*

¹⁰⁴ *Hamdi v Rumsfeld* (2004) 542 US 507

¹⁰⁵ Jonathan Hafetz, "The Supreme Court's 'Enemy Combatant' Decisions: Recognizing the Rights of Non-Citizens and the Rule of Law," (2006) 14 *Temple Polit. & Civ. Rts. L. Rev.* 409; Daniel Moeckli, "The US Supreme Court's 'Enemy Combatant' Decisions: A 'Major Victory for the Rule of Law'?" (*Journal of Conflict & Security Law*, Vol. 10, No. 1 Spring, Oxford University Press 2005) 75-99

¹⁰⁶ *Rasul v Bush* (2004) 542 US 466

¹⁰⁷ n105

¹⁰⁸ *Hamdan v Rumsfeld* (2006) 548 US 557

government could not unilaterally create military commissions without congressional authorization.¹⁰⁹

Boumediene v Bush: This case focused on whether non-citizen detainees at Guantanamo Bay had the constitutional right to file habeas corpus petitions in US Federal Courts after the passage of the Military Commissions Act of 2006, which aimed to strip courts of jurisdiction over such petitions.¹¹⁰ The US Supreme Court held that the detainees had a constitutional right to habeas corpus and that the procedures established by the Military Commissions Act were ultra vires, and this landmark decision affirmed the right of detainees to challenge their detention in civilian courts, reinforcing the principle of judicial oversight.¹¹¹

5.2. Decisions of International Courts and Human Rights Bodies

Various international courts and human rights bodies have responded to the treatment of unprivileged combatants by the US in the context of its intervention in Afghanistan which are discussed below:

International Court of Justice (ICJ): While the ICJ has not directly adjudicated cases on the treatment of unprivileged combatants in Afghanistan, its general principles on state responsibility and the protection of human rights provide a backdrop for understanding international obligations. The ICJ has emphasized that states must respect international law, including human rights and humanitarian law, even during armed conflicts. The ICJ's decisions underscore that actions like torture and inhumane treatment are prohibited under customary international law, which binds all states.¹¹²

International Criminal Court (ICC): The ICC's involvement became prominent with Chief Prosecutor Fatou Bensouda's request in 2017 to investigate potential war crimes and crimes against humanity in Afghanistan, which included actions by US forces and the CIA. This investigation focused on alleged crimes such as torture and ill-treatment of detainees, a significant portion of whom were classified as unprivileged combatants.¹¹³ In 2020, the ICC Appeals Chamber authorized the investigation, overturning the initial rejection, and this marked a critical moment, highlighting international concern over the treatment of detainees and the importance of accountability, even from powerful states like the US.¹¹⁴

European Court of Human Rights (ECHR): Although the ECHR does not have jurisdiction over the US, it has ruled on cases involving European countries' complicity with US detention practices in several cases. One of such is Poland's violation of the European Convention on Human Rights by enabling the CIA to detain and torture individuals on Polish soil. The ruling criticized

¹⁰⁹ n105

¹¹⁰ Boumediene v Bush (2008) 553 US 723

¹¹¹ n105

¹¹² Nicaragua v US (1986) ICJ Rep 14; Helen Duffy, *The "War on Terror" and the Framework of International Law* (2nd ed., Cambridge University Press 2015).

¹¹³ ICC, 'The Prosecutor of the International Criminal Court, Fatou Bensouda, requests judicial authorization to commence an investigation into the Situation in the Islamic Republic of Afghanistan' (2017) office of the Prosecutor <www.icc-cpi.int/news/prosecutor-international-criminal-court-fatou-bensouda-requests-judicial-authorisation> assessed 15 January 2026

¹¹⁴ Ehsan Qaane, *The International Criminal Court's Afghanistan Investigation, Challenges and Constraints* (Raoul Wallenberg Institute for Human Rights and Humanitarian Law 2023)

the use of secret detention sites and the transfer of detainees without due process, practices closely associated with the treatment of unprivileged combatants.¹¹⁵ The court in another case found Macedonia responsible for ill-treatment and unlawful rendition to US authorities, which highlight European states' complicity in practices deemed in violation of international human rights norms.¹¹⁶

