INTERNAL INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS REGARDING ABDULLAH ALMALKI, AHMAD EL MAATI AND MUAYYED NUREDDIN

JOINT SUBMISSIONS BY ABDULLAH ALMALKI, AHMAD EL MAATI & MUAYYED NUREDDIN

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PART I - OVERVIEW

1. On January 9, 2008, Commissioner Iacobucci requested further written submissions on the matters raised in the amended notice of hearing dated November 26, 2007. In light of the security and liberty interests at stake in the matters before the Inquiry, the Commissioner specifically seeks submissions about the potential role of the *Charter of Rights and Freedoms* in determining and affecting the standards of conduct required of Canadian officials from 2001 to 2004.

2. Counsel for Mr. Almalki, Mr. Nureddin and Mr. El Maati (together, the "Participants") propose that the standards of conduct of Canadian officials must reflect the *Charter* analytical framework under sections 7 and 1. As a preliminary matter, we will submit that the *Charter* directly binds Canadian officials in the performance of their duties here and abroad in the specific factual context of the three cases. We will then argue that the conduct which resulted in the violation of the Participants' section 7 rights did not accord with fundamental justice, and that in the balancing exercise under section 1, the actions of Canadian officials constituted a breach of the *Charter* that is neither proportionate nor minimally impairing.

PART II – ARGUMENTS

3. Brief submissions will be made with respect to the following three questions:

(a) Did the *Charter* apply directly to the conduct of Canadian officials vis-à-vis Messrs. Almalki, El Maati and Nureddin?

(b) Did the conduct result in a breach of the Participants' s. 7 rights that did not accord with fundamental justice? and

(c) Was the resulting violation rationally connected to the national security objectives under a s. 1 analysis?

A. APPLICABILITY OF THE CHARTER

Intersection of International Human Rights Law and Charter Rights and Obligations

4. A long line of Supreme Court of Canada authorities, marked most recently by the decision in *R. v. Hape*, confirms that Canadian legislation, including the *Charter*, is presumed to conform to international law.[1]

5. Canada's international human rights obligations must inform the interpretation of both the content and the scope of application of the *Charter*.[2]

6. Canada's international human rights obligations were fully explored in the participants' previous written submissions and at the hearing on standards held January 8th and 9th. The significance and application of those obligations will not be repeated here. It will suffice to say that the general prohibition against torture is widely accepted as a *jus cogens* norm of international law and in addition, is codified in a number of treaties including article 7 of the *International Covenant on Civil and Political Rights* and the *Convention Against Torture*.[3]

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[1] *R.* v. *Hape* 2007 (S.C.C.) 26 at para. 3; *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269 at para. 50; and *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at p. 1056

[2] *Suresh v. Canada*, [2002] 1 S.C.R. 3 at 45; *Re: Public Service Employee Relations Act (ALTA)*, [1987] 1 S.C.R. 313 at p. 349; *Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76

[3] See generally Outline of Submissions on Standards of Conduct of Human Rights Watch dated December 18, 2007 at paras. 17 to 52, and Transcript of Oral Submissions, January 8, 2008 at pp. 97-109, 219-226 and 254 - 255.

7. It is also worth emphasizing that the higher status of the prohibition against torture and inhumane treatment as a *jus cogens* norm has direct legal consequences for the legal character of all official domestic actions relating to a violation. To state the obvious, if a *jus cogens* norm is powerful enough to nullify treaty obligations, it must also serve to delegitimize any legislation, administrative or judicial act at the domestic level which in any way causes or contributes to torture.[4]

Extraterritoriality of the Charter

8. It is anticipated that the Attorney General will submit that *R. v. Hape* significantly limits the territorial reach of the *Charter* and that the *Charter* is inapplicable to the conduct of Canadian officials when acting outside of Canada in the international fight against terrorism. If that is the approach adopted by the Attorney General, the Participants submit that it is a narrow interpretation of both *Hape* and previous jurisprudence on the scope of the application of the *Charter,* and one that ignores the fundamental human rights norms at issue in this Inquiry.

9. *Hape* does not dictate that the *Charter* has no application to the conduct at issue in this Inquiry. We make this submission for the following reasons:

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[4] *Prosecutor v. Furundzija* (December 10, 1998), Case No. 1T-95-17/I-T 10 (ICTY) at paras. 155 to 157. The same could be said for other serious human rights violations having *jus cogens* status, such as disappearance of individuals and prolonged arbitrary detention: see authorities cited by Warren Allmand, Transcript of Oral Submissions, January 9, 2008 at pp. 306-308.

