



PMUNC 2015

International Criminal Court

Chair: Sukrit Puri

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Chair's Letter

Dear Delegates

While I was in high school, Facebook rolled out an update that allowed users to create a list of their Inspirational Persons. Along with Stephen Colbert, I added Henry Kissinger to the list. A few years later, my parents ran into the famous statesman, and my mom unabashedly leapt at the chance to score me his autograph, which I hung up proudly on my wall next to a poster that read, “Power is the greatest aphrodisiac’ – Henry Kissinger”.

Welcome to the International Criminal Court committee at PMUNC 2015, where we will be trying my hero, Henry Kissinger.

The purpose of this committee is to simulate what will never be. Be prepared to prosecute, defend, and judge three world leaders who have never seen and will probably never see a courtroom, but whose actions demand a trial.

We will be trying Talaat Pasha posthumously as the man who perpetrated the Armenian Genocide of 1915, an issue often overlooked and airbrushed by history (and also an issue that curiously came to popular attention this year thanks to Kim Kardashian). We will also be trying George W. Bush for overseeing the inhumane torture of detainees in Afghanistan. And finally, we will prosecute the Bismarckian statesman Kissinger for war crimes committed in Cambodia at the end of the Vietnam War. I'm excited to preside over these sessions!

A bit about me: I'm a third year student at Princeton, and this will be my fifth PMUNC—I competed at PMUNC in high school too! I'm from New Delhi, India, but I finished my high school in New York, and now I live in Belgium. When I'm not playing FIFA or watching hours of late night talk shows (Conan is a favorite), I study economics, with certificates in political economy and statistics and machine learning. On campus, I'm heavily involved with Princeton's International Relations Council, and used to captain the Princeton collegiate Model UN team. And these days I'm seeing if I can receive university funding to create a Kanye Appreciation Society of Princeton (it seems unlikely as of this writing).

I'm looking forward to a great conference,

Sincerely,
Sukrit Puri

Introduction

Note: The majority of this introduction to the ICC is identical to that which was contained in the background guide for the ICC committee simulated at PMUNC 2014, written by Aaron Hauptman, who was the chair for that committee, and Martha Jachimski. Additional edits have since been made by Ararat Gocmen.

The Founding of the International Criminal Court

The International Criminal Court (ICC) is a relatively recent addition to the world's set of supranational institutions, with its founding treaty having entered into effect in 2002. The ICC serves as “the court of last resort for the prosecution of genocide, war crimes, and crimes against humanity.”¹ The creation of the ICC marked the first time that a collection of sovereign states signaled their willingness to follow the rulings of a permanent international legal institution charged with the punishing of criminal acts committed

on their soil or by their citizens.² Though the parties to the Rome Statute accepted the jurisdiction of the ICC, the purpose of the court is not to replace the national laws of its signatories: “The ICC can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.”³ In this way, the ICC acts as a fail-safe mechanism to address the most serious crimes in the case that the States on their own refuse to act.

The desire to create an institution like the ICC had its basis in the aftermath of the Second World War, as the international community sought to address the atrocities committed in the first half of the twentieth century. The brutality of Nazi Germany shocked the Allies, who set one of their key post-war goals to be the redress and punishment of all those involved in the crimes through an

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<http://www.hrw.org/topic/international-justice/international-criminal-court>

² http://www.icc-cpi.int/iccdocs/PIDS/publications/UICC_Eng.pdf

³ Ibid.

organized system of international justice.⁴ U.S. Supreme Court Justice Robert M. Jackson, who served as the Chief US Representative at Nuremberg, saw the tribunals as a crucial part of the post-war reconciliation, given the levels of brutality reached by the war, and an important precedent for future standards of conduct for war: “We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow ... We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity’s aspirations to do justice.”⁵ Following the end of the war, the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East in Tokyo were established, with each of the key Allied nations appointing justices to try all those who ordered, implemented, and were involved in the campaigns of mass murder, diaspora, and ethnic cleansing.⁶ These courts serve largely as the “moral legacy” which formed the basis for a

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<http://www.parl.gc.ca/content/lop/researchpublications/prb0211-e.htm>

⁵ Ibid.

