Preparation Paper

Commission on Human Rights

"Human Rights Loopholes: Legalized Arrest, Torture and Restraint"
Introduction of the VIMUN 2006 CHR-Team:

Chairperson

Christoph Greil was born on July 6 in 1983; he lives in Upper Austria and Vienna. As a student of law and international business administration, he takes a special delight in the opportunity to be your Chairperson for the Commission on Human Rights; particularly because it deals with human rights affairs, international law and multilateral treaties. The CHR is moreover one of the VIMUN’s most popular committees and it offers a special challenge in terms of communication to all delegates. Not only do you have the possibility of experiencing a diplomat’s work in the UN, but it also the ideal environment to gain experience in the fields of group dynamics, argumentation and decision-making. It is a unique chance to train various skills you need in real life. The process of negotiating is full of possibilities to test your point of view and to powerfully assert yourself while being polite and diplomatic.

He is looking forward to productive discussions and negotiations, focussing on our declared goal: to pass a resolution by the end of the committee sessions!

Co-Chairperson

Robert Albrecht was born on May 30 in 1983 in Linz, Upper Austria. After he completed high school in June 2001 he first started studying physics at the University of Vienna for half a year. Afterward he worked in community service, which is an alternative to compulsory military service in Austria, from February 2002 until January 2003. He finally made a new decision regarding his studies after the community service, because the work during that time had great influence on him. He lead guided tours and worked with school classes at the KZ Memorial Mauthausen. So he decided to study history and politics. That brought him to Vienna once again where he lives and studies. He is especially interested in contemporary history and international relations regarding its interlinks and coherence.

Usher

Hölzl Hadmar was born on January 20 in 1984 in Wels, Upper Austria. After finishing high school he moved to Vienna in 2003. The combination of political issues and public relations is highly important for him, therefore, he started studying political science and communications science at the University of Vienna. Participation in the VIMUN will offer potentialities to discuss the full range of political topics, especially related to human rights affairs, to express our opinions, interests or concerns regarding controversial ideas. For this reason, it is not only an honour and challenge to be part of the 2006 VIMUN-Team, it is also a great chance for all to practice skills needed for future challenges in political-life.
1. Introduction to the Commission on Human Rights

The United Nations Commission on Human Rights, composed of 53 States, meets each year in regular session in March/April for six weeks in Geneva. Over 3000 delegates from Member and Observer States and from non-governmental organisations participate.

Under exceptional circumstances the Commission can also meet between its regular sessions in special session provided that a majority of the Commission Member States agree to do so.

During its regular annual session, the Commission adopts about one hundred resolutions, decisions and Chairperson’s statements on matters of relevance to individuals in all regions and circumstances. It is assisted in this work by the Sub-Commission on the Promotion and Protection of Human Rights, a number of working groups and a network of individual experts, representatives and rapporteurs mandated to report to it on specific issues.

Procedures and Mechanisms

The procedures and mechanisms of the Commission on Human Rights are expected to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). These procedures and mechanisms are collectively referred to as the Special Procedures of the Commission on Human Rights.

Main Themes

The main themes addressed by the Commission are: the right to self-determination; issues of racism; the right to development; the question of human rights violations in occupied territories, violation of human rights and fundamental freedoms in any part of the world; including all aspects of economic, social and cultural rights; as well as civil and political rights, questions of torture and detention, disappearances and summary executions, freedom of expression, the independence of the judiciary, impunity and religious intolerance; the human rights of women, children, migrant workers, minorities and displaced persons; indigenous issues; the promotion and protection of human rights, including the work of the Sub-Commission, treaty bodies and national institutions; and advisory services and technical cooperation in the field of human rights.

Working Groups

From time to time the Commission identifies areas in which existing standards need to be further developed to confront new and growing concerns. At present, it is working to reinforce safeguards against torture and other forms of cruel or inhuman treatment in custody through preventive visits to places of detention, and to promote the rights of indigenous populations.

Other subjects that are currently under consideration by working groups of the Commission are the right to development, and structural adjustment programmes and human rights.

If complaints from individuals or organisations received by the Sub-Commission's Working Group on Communications reveal a pattern of serious human rights violations in a country, the matter can be brought to the attention of the Commission's Working Group on Situations and of the Commission itself.

