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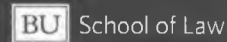


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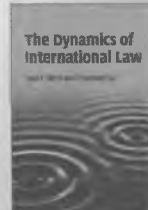
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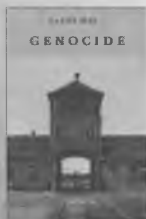
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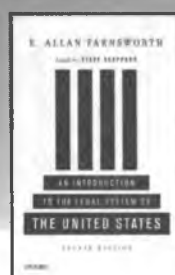
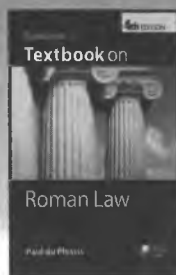
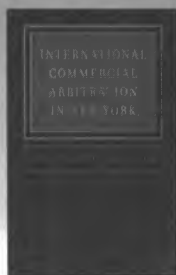
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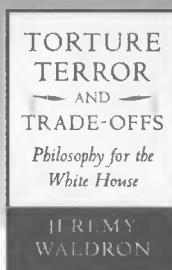
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# The Institutionalization of Torture by the Bush Administration

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M. Cherif Bassiouni



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The United States of America has historically been regarded as a moral leader opening the pathway for human rights. The country which has long struggled for the establishment of the rule of law – as well as to be a model for other nations in observing it – has, since 11 September 2001 committed abhorrent practices of torture against which it has fought when committed by others. What seems astonishing is that such practices took place in the U.S. within a climate of significant public indifference and even with some public support. Time and again, observers of tragic historic events reveal that it is not so much the evil doing of the few which allows the worst atrocities to occur, as it is the indifference of the many. The Bush administration assumed neither moral nor legal responsibility, and in the end, it is hard-put to show what positive results may have been obtained for so many transgressions.

The history of law and legal institutions has long proven the error of accepting the Machiavellian principle that the ends justify the means. In addition, the proposition that torture prevents terrorism cannot be proven true. Under torture, people tend to say whatever is expected of them. However, this is not only about pragmatic pursuits. It is about morality and ethics. The judgment has already been made that torture is unlawful.

In addition, the Guantánamo Bay practices and the unlawful seizure of persons in different parts of the world by the CIA after which they are transferred to countries where they are tortured, have proven that reliable evidence is highly unlikely to be attained under torture. In addition, most detainees have been proven to have no connection to terrorism, and most of them have been released because they were wrongly arrested. Guantánamo represents a failed policy that has caused much damage to the moral authority of the United States.

Aberrant views of torture as necessary because "the ends justify the means" have not generated much negative reaction from the legal profession, despite the fact that the 1984 Convention against Torture, the Geneva Conventions, the U.S. Constitution, and the laws of the United States have clearly prohibited such practices. Are the events of September 11, 2001 enough to have us reopen the question of whether the medieval practice of torture should be allowed? Are they enough to have its institutionalized practice undermine the integrity of the American legal process and our system of law and undermine the US' moral leadership in the world? The answer to these questions has to be a resounding and unqualified 'no'. The US must, therefore, take quick and confident action to make amends and to hold responsible those who promoted a policy of torture.

*Cherif Bassiouni, as the pre-eminent scholar in the field of international criminal law, speaks to us with unquestioned mastery of the complex legal issues involved in the Bush administration's torture practices. But his work is also imbued with personal outrage and compelling moral authority. This is legal scholarship at its best, explaining the world in order to change it. Instantly, this book becomes the authoritative work in this field.*

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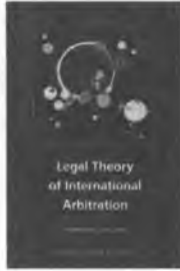
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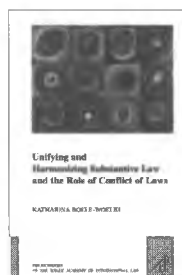
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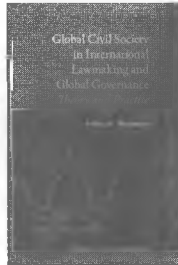
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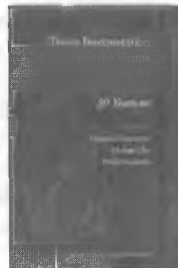