⁶ Ibid.

future international criminal justice system, though their unclear rules of procedure, standards for evidence, and lack of international representation make them significantly different from today’s ICC. The momentum for the creation of the ICC was reawakened after the end of the Cold War, and on July 17th, 1998, the conference in Rome to establish the ICC adopted the Rome Statute.⁷ The treaty went into effect on July 1st, 2002, with 60 states ratifying the treaty.

The establishment of the ICC was the product of several ambitions of the international community. Many international legal experts hoped that the creation of an impartial international court would help end some brutal conflicts. Former Nuremberg prosecutor Benjamin B. Ferencz saw the reestablishment of justice as a necessary precondition to a lasting peace.⁸ The creation of two recent ad hoc tribunals—in the former Yugoslavia and in Rwanda—was motivated by the hope that guaranteeing

⁷ http://www.icc-cpi.int/iccdocs/PIDS/publications/UIICC_Eng.pdf

⁸

<http://legal.un.org/icc/general/overview.htm>

the punishment of at least a portion of the war criminals would bring the end of violence more quickly and prevent a resurgence of fighting.⁹ The establishment of the ICC was also intended partially to deter future war criminals, given the historical lack of punishment for those who committed the most brutal crimes, especially those holding high positions of power.¹⁰

Organizational Structure

According to its charter, the Court has jurisdiction over international crimes only when they were committed by a national of or on the territory of one of its member states.¹¹ This requirement may be circumvented when a situation is referred to the ICC Prosecutor by the United Nations Security Council, as its resolutions are technically binding on all UN members, or if a state declares its willingness to abide by the Court's ruling.¹²

⁹ Ibid.

¹⁰ Ibid.

¹¹ http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx

¹² Ibid.

The Office of the Prosecutor is one of the key organs of the ICC, with the head prosecutor elected by the Assembly of States party to the Rome Statute. The Office of the Prosecutor receives and examines referrals of crimes to the Court to determine whether or not there is a legal basis for future investigations or proceedings.¹³ Its mandate creates three divisions within the Office: The Investigation Division, which is required to cover both incriminating and exonerating evidence; The Prosecution Division, which is principally responsible for litigation; and the Jurisdiction, Complementarity, and Cooperation Division, which assesses the admissibility of evidence, coordinates with people outside the ICC on investigation, and handles the Court's external affairs.¹⁴ In addition to responding to referrals of crimes, the Office of the Prosecutor may also launch its own investigations into potential crimes, which must then be confirmed by a panel of judges in the Pre-Trial Chamber of the Court.¹⁵

¹³ http://www.icc-cpi.int/iccdocs/PIDS/publications/OTP_Eng.pdf

¹⁴ Ibid.

¹⁵ Ibid.

In order to judge crimes impartially, the Court also has a division charged with defending those indicted.¹⁶ In order to ensure the due process rights of all defendants, article 67 of the Rome Statute states that the accused is “entitled to a public, impartial and fair hearing.” To that end the accused is guaranteed the following provisions:

- Trial without undue delay
- Defense by a lawyer of their choice, along with the ability to present evidence and call witnesses
- Legal assistance provided by the court if they lack the resources to appoint their own lawyer
- Information about the witnesses to be called by the prosecution, and the right to challenge the credibility of those witnesses
- The right against self-incrimination and to remain silent, without silence being held equivalent to an admission of guilt or innocence.

¹⁶ <http://www.icc-cpi.int/iccdocs/PIDS/publications/DefenceEng.pdf>

- The disclosure by the Office of the Prosecutor of any evidence found during the investigation which points to the innocence of the accused.¹⁷

The Court itself is made up of 18 judges from different member countries, each elected for nine year terms by the Assembly of States. The election of judges takes into account their individual competence in criminal law and human rights, as well as the “need to represent the world’s principal legal systems, a fair representation of men and women, and equitable geographical distribution.”¹⁸ Judges are not allowed to participate in cases in which their impartiality may be in question.¹⁹ The judges choose a President and two Vice-Presidents from their ranks. They are organized into three divisions in order to handle every step of the legal process: Pretrial, Trial, and Appeals. Each case is therefore heard by multiple judges at each stage of litigation.²⁰

¹⁷ Ibid.

¹⁸ <http://www.icc-cpi.int/iccdocs/PIDS/publications/JudgeSENG.pdf>

¹⁹ Ibid.

²⁰ Ibid.