Standard-Setting and Implementation

One of the most important tasks entrusted to the Commission has been the elaboration of human rights standards. In 1948 it concluded work on the landmark Universal Declaration of Human Rights. Since then it has developed standards relating, inter alia, to the right to development, civil and political rights, economic, social and cultural rights, the elimination of racial discrimination, torture, the rights of the child and the rights of human rights defenders.

All states that accept these standards are obliged to implement the rights they entail and to report regularly to international bodies set up to monitor their compliance.

Human rights standards have little value if they are not implemented. Consequently, the Commission devotes much of its time to examining issues of implementation. Some of its work is particularly sensitive, generating extensive debate and often disagreement. Its network of mechanisms – experts, representatives and rapporteurs – plays an important role in reporting to the Commission annually. Information received from governments, non-governmental organisations and individuals is used in the preparation of these reports.
The Commission's success is measured by its ability to improve the human rights standards of individuals.

**Advisory Services and Technical Cooperation**

Where problems are identified, the Commission can take action to address them. The CHR regularly requests the Office of the High Commissioner for Human Rights to provide assistance to governments through its programme of advisory services and technical cooperation in the field of human rights. This assistance takes the form of expert advice, human rights seminars, national and regional training courses and workshops, fellowships and scholarships, and other activities aimed at strengthening national capacities for the protection and promotion of human rights.

**Creation of the Human Rights Council – Replacing the Commission on Human Rights**

The Human Rights Council was established by the General Assembly in its resolution 60/251 of 15 March 2006 and will replace the Commission on Human Rights, which will be formally abolished on 16 June 2006.

Following this historic event, UN Secretary-General Kofi Annan stated,

“Now the real work begins. The true test of the Council’s credibility will be the use that Member States make of it. If, in the weeks and months ahead, they act on the commitments they have given in this resolution, I am confident that the Council will breathe new life into all our work for human rights, and thereby help to improve the lives of millions of people throughout the world.”

The High Commissioner for Human Rights, Ms. Arbour, also saluted the creation of the Human Rights Council, calling its establishment “a historic opportunity to improve the protection and promotion of fundamental freedoms of people around the world.”

The Human Rights Council, to be composed of 47 Member States, will be based in Geneva and will hold no fewer than three sessions per year (including a main session) for a total period of no less than ten weeks. The Council will also be able to hold special sessions when necessary through a request by a Member of the Council with the support of one-third of the membership of the Council.

Elections of the first members of the new Human Rights Council are scheduled to take place on 9 May 2006. The first meeting of the Council will be convened on 19 June 2006.
2. Introduction to the Issue: “Human Rights Loopholes: Legalized Arrest, Torture and Restraint”

Examples for cases of Human Rights (HR) violations related to legal or illegal arrest and restraint:

- The contested US-naval-station “Guantanamo Bay”
- The contested prison in Abu Ghraib
- Currently relevant HR violations in the Republic of Belarus by organs of the state.
- HR violations on the occasion of any action of (official) organs of a state or of people working for the state.
- HR violations in prisons and similar (official or secret) establishments.
- HR violations on the occasion of arrests of all kinds and restraints of all kinds (being imprisoned, being held by the police and other organs of the state in police stations, being detained for deportation to another country), during examination and interrogation, during heavy labor etc.
- HR violations during demonstrations and mass protests.
- HR violations on ships, planes, in cars, in airports, police stations, military bases, in flats, civil houses, on the streets, in the woods, in secret places, on the battlefield etc.