United Nations Human Rights Council (UNHRC): Several UN Special Rapporteurs have documented abuses and called for the protection of detainee rights. Reports by Special Rapporteurs have criticized the use of torture and indefinite detention without trial, and these reports frequently highlight cases of detainees held at Guantanamo Bay. It also underscores the need for compliance with international human rights standards, even in counter-terrorism contexts.¹¹⁷]

UN Committee Against Torture: The UN Committee Against Torture has periodically reviewed US compliance with the Convention Against Torture. In its concluding observations, the Committee expressed concerns about reports of torture, ill-treatment, and the legal justifications used by the US for practices like waterboarding. The Committee urged the US to investigate allegations, prosecute perpetrators, and provide remedies to victims, such that the Committee's statements emphasize that the prohibition of torture is absolute and non-derogable.¹¹⁸

Inter-American Commission on Human Rights (IACHR): The IACHR has issued precautionary measures concerning detainees held at Guantanamo Bay, urging the US to respect due process rights and humane treatment. The IACHR has consistently criticized the lack of legal rights afforded to detainees, the conditions of detention, and the indefinite nature of detention without trial. It has also called for the closure of Guantanamo Bay and the implementation of fair legal procedures.¹¹⁹

Non-Governmental Organizations (NGOs) and Advocacy Groups: NGOs have played a critical role in highlighting abuses and advocating for detainee rights. Reports by organizations like Human Rights Watch, Amnesty International, and the American Civil Liberties Union (ACLU) have provided detailed accounts of detainee treatment, including torture and extraordinary rendition. It has also brought attention to specific cases, filed lawsuits, and submitted amicus briefs to courts and human rights bodies, pushing for greater accountability and transparency, for

¹¹⁵ *Al Nashiri v Poland* Appl (2014) 28761/11; *Husayn Abu Zubaydah v Poland* (2014) 7511/13

¹¹⁶ *El-Masri v The Former Yugoslav Republic of Macedonia* (2012) 39630/09; Steven Greer "Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really 'Absolute' in International Human Rights Law?" (2015) *Human Rights Law Review*, Vol 15, 101–137

¹¹⁷ Juan E. Mendez, 'Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' (2011) A/HRC/16/52; Manfred Nowak and Anne Charbord (eds), *Using Human Rights to Counter Terrorism* (Edward Elgar Publishing, 2018) 371.

¹¹⁸ Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America (2014) CAT/C/USA/CO/3-5; UNHRC, Report of the Special Rapporteur on Torture, UN Doc. A/HRC/13/39 (2010) <<https://undocs.org/A/HRC/13/39>> accessed 16 January 2026

¹¹⁹ Inter American Commission on Human Rights, *Towards the Closure of Guantanamo* (Organization of American States 2015) <www.oas.org/en/iachr/reports/pdfs/towards-closure-guantanamo.pdf> accessed 16 January 2026

example, the ACLU's legal actions have challenged the legality of practices like indefinite detention and the use of torture in the name of national security.¹²⁰

5.3. Impacts of the decisions of the US' Domestic Courts and International Courts and Human Rights Bodies on the rights of unprivileged combatants

The decisions of both domestic and international courts and Human Rights Bodies to the US treatment of unprivileged combatants during the Afghanistan intervention had significant implications, which includes:

Check on Executive Power: The rulings by the US Supreme Court established critical checks on executive authority, affirming the role of the judiciary in safeguarding human rights, even during wartime, and these decisions emphasized the importance of due process and judicial review.¹²¹

Reaffirmation of Human Rights Standards: International court rulings and the advocacy of human rights bodies reinforced the global commitment to upholding international humanitarian law and human rights standards by sending a clear message that violations of detainee rights would not be tolerated, and that accountability is essential.¹²²

Policy Reforms: The legal challenges and court decisions prompted changes in US detention policies, including the establishment of review processes for detainees at Guantanamo Bay and the eventual cessation of certain controversial interrogation techniques, and these reforms reflect the impact of judicial intervention in shaping policy.¹²³

Global Legal and Ethical Discourse: The court responses contributed to the broader international discourse on the rights of combatants, the legality of detention practices, and the moral and ethical considerations of counter-terrorism strategies, and these debates continue to influence how states approach the treatment of combatants in conflict situations.¹²⁴

6. The Lessons Learnt from the other International Interventions and Conflicts

The treatment of unprivileged combatants and the broader conduct of international interventions have led to significant lessons that can be gleaned from various global conflicts. The comparative analysis of these conflict situations provides several key lessons for future conflicts involving unprivileged combatants as follows:

¹²⁰ACLU v Department of Defense (2005) 389 F. Supp. 2d 547; Amnesty International, "USA: "War on terror" detentions at a crossroads: New AI report on detentions and trials following the US Supreme Court's Hamdan v. Rumsfeld Ruling" <www.amnesty.org/en/documents/AMR51/148/2006/en/> accessed 16 January 2026

¹²¹ Joseph Margulies, *Guantanamo and the Abuse of Presidential Power* (Simon & Schuster Publishers 2007) 126

¹²²Kim Lane Scheppele, "The International State of Emergency: Legitimacy, Legality, and Constitutionalism after September 11" (2006) *Law and Social Inquiry, Princeton University* 647 <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1048&context=schmooze_papers> accessed 16 January 2026

¹²³ Peter Margulies, "Judging Terror in the 'Zone of Twilight': Exigency, Institutional Equity, and Procedure after September 11"th (2004) *Boston University Law Review* Vol 84, 383 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=840086> accessed 16 January 2026

¹²⁴ Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response* (3rd edn, Routledge 2011)

6.1. Clear Legal Standards and Definitions: The ambiguity surrounding the classification of unprivileged combatants needs to be addressed as clear and universally accepted definitions should be established to guide the treatment of combatants and non-combatants alike.¹²⁵

6.2. Upholding international legal norms: In many conflicts, such as the US intervention in Afghanistan and Israeli-Palestinian conflict, the erosion of international legal norms, like the Geneva Conventions, has led to widespread criticism and long-term consequences.¹²⁶ It is crucial to adhere to international law, particularly the Geneva Conventions and human rights treaties, to maintain legitimacy and reduce the risk of backlash.¹²⁷ Even in asymmetric warfare, where enemies may not adhere to these norms, state actors benefit from maintaining legal standards to prevent violence from escalating into broader conflicts or undermining international support.¹²⁸

6.3. The importance of due process in detention practices and human rights: The indefinite detention without trial, as seen in Guantanamo Bay and the internment practices in Sri Lanka, undermines the rule of law and damages the credibility of the intervening power.¹²⁹ Establishing clear legal processes for detainees, including timely trials and access to legal representation, is essential to prevent human rights abuses and maintain moral authority.¹³⁰ Also, detention practices should be transparent and subject to judicial review to avoid accusations of arbitrary or unjust imprisonment.¹³¹

6.4. Long-term Consequences of interrogation techniques and torture: The use of enhanced interrogation techniques by the US, as well as the reported use of torture in Russia and Israel, have led to widespread condemnation and have had lasting negative impacts on the reputations of these states.¹³² Torture and other forms of inhumane treatment not only violate international law but also have long-term strategic consequences, including radicalizing opponents, damaging relationships with allies, and undermining efforts to promote human rights globally.¹³³ Alternative, lawful interrogation methods should be developed and employed.¹³⁴

6.5. Managing Public Perception and Strategic Communication: Irish Republican Army (IRA) is a republican Paramilitary organization seeking the end of British rule in Northern Ireland and the reunification of Ireland.¹³⁵ During the Troubles in Northern Ireland (1960s-1998), the British government used internment without trial to detain suspected IRA members. This policy was

¹²⁵David P. Forsythe, *The Politics of Prisoner Abuse: The United States and Enemy Prisoners after 9/11* (Cambridge University Press 2011) 42

¹²⁶ Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge University Press 2002) 16

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ Michael Byers, 'Terrorism, the Use of Force, and International Law After 11 September' (2002) 51 *International and Comparative Law Quarterly* 401

¹³⁰ *ibid*

¹³¹ *ibid*

¹³² Jamie Mayerfeld, 'Playing by Our Own Rules: How US Marginalization of International Human Rights Law Led to Torture' (2007) 20 *Harvard Human Rights Journal* 89