The ICC and International Law

The Court's Legal Position

Unlike the International Court of Justice, an organ of the United Nations, the International Criminal Court's charter provides for universal jurisdiction. Whereas the ICJ has limited jurisdiction and allows UN members to voluntarily and conditionally accept its rulings, the ICC's universal jurisdiction means that has jurisdiction everywhere since it can receive cases from non-member states through the UN Security Council.²¹ In order to exercise this jurisdiction and effectively implement the international legal principles enshrined in the Rome Statute, the ICC has extensive protocols for international cooperation and assistance between the Court and national authorities.²²

Relevant Legal Concepts: Criminal Responsibility

²¹

<http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/intlcrimincourt.authcheckdam.pdf>

²² Ibid.

The legal principles used by the International Criminal Court are clearly delineated in the Rome Statute, and each delegate should take some time to familiarize themselves with them. The key provisions will be explained in this section, though they can all be found in Section 3 of the Rome Statute.

Article 24: Non-retroactivity *ratione personae*

This article can be seen as a parallel to the principle of U.S. law that prevents ex-post-facto prosecution. The accused may not be held as criminally responsible for an act that occurred prior to the entry into force of the Rome Statute or one of its amendments. If the law is changed during the court's proceedings, the law more favorable to the accused shall apply.

Article 25: Individual criminal responsibility

An individual may be deemed criminally responsible for an act if they committed it alone or jointly with another person, "regardless of whether that other person is criminally responsible." As stated earlier, someone may also be responsible even if they did not directly commit the

crime, in the case that they ordered, solicited, or induced the crime or its attempt. Aiding, abetting, or assisting the crime also implies responsibility. Any contribution to the crime will result in responsibility if it was “made with the aim of furthering the criminal activity” and if it was “made in the knowledge of the intention of the group to commit the crime.” In the case of a charge of genocide, any direct and public incitement of genocide makes the individual criminally responsible. It is important to note that the Rome Statute does provide for the possibility that someone withdrew support prior to the completion of the crime. Article 25(3)(f) states the following: “A person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.”

Article 27-28: Irrelevance of official capacity, and responsibility of commanders and other superiors

According to the Rome Statute, the ICC has the power to prosecute individuals even if they acted in their official capacity

as a head of state, member of government, or elected representative. Military commanders or those acting as military commanders will be held criminally responsible for crimes that happen on their watch due to their effective order or due to their failure to properly control their forces.

Articles 26, 30 & 31: When are individuals not criminally responsible?

Those who were under the age of 18 when the crime was committed are exempt from ICC prosecution. Article 30 requires that an individual commit the crime in question with both intent and knowledge. If this cannot be proven with sufficient evidence, the accused must be acquitted. They may also be excluded from criminal responsibility if “the person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or the capacity to control his or her conduct to conform to the requirements of the law.” This provision is somewhat equivalent to the idea of the “insanity defense” in the US legal system. Article 31 also provides for special circumstance in war where criminal responsibility may be excluded, where

“the person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against imminent and unlawful use of force in a manner proportionate to the degree of danger to the person protected.” The key to this provision is the proportionality of the response to the “imminent” danger. However, the Rome Statute expressly states that labeling a military operation as “defensive” alone does not necessarily exclude criminal responsibility. Lastly, Article 31 excludes responsibility if the crime was caused “by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm ... and the person acts necessarily and reasonably to avoid this threat.” Again proportionality is key in applying this provision as a successful defense.

Rules of Procedure

For the duration of the conference, each delegate will be assigned to represent one of the 18 ICC judges. Throughout the conference, each delegate will serve as the prosecution, defense, and judge on one of

the three cases. The positions will rotate after the end of each case. The assignments of the roles for each case are listed below. The cases will be brought to trial in the following order:

1. *The Prosecutor v. Mehmed Talaat Pasha*
2. *The Prosecutor v. Henry Alfred Kissinger*
3. *The Prosecutor v. George Walker Bush*

Each case hearing will have the same structure, and the time limits outlined in the following procedure are up to the chair’s discretion in order to facilitate a more productive debate.

Trial Preparation (45 minutes)

Each side will have time to gather and prepare for the trial. During this time, delegates should determine within their respective sides who will give opening statements, examine and cross-examine witnesses, and give closing statements. Delegates may draft opening and closing statements before the conference and combine these during trial preparation. Both sides must also present a written list

of requested witnesses to the chair. Judges should use this period to review the case and determine what questions they will ask the prosecution and defense during Dialogue and Discussion.