Examples for concrete kinds of HR violations related to legal or illegal arrest and restraint:

- Use of inappropriate physical and psychic violence, arrest without legal title or fundament, arrest without declaration of reasons or declaration of non-legitimated reasons, ultra vires action (use of more power than given by the state), exceedance of self-defense by officers or organs of the state, arrest at an inappropriate time, accusable actions of officers during official missions, breach of statutory duty, violation of human dignity, defamation and insult, inappropriate measures of investigation, disrespect of basic human needs, inhuman treatment, torture, threat to life or physical conditions of family members and friends
- Procrastination (diversion) of people, denial of basic (inter)national rights and needs.
- Denial of accusation, denial of a fair trial, proceeding and treatment.
- Utilisation of information received by torture and inhuman treatment during trials and similar proceedings.
- Unjustified and non-legitimated treatment during restraint: disrespect of human needs like food, clothing, hygiene, free space for moving, sleep, moderate temperature, medical treatment, fresh air and sun, security.
- Deportation of prisoners and captives to countries that make use of torture and inhuman treatment.
- Denial of continuative human needs like religion, education, personal space, restricted freedom, movement, physical exercise, psychological support and supervision.
- Inappropriate heavy labor.
- Unfair treatment in its extensive meaning.

Treaties and documents of international law prohibiting all of these HR violations can be found in the “useful links” section.

The following is a list of important United Nations Human Rights documents:

- Universal Declaration of Human Rights
- Covenant on Civil and Political Rights
- Optional Protocol to the Covenant on Civil and Political Rights
- Covenant on Economic, Social, and Cultural Rights
- Convention Against Torture
- Convention Against Genocide
- The Geneva Conventions
- Convention on the Rights of the Child
The Contested US-Naval-Station “Guantanamo Bay”

The Camp

In any discussion of current human rights loopholes, it is absolutely necessary to involve the places that the world knows as “Camp X-Ray” and “Camp Delta”, part of the United States’ “War against Terrorism”.

Camp X-Ray was and Camp Delta still is part of the US military base Guantanamo Bay on Cuba, which has existed since 1903 and is the only US base in a country that has no diplomatic relations with the USA.

After the Afghanistan War “Camp X-Ray” was established on January 11th 2002 and used until April 29th. 320 prisoners were the maximum the camp was built for, and this was far too little space for the amount of prisoners expected. Therefore, the United States closed “Camp X-Ray” and replaced it with “Camp Delta” in April 2002.

Delta still exists today and is used for the imprisonment of 510 people at this time.

Legal or Illegal?

Camp Delta is guarded by members of the US-Military Force. This means that, as a military prison, Guantanamo Bay is not subject to the US civil law. This is the reason why civil authorities have almost no possibility of legal intervention.

The prisoners in the camp were captured during the war in Afghanistan. About 1000 members of the Taliban and Al-Quaida were brought to Guantanamo in 2002. These included teenagers between 13 and 16 years old and even younger.

All prisoners were arrested during war, but they are not treated as Prisoners of War (POW). Instead, they were treated like terrorists, threatening the national security of the United States. The US government calls them “unlawful combatants”, which means that they have none of the rights of a POW laid down in the Geneva Conventions.

The United States does not see the “War against Terrorism” as a war between two different countries. Thus, the prisoners are not regarded as regular soldiers of any regular armed force.

Article 4 of the 3rd Geneva Convention describes categories of persons who have POW status that makes then “lawful combatants”. The US government is of the opinion that the Taliban and Al-Quaida prisoners are not protected by criminal law because of the nature of their combat activities. Similarly, the United States feels that they are not protected by martial law because they do not agree with the definition of “lawful combatants” in the Geneva Conventions. This leaves the prisoners with no rights at all. These are exactly the human rights loopholes that make up our topic under discussion.

In relation to the topic of CHR, “Human Rights Loopholes: Legalized Arrest, Torture and Restraint,” it is important to note that arresting these people during the war in Afghanistan as combatants was legal. However, it is their treatment as “unlawful combatants” that is under question and may be regarded as a method of imprisoning them as long as possible without any rights or possibility to a legal and fair trial. Their restraint under harsh conditions and denial of criminal and martial rights is definitely not the procedure we would expect from a constitutional state like the USA.

As the first attack on US territory since Pearl Harbour 1941, 9/11 was a shock for the United States. Of course it is difficult to accuse the USA of trying to defend their country. However, we can hold them responsible for the methods they use to do so.

For the United States, all the prisoners in Guantanamo would be a high risk for national security if they were liberated. Another problem is that not all of the prisoners are citizens of countries that are considered “enemy-states” for the USA. Therefore, the US relationship to countries like Germany, Turkey or Saudi Arabia may become problematic. There are also legal problems resulting from the imprisonment of citizens.
of states that were not at war with the USA. Indeed, one could argue that Afghan prisoners fall under the category of POWs since there was a war with Afghanistan.