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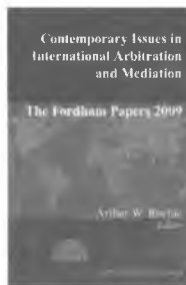
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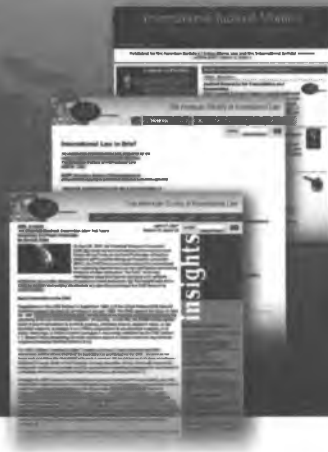
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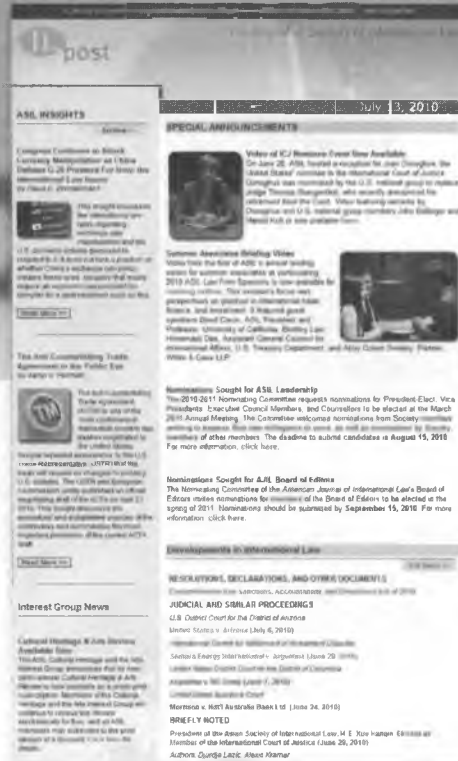
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On the one hand, international law has become segmented, as specialized international institutions and rule-making have proliferated in a variety of issue areas. Another facet of segmentation has been the proliferation of competing and complementary conceptions of international law. Some view the growing body of specialized international legal rules as creating problems in the unity of international law, ultimately undermining the international legal system's ability to promote peaceful relations among states and other actors. Others view fragmentation as a positive development that reflects the expansion and increased diversity, and hence utility, of international legal norms, particularly in accommodating the diverging interests of international actors.

On the other hand, recent years have witnessed a seemingly opposite trend towards seamlessness, as evidenced by the collapsing of boundaries between public and private international law, between non-state actors and principles of state responsibility, between law and policy, and between the prerogatives of power and the demands of principle. Areas of international law once considered distinct are increasingly—perhaps routinely—borrowing principles, jurisprudence, and practice from one another.

The paradox of simultaneous segmentation and seamlessness raises important questions. Most broadly, when should international law be segmented, and when should it be seamless? What are the mechanisms for deciding this question, and what are the values that inform those decisions? What do these trends say about international law as a coherent system? To what extent are certain groups and their viewpoints excluded or ignored? What does this say about who the influential players within the international legal system are, and how that influence is exercised? What does the existence of competing conceptions of international law itself mean for ASIL's constituents, including judges deciding international issues, practitioners seeking to persuade courts and craft international policy, and scholars seeking to understand and propose solutions to global problems?

Society members are uniquely positioned to tackle these questions with their diverse perspectives, experiences, and areas of expertise, and their unifying commitment to investigating the limits and possibilities of international law. We look forward to an exciting and dynamic meeting that will examine such trends, and their implications for international law and legal institutions in the 21st century.