Opening Statements (15 minutes each)

During opening statements, both sides should present the background information of the case and discuss how evidence will be used throughout their presentation of the case. The charges being brought should be discussed as well as each side's theory of the case.

Direct Examination and Cross Examination of Witnesses (time limit at chair's discretion)

In direct examination, each side will question their own witnesses in order to bring information forward to the court. This will be followed by cross examination, in which the other side will question the same witnesses.

Dialogue and Discussion (time limit at chair's discretion)

Following the examination of witnesses, judges will ask the Prosecution and

Defense questions pertinent to the facts and arguments of each side's case. Each judge is encouraged to ask at least three questions.

Closing Statements (30 minutes each)

Closing statements will be presented by both sides. The Prosecution will speak first, and may elect to only use half its time before the closing statement of the Defense. After the Defense presents its closing statement, the Prosecution may use the remainder of its time to put forward a rebuttal. The closing statements should review and further analyze the evidence and arguments put forward throughout the trial, point out the relevant law, and argue for a judgment in the side's favor.

Deliberation

After closing statements the court will recess and the judges will deliberate on the case. This will happen in the form of a moderated debate in the absence of the Prosecution and Defense over which the chair shall preside. During this deliberation, the judges will produce a ruling and a statement describing the rationale behind it

Case Assignments

Sivlia Fernandez de Gurmendi (Argentina), to be played by the chair

Joyce Aluoch (Kenya)

- Prosecution: *The Prosecutor v. Mehmed Talaat Pasha*
- Defense: *The Prosecutor v. Henry Alfred Kissinger*
- Judge: *The Prosecutor v. George Walker Bush*

Chile Eboe-Osuji (Nigeria)

- Prosecution: *The Prosecutor v. Mehmed Talaat Pasha*
- Defense: *The Prosecutor v. Henry Alfred Kissinger*
- Judge: *The Prosecutor v. George Walker Bush*

Robert Fremr (Czech Republic)

- Prosecution: *The Prosecutor v. Mehmed Talaat Pasha*
- Defense: *The Prosecutor v. George Walker Bush*
- Judge: *The Prosecutor v. Henry Alfred Kissinger*

Geoffrey A. Henderson (Trinidad and Tobago)

- Prosecution: *The Prosecutor v. Mehmed Talaat Pasha*
- Defense: *The Prosecutor v. Henry Alfred Kissinger*
- Judge: *The Prosecutor v. George Walker Bush*

Olga Venecia Herrera Carbuccia (Dominican Republic)

- Prosecution: *The Prosecutor v. Henry*

Alfred Kissinger

- Defense: *The Prosecutor v. Mehmed Talaat Pasha*
- Judge: *The Prosecutor v. George Walker Bush*

Piotr Hofmanski (Poland)

- Prosecution: *The Prosecutor v. George Walker Bush*
- Defense: *The Prosecutor v. Mehmed Talaat Pasha*
- Judge: *The Prosecutor v. Henry Alfred Kissinger*

Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo)

- Prosecution: *The Prosecutor v. George Walker Bush*
- Defense: *The Prosecutor v. Mehmed Talaat Pasha*
- Judge: *The Prosecutor v. Henry Alfred Kissinger*

Sanji Mmasenono Monageng (Botswana)

- Prosecution: *The Prosecutor v. Henry Alfred Kissinger*
- Defense: *The Prosecutor v. Mehmed Talaat Pasha*
- Judge: *The Prosecutor v. George Walker Bush*

Howard Morrison (United Kingdom)

- Prosecution: *The Prosecutor v. George Walker Bush*
- Defense: *The Prosecutor v. Mehmed Talaat Pasha*
- Judge: *The Prosecutor v. Henry Alfred Kissinger*

Kuniko Ozaki (Japan)

- Prosecution: *The Prosecutor v. George Walker Bush*
- Defense: *The Prosecutor v. Henry Alfred Kissinger*
- Judge: *The Prosecutor v. Mehmed Talaat Pasha*

Marc Perin de Brichambaut (France)

- Prosecution: *The Prosecutor v. George Walker Bush*
- Defense: *The Prosecutor v. Henry Alfred Kissinger*
- Judge: *The Prosecutor v. Mehmed Talaat Pasha*

Bertram Schmitt (Germany)