The “War against Terrorism” is certainly another kind of war, different from all other wars in history. The old model of war as a conflict of two or more different nations has almost become outdated. So it is difficult to transfer older guidelines like the Geneva Conventions to modern forms of war like the “War against Terrorism”. The Geneva Conventions have never been meant for this form of war. Hence, so-called legal “loopholes” are possible.

Perhaps it would be necessary to revise the Geneva Conventions or find new legal guidelines that are adapted to a new type of war. Whatever variant will be selected, there is no doubt that we need an appropriate and generally accepted set of rules for new forms of war in our times.

**Arrest – Conditions and Treatment of the Prisoners**

An important issue arises in regard to the manner in which prisoners are treated. During the last years there were many reproaches from human rights organisations like Amnesty International and also the Red Cross about poor prison conditions, torture and maltreatment. Threatening a prisoner’s family, punishment for quoting from the Koran or “waterboarding” (pressing the head under water) were described as methods for getting information in a Red Cross report in 2004.

In 2004 the Red Cross reported about activities that were tantamount to torture and the international report of Amnesty International in 2005 called Guantanamo Bay the “gulag of our times”. The Pentagon did not deny these criticisms.

**What Has Happened So Far?**

There have been many protests against Guantanamo and US methods from Human Rights NGOs like Human Rights Watch and Amnesty International and from international GOs like the UN and the EU. But the question is: What has been done so far? Protests against Human Rights violations are necessary and important but there has to be action as well to change the situation.

In November 2003, the US Supreme Court announced that appeals by Afghan war prisoners who challenge their arrest as unlawful would be decided in a fair trial. Another important sign was a brief of 175 members of both Houses of Parliament in the UK to support the prisoner’s access to US jurisdiction. However, in June 2004 the US Supreme Court ruled that although prisoners can challenge arrest, they can also be held without charges or trial.

The single most significant condemnation of US practices occurred on February 15th 2006 when the UN-CHR demanded to close Camp Delta. Fair trials for all prisoners were also called for. This was the first time the UN and the CHR as an organ of the international community acted in a manner more effective and concrete than a conventional protest and demanded the closing of the camp.

**The Contested Prison in Abu Ghraib**

What we primary know about Abu Ghraib from the mass media are the horrible pictures of US soldiers torturing prisoners. But before we talk about these images, some background knowledge is necessary.

**The Prison**

The Abu Ghraib prison is located in Abu Ghraib, about 30 kilometres to the west of Baghdad. It became known as a place were the Iraqi government tortured and executed dissidents under Saddam Hussein. In the Western media it was known as “Saddam’s Torture Central”.

After the occupation of Iraq by coalition forces in 2003, the US took control of the prison and the Iraqi government of another. Interesting in connection to our topic under discussion is the US part, known as “Camp Redemption”.
Who Were the Prisoners?

The Iraqis used the prison for convicted criminals. The US military used their section for their own Iraqi prisoners who are mostly alleged rebels or criminals picked up by US patrols. According to the International Red Cross, close to 90% of the people being held are not guilty of the allegations brought against them. In 2004 the number of prisoners was about 7000. Today, the number of captives is smaller.

Legal or Illegal Arrest and Restraint?

The legal perspective of Abu Ghrab is as alarming as the treatment of the prisoners. Indeed, the Ministry of Justice is the only authority in Iraq with the legal right to hold any person in prison. Thus, the people who are arrested in Abu Ghrab by the US military are kept unlawfully.

The international community first knew about the political scandal and human tragedy of Abu Ghrab in April 2004. Members of the US military police and the CIA committed acts of torture and mistreatment against prisoners.

The human rights violations in connection with Abu Ghrab are quite obvious. There are, according to the International Red Cross, people who were arrested by members of the US military and the US military police as alleged rebels without definite evidence. As mentioned already, their restraint in the US-controlled part of Abu Ghrab through US military personnel is against the law because only the Ministry of Justice has the authority to hold people in prison. Again, it must be underlined that arrest and restraint of Iraqi people by the US is illegal.