(a) *Hape* was primarily concerned with the exercise of *enforcement* jurisdiction in another state by RCMP officials conducting an investigation in conformity with the foreign state's local laws. There is no similar issue on the known facts before the current Commission. Canadian officials did not exercise powers of enforcement (*eg*, arrest, search and seizure, prosecution) in Syria and Egypt;

(b) Rather, we are concerned in this hearing with the *prescriptive* nature of the *Charter*. Clearly, the Government of Canada acts within its power when it makes rules, issues commands or grants authorizations binding upon RCMP, CSIS and consular officials in the exercise of their official duties vis-à-vis Canadian citizens;

(c) In any event, the concerns about extra-territorial enforcement and adjudicative jurisdiction which were determinative of the *Hape* case are not triggered in this context because we are dealing with violations of human rights that are matters of universal jurisdiction. A breach of the right to be free from torture or other inhumane treatment is recognized as an offence of universal jurisdiction under the Criminal Code. Canada would not violate any state's sovereignty, for example, if it sought to try someone accused of torture committed in another territory. Given this universal jurisdiction, it cannot be argued that the *Charter* rights which reflect the same norms do not extend beyond Canadian territory; [5]

[5] Criminal Code, R.S.C. 1985, c. C-46, s. 7; *Hape* at para. 66

(d) Based on the facts as we know them, the relevant conduct, including decisions to share information, took place within Canada or at Canadian Consulates abroad which, for the purposes of international law, are considered Canadian jurisdiction. There is therefore no issue here, as there was in *Hape*, of the enforcement of Canadian law in another state's territory without the other state's consent; [6]

(e) Respect for state sovereignty, on which the majority decision in *Hape* largely turns, is not absolute. As the majority states at para. 43, developments in international human rights law provide legitimate limits on a state's sovereignty;

(f) Similarly, the principle of comity, which is also provided as a rationale for limiting the extra-territoriality of the *Charter* in *Hape*, is not an excuse for condoning another state's breach of international law. The majority in *Hape* specifically states that deference for the way in which a foreign state chooses to provide assistance within its borders in criminal investigations ends where clear violations of international law and fundamental human rights are in issue.[7] Thus, even if Canadian officials engaged in conduct in a foreign territory not subject to Canada's jurisdiction (like Syria and Egypt), the reach

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[6] *Hape* at para. 84

[7] *Ibid.* at paras. 51 and 52

of the *Charter* is not circumscribed on the basis of a state's sovereignty or principles of comity where the conduct violates fundamental human rights;

(g) Whether or not the three men would be successful in a *Charter* application is not at issue. What is sought is the use of a *Charter* analytical framework in determining appropriate standards of conduct. *Hape* itself stands for the proposition that Canadian police should "strive to conduct investigations outside Canada in accordance with the letter and spirit of the *Charter*, even when its guarantees do not apply directly."[8]

10. In the result, the Participants submit that the *Charter* applies to the conduct of Canadian officials in the context of the three cases, both because the facts suggest the relevant conduct took place within Canada's territorial jurisdiction, and because the *Hape* framework supports the application of the *Charter* where rights having *jus cogens* status are jeopardized.

B. THE CONDUCT IN QUESTION VIOLATED SECTION 7

11. There is no question that Canadian officials were required to consider the Participants' rights to life, liberty and security of the person in determining their course of conduct. Further, there can be no debate that the treatment and prolonged detention meted out by Syrian and Egyptian officials resulted in a severe violation of those rights.

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[8] *Ibid.* at para. 112

12. The Supreme Court of Canada has stated definitively that the guarantee of fundamental justice under s. 7 applies even to deprivations of life, liberty or security effected by actors other than our own government, if there is **a sufficient causal connection between our government's participation and the deprivation ultimately effected**. As the Court in *Suresh* stated:

> ...where Canada's participation is a necessary precondition for the deprivation and where the deprivation is an entirely foreseeable consequence of Canada's participation, the government does not avoid the guarantee of fundamental justice merely because the deprivation in question would be effected by someone else's hand.[9]

13. The obligations of state actors that flow from the Participants' s. 7 rights must inform the standard of conduct expected of those actors in 2001 to 2004. As *Suresh* makes clear, it is no answer to say that the deprivation of life, liberty or security of the three individuals occurred at the hands of Syrian or Egyptian officials. The standard of conduct, therefore, as informed by s. 7, was whether the sharing of information or other act or omission by Canadian officials would foreseeably result in a breach of the men's s. 7 rights.[10]

14. The Court in *Suresh* proposed that a balancing exercise must take place – between the conditions of the person whose s. 7 rights are engaged and the danger that the person presents to Canada's security – in order to determine whether the deprivation of the

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[9] *Suresh v. Canada*