- Prosecution: *The Prosecutor v. Henry Alfred Kissinger*
- Defense: *The Prosecutor v. George Walker Bush*
- Judge: *The Prosecutor v. Mehmed Talaat Pasha*

Sylvia Steiner (Brazil)

- Prosecution: *The Prosecutor v. Henry Alfred Kissinger*
- Defense: *The Prosecutor v. George Walker Bush*
- Judge: *The Prosecutor v. Mehmed Talaat Pasha*

Cuno Tarfusser (Italy)

- Prosecution: *The Prosecutor v. Henry Alfred Kissinger*
- Defense: *The Prosecutor v. George Walker Bush*
- Judge: *The Prosecutor v. Mehmed Talaat Pasha*

Christine van der Wyngaert (Belgium)

- Prosecution: *The Prosecutor v. Mehmed Talaat Pasha*
- Defense: *The Prosecutor v. George Walker Bush*
- Judge: *The Prosecutor v. Henry Alfred Kissinger*

Cases

Though the committee is a simulation of the ICC, the cases that will be simulated in this committee—the trials of Talaat Pasha, Henry Kissinger, and George W. Bush—are ones which the ICC has not and will likely never attempt to prosecute, whether for reasons of historical impossibility (Talaat Pasha was assassinated in 1921, decades before the ICC was established) or due to political and legal complications (Kissinger and Bush are both major American political figures whose crimes committed against humanity, if any, occurred during U.S. wars).

The Prosecutor v. Mehmed Talaat Pasha

The ICC has brought a case against Mehmed Talaat Pasha, the Ministry of Interior of the Ottoman Empire during the First World War. Referring to the Rome Statute, the Prosecutor charges Talaat Pasha on two counts: 1) "genocide by killing" (article 6-a) and 2) "genocide by deliberately inflicting on the target group conditions of life calculated to bring about the group's physical destruction" (article 6-c).

The charges concern Talaat Pasha's authorization of and general involvement in the mass deportations and executions of Armenians in the Ottoman Empire during the First World War, considered by many historians and officially recognized by a number of governments around the world as the first genocide of the twentieth century.²³ However, a number of academic historians maintain that the exile and killings of Armenians in the Ottoman Empire was the result of war rather than genocide, and Turkish officials also assert this view.²⁴

As the Ottoman Minister of Interior, Talaat Pasha transmitted a circular to the commander-in-chief of the Ottoman army on April 24, 1915, ordering the arrest of all the Armenian intellectuals living in Istanbul at the time, many of whom were soon after murdered.²⁵ A month later,

²³ http://www.armenian-genocide.org/recognition_countries.html

²⁴

<http://www.independent.co.uk/news/world/us-academics-join-rush-to-deny-turkish-massacre-of-armenians-1253821.html>

²⁵

https://en.wikisource.org/wiki/Circular_on_April_24_1915

Talaat Pasha requested and signed the Tehcir Law, a bill which resulted in the deportation of the Ottoman Empire's Armenian population, leading to the displacement and eventual deaths of hundreds of thousands of Armenians between the years 1915 and 1921.²⁶

All these events, of course, took place at a time when the Ottoman Empire was collapsing, leaving controversial the question of who was officially responsible for the sufferings of the Armenian people, and whether those sufferings occurred as a result of a failing administration acting in self-defense or a nationalist government seeking to ethnically cleanse their territories.

As part of this case, both the prosecution and the defense involved will have to become familiar with the historical record surrounding the Armenian genocide, including both sources that affirm and deny that what occurred to the Armenian people in those last years of the Ottoman Empire constituted genocide. Additionally, and more importantly, if those events did indeed constitute

²⁶

https://en.wikipedia.org/wiki/Tehcir_Law

genocide, the prosecution and defense will have to determine, using a combination of both legal and historical documents, Talaat Pash's direct role in the genocidal crimes that were perpetrated by the Ottoman government.

The Prosecutor v. Henry Alfred Kissinger

The ICC has brought a case against Henry Alfred Kissinger, former National Security Advisor (1969-1975) and the 56th Secretary of State (1973-1977). Referring to the Rome Statute, the Prosecutor charges Kissinger with war crimes, specifically with "intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities" (article 8(2)(e)(i)).