Publication of the Facts

We know the facts from the Taguba-report. This was an official military inquiry in 2003 by Major General Antonio Taguba. It was classified “secret” and dated “April 2004”. Taguba found that between October and December 2003 there were numerous instances of criminal abuses of prisoners. The report also said that about 60% of the arrested people were no threat to society and innocent. General Taguba also found a number of organisational and leadership failures. For example, he found that reservists without adequate training were responsible for guarding the prison. The failures listed in the report especially concerned members of the 372nd Military Police Company and also intelligence officers.

All of this was made public in April 2004 through an article in the New Yorker Magazine. The report of this investigation showed pictures and facts of US military personnel abusing prisoners. This publication resulted in a political scandal, and the credibility and public image of the US and their allies was extremely damaged. There were rumours of torture and abuse and even war crimes in Abu Ghrab throughout 2003. Hence, Amnesty International called for an independent investigation.

Torture and Abuse

The conditions of imprisonment, especially torture and abuse, at Abu Ghrab are clear offences against international law. Many pictures from the prison document the intolerable situation and act as evidence for acts against humanity, such as:

- Physical violence
- videotaping and photographing naked male and female prisoners
- photographing and posing with the bodies of dead prisoners
- pouring cold water on naked detainees
- placing a dog chain around a naked prisoner's neck with a female soldier posing for a picture

These are only a few examples of things that happened in the prison under US control.

Consequences

Seventeen soldiers and officers were removed from duty by the Ministry of Defense. Seven of these soldiers were convicted by court martial between May and September 2005.

There are two names which are especially well known in this connection: Charles Graner and Lynndie England. Both were sentenced to ten years and three years respectively in prison in January and September 2005. These sentences were imposed although the families of the accused soldiers argued that the abuses
occurred under the direction of higher-ranking military officers and the CIA. However, appealing to superior orders is not a defense for war crimes.

The commanding officer of the Abu Ghraib prison, Brig. General Janis Karpinski, was also demoted to the rank of colonel.

After the publication of the facts, US Minister of Defense Donald Rumsfeld declared his responsibility for the incidents, but he did not resign. The US administration merely saw failures of a few single persons and called it an isolated incident.

As a reaction to the political scandal, the US decided on March 9th, 2006 to start the process of closing Abu Ghraib and taking the detainees to other prisons in Iraq. However, all of these steps do not solve the problem, as nothing is preventing the US from letting such crimes happen again in another location.

**Currently Relevant HR Violations in the Republic of Belarus by Organs of the State**

After the recent elections in the Republic of Belarus, Alexander Lukashenko was confirmed as president for a third term. Many international GOs (governmental organisations) and NGOs (non-governmental organisation) criticised the election as fraud. However, the regime is still supported by the Russian Federation.

Amnesty International is concerned that, although Belarus has signed the International Covenant on Civil and Political Rights (ICCPR), the Belarusian authorities have become intolerant to any public criticism and dissent. The government uses excessive force, mass detentions and long-term imprisonment as methods to suppress any civil or political dissent. The imprisonment of 26 independent journalists after the recent elections is only one example.

**Arrest and Restraint**

“The Belarusian government widely uses controversial legislation to restrict the possibilities for non-governmental organisations, political parties, trade unions, journalists and individuals to express their peaceful opinion. For example, the use of official warnings in combination with a bureaucratic system of registration and a controversial set of guidelines has decimated the number of Human Rights organisations. Criminal insult and slander against the President of Belarus are an increasingly used criminal charge, which can result in long-term imprisonment.”

The constitution of the Republic of Belarus guarantees the freedom of expression in Article 33. Furthermore, Belarus has ratified several international treaties that bind it legally to observe this freedom. Therefore, using the Belarusian Criminal Code to suppress the right to freedom of expression violates the government’s international human rights obligations. Many arrests are illegal because they are an unlawful acts against the signed Human Rights treaties and the Belarusian constitution.

Criminal law should not be used in a way as to stifle criticism of state authorities’ policies or to intimidate those who voice legitimate concerns about the actions of state authorities. Several articles of the Belarusian Criminal Code are being used by the authorities for these purposes. For example, Defamation of the President (Article 367) can result in up to five years in prison.