¹³³ *ibid*

¹³⁴ *ibid*

¹³⁵ Kevin Boyle, Tom Hadden, & Paddy Hill, *Ten Years on in Northern Ireland: The Legal Control of Political Violence* (Cobden Trust, 1980) 5

highly controversial and contributed to further unrest.¹³⁶ The British military and police forces used what were later termed as the “five techniques” which the European Court of Human Rights found to constitute inhuman and degrading treatment.¹³⁷ Similar to the US where Guantanamo has been a focal point, the British policies faced significant legal challenges and public backlash, leading to policy changes over time.¹³⁸ The British experience demonstrated how public perception can significantly impact the outcome of a conflict.¹³⁹ Missteps like internment without trial fueled further unrest and undermined the British government’s position.¹⁴⁰ Effective communication and maintaining the moral high ground are vital interventions and should be accompanied by transparent communication strategies that address public concerns, explain actions, and promote understanding, while managing the narrative helps to prevent the adversary from exploiting human rights abuses or legal violations to gain support.¹⁴¹

7. Conclusion and Recommendations

7.1. Conclusion

Following the 9/11 attacks, the US launched military operations in Afghanistan with the objective of dismantling the Taliban regime and eliminating al-Qaeda operatives. The events of post-9/11 provide a critical analysis of the impact of US military operations in Afghanistan on the rights of unprivileged combatants, also known as unlawful combatants or enemy combatants. This intervention led to significant legal, ethical, and humanitarian challenges regarding the treatment of individuals captured on the battlefield who did not fit into traditional categories of lawful combatants or civilians. Key findings of the article highlight that unprivileged combatants were often denied the protections afforded by the Geneva Conventions. The US administration’s stance that such individuals were not entitled to POW status under IHL led to controversial practices, including indefinite detention without trial, enhanced interrogation techniques, and extraordinary rendition. These practices have been criticized for violating IHL, IHRL and international legal standards, thereby challenging the legitimacy of the US intervention in the eyes of the international community. The US approach to detainee treatment, characterized by the creation of Guantanamo Bay detention center, has sparked widespread debate and legal challenges, including landmark decisions of the US Supreme Court which underscore the tension between national security imperatives and the protection of individual rights, illustrating the complex dynamics at play in the post-9/11 security landscape. The analysis concludes that while the US had legitimate security concerns following the 9/11 attacks, the methods employed in Afghanistan raised significant ethical and legal issues. The treatment of unprivileged combatants not only posed challenges to international humanitarian norms but also risked undermining the moral authority of the US on the global stage. Furthermore, the lack of clear legal status for these individuals created a precedent that could be exploited by other states to justify similar actions, potentially eroding the established framework of IHL and IHRL.

¹³⁶ *ibid*

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ Graham Dawson, Jo Dover and Stephen Hopkins, *The Northern Ireland Troubles in Britain: Impacts, engagements, legacies and memories* (Manchester University Press 2017) 29

¹⁴⁰ *ibid*

¹⁴¹ *ibid*

7.2 Recommendations

Clarification of Legal Definitions and Protections: There is an urgent need for the international community to revisit and clarify the definitions and protections afforded to various categories of combatants under international law. Establishing clear guidelines for the treatment of unprivileged combatants will help prevent ambiguity and ensure consistent application of humanitarian principles. This could involve updating the Geneva Conventions or drafting supplementary protocols to address the evolving nature of warfare and combatant status.

Strengthening International Oversight Mechanisms: To ensure compliance with IHL, it is crucial to strengthen international oversight and accountability mechanisms. Institutions such as the International Committee of the Red Cross (ICRC) and the International Criminal Court (ICC) should be empowered to monitor and investigate alleged violations of combatant rights. States should cooperate with these bodies and support their efforts to uphold the rule of law in conflict situations.

Balancing Security and Human Rights: Governments must strike a balance between national security concerns and the protection of individual rights. Policies should be formulated to ensure that counterterrorism measures do not come at the expense of fundamental human rights. Adopting transparent detention practices, providing detainees with fair trial rights, and ensuring access to legal representation are essential steps toward achieving this balance.

Promoting Dialogue and Cooperation: The international community should foster dialogue and cooperation among states to address the challenges posed by unprivileged combatants. Collaborative efforts to share intelligence, best practices, and legal frameworks can enhance the collective ability to respond effectively to security threats while respecting human rights. Diplomatic channels and multilateral forums such as the United Nations can play a pivotal role in facilitating such cooperation.

Reparations and Rehabilitation: For those individuals who have been wrongfully detained or subjected to ill-treatment, there should be mechanisms for reparations and rehabilitation. Providing compensation, medical care, and psychological support to affected individuals can help redress the injustices suffered and promote healing and reconciliation. States involved in detention should take responsibility for addressing the harm caused by their actions.