The charges concern Kissinger's involvement in the bombing campaigns in Cambodia during the Vietnam War, specifically the Operation Menu campaign (March 1969-May 1970). The campaigns violated the Cambodia's neutrality and resulted in massive civilian casualties in addition to the planned combatant casualties. However, no separate data for the 1969-1970 bombings exist; the total civilian death toll of the bombing

campaigns in Cambodia is estimated to be anywhere between 50,000 and 150,000 people.²⁷

Kissinger's alleged role in Operation Menu involved drafting up the plans, coordinating the required resources and political support, and supervising the developments of the campaign. Kissinger became the National Security Advisor to President Richard Nixon on January 20, 1969. At the time, the peace talks between the United States and North Vietnam had already begun and mutual de-escalation had been initiated. President Lyndon Johnson had ordered bombings to halt US bombings in Vietnam, while the National Front for Liberation of South Vietnam had formed a Provisional Revolutionary Government to gain equal status at the talks.

As such, the appropriateness and necessity of the bombing campaign is drawn to question. To avoid this debate at home, Nixon administration kept Operation Menu secret from the Congress (only three individual Congressmen and two Senators were informed), putting the

²⁷

http://www.yale.edu/cgp/Walrus_CambodiaBombing_OCT06.pdf

legality of the action to question in the context of both American and international law.

Because of the covert nature of the bombing campaign, Kissinger was personally involved in day-to-day supervision and orchestration of the attacks. Kissinger has been identified as the person who created and introduced the draft of Operation Menu, as the person who handled the communication between the President and the US Army forces carrying out the attacks, and as the person who had access to all available intelligence before any other US foreign policy agent. As the main actor behind the operation, Kissinger is believed to have well understood the potential civilian casualties that would have resulted from the actions he ordered.

Kissinger maintains that the Cambodian government was informed of the Operation Menu and that the US Army officials were instructed to minimize the potential damage to Cambodian civilians. As such, he maintains, it was a necessary and politically justifiable course of war. However, Kissinger's defense does not address the questions of urgency, of knowing and willful attacks on civilians,

and on bypassing democratic civilian oversight of military operations as established in American and international law.

The Prosecutor v. George Walker Bush

The ICC has also brought a case against the 43rd President of the United States of America, former President George Walker Bush (2001-2009). Referring to the Rome Statue, the prosecutor is trying Mr. Bush for ordering torture, a crime against humanity (article 7(1)(f)), and for imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (article 7(1)(e)).

The charges concern Bush's oversight of a program of detainee torture of supposed Al Qaeda terrorists, which is a criminal offense under U.S. civilian and military law, but not one person has yet been indicted in connection with the torture of Mohammed al-Qahtani and Mohamedou Ould Slahi. According to the Investigation by Senate Select Committee on Intelligence which was compiled in a report released on December 9, 2014, the CIA systematically misled Congress and the public about the severity and import-

ance of those interrogation methods for years.²⁸

The report details actions by CIA officials, including torturing prisoners, providing misleading or falsified information about classified CIA programs to the media, impeding government oversight and internal criticism, and mismanaging of the program. It also revealed the existence of previously unknown detainees, that more detainees were subjected to harsher treatment than was previously disclosed, and that more forms of torture were used than previously disclosed. It concluded that torturing prisoners did not help acquire actionable intelligence or gain cooperation from detainees and that the program damaged the United States' international standing.²⁹ Furthermore, according to the report, the CIA use tech-

²⁸ "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, F." United States Senate Select Committee on Intelligence. Archived on 2014-12-09. Retrieved 15 June 2015. Declassification Revisions December 3, 2014

²⁹

<http://www.feinstein.senate.gov/public/index.cfm?p=senate-intelligence-committee-study-on-cia-detention-and-interrogation-program>

niques that were at times not directly approved by the Justice Department or top CIA leadership. The study, which examined more than 6 million internal CIA documents, also concluded that the agency's management of its rendition, detention, and interrogation program, especially during 2002 and 2003, was fundamentally flawed.

Yet, an e-mail dated May 22, 2004, to senior FBI officials released under a Freedom of Information Act request repeatedly referred to an Executive Order that permitted military interrogators in Iraq to place detainees in painful stress positions, impose sensory deprivation through the use of hoods, intimidate them with military dogs and use other coercive methods more than a year after the Pentagon reputedly disavowed the use of such interrogation methods at Guantanamo Bay. The e-mail makes 11 references to an Executive Order "signed by President Bush" that authorized these abusive interrogation methods. The involvement of Mr. Bush is still unclear.