Another problem is that many prisoners are under arrest for political reasons. For example, there are many people who have been arrested during or after demonstrations. Very often, people are imprisoned for just a few days without any trial. The time of imprisonment is very short, so NGOs like Amnesty International are unable to react quickly enough. However, the time of imprisonment is long enough for practices of physical and psychological maltreatment.

**Arrest-Conditions, Treatment of the Prisoners, Torture**

The conditions of imprisonment and treatment of prisoners in Belarus are far from a standard that respects human rights. Particularly after the recent elections, the Belarusian government used the demonstrations as a pretext to arrest several people who protested publicly against the obvious electoral fraud and President Lukashenko.
A special case occurred in April 2006 when Belarusian police special forces disrupted peaceful resistance in Minsk with excessive force. More than 400 people were arrested in the country. Increasingly specific information about the procedure of the arrest has become public. Police forces struck the peaceful demonstrators with their batons and threatened women while and after arresting them (and later in prison) with rape and the death penalty. In the prison of Okrestina, women were forced to take off all their clothes, were scanned by male policemen, and threatened again. Human Rights NGOs like the International Community for Human Rights report that many young women got sick during the procedure because of the catastrophically poor hygienic conditions in Okrestina.

All of the above can be defined as physical and psychological torture. Prisoners were maltreated with batons and psychologically threatened with death and rape. Although threats are not the primary methods of getting information, they are designed to intimidate people and to break any resistance against the Belarusian regime.

What Has Happened So Far?

Observers of the OSCE criticised the recent elections and the election of Alexander Lukashenko as electoral fraud. They have also criticised abuses by state authorities such as the police and their mass imprisonment of peaceful demonstrators.

The European Union has tried to exert pressure on the Belarusian government because of these massive human rights violations, especially after the elections. For this purpose, an EU delegation met Belarusian demonstrators and members of opposition groups. Many Belarusian politicians, including president Lukashenko, are on an EU list that forbids them to enter the European Union. This EU document also requests the Republic of Belarus to release all political prisoners who were arrested because of their peaceful expression of opinion and to put an end to the suppression of the freedom of expression. In particular, the Belarusian authorities and especially the police forces are requested to respect human rights and not to use methods of physical or psychological maltreatment.
Useful Links:

United Nations Offices:
UN Headquarters in New York: [http://www.un.org/]
UN Headquarters in Geneva: [http://www.unog.ch/]
UN Headquarters in Vienna: [http://www.unvienna.org/unov/index.html]
UN Headquarters in Nairobi: [http://www.unon.org/]

About the UN-System:
UN organisation-chart: [http://www.un.org/aboutun/chart.html]
The UN Commission on Human Rights: [http://www.ohchr.org/english/bodies/chr/index.htm]
Background-information on CHR: [http://www.ohchr.org/english/bodies/chr/background.htm]
Human Rights Bodies: [http://www.ohchr.org/english/bodies/]
Further information on the CHR: [http://www.ohchr.org/english/bodies/chr/index.htm]
The Human Rights Council: [http://www.ohchr.org/english/bodies/hrcouncil/]
Further information on the UN HRC: [http://www.globalpolicy.org/reform/topics/hrcindex.htm]
The original CHR Rules of Procedure: [http://www.ohchr.org/english/bodies/rules3.htm#x41]
The Members of the CHR in it’s 62nd session in Geneva: [http://www.ohchr.org/english/bodies/chr/membership.htm]

Important Human Rights Documents:
“In larger freedom” Report by the Secretary General: [http://www.un.org/largerfreedom/contents.htm]

Examples for UN Resolutions:
CHR documentation: [http://www.ohchr.org/english/bodies/chr/sessions/61/documents.htm]

Further Useful Links for the Topic under Discussion:
Links on “Guantanamo Bay”:
[http://www.nsgtmo.navy.mil/]
[http://web.amnesty.org/pages/guantanamobay-index-eng]
[http://www.hrw.org/doc/?t=usa_gitmo]
[http://www.washingtonpost.com/wp-dyn/content/article/2006/03/04/AR2006030401183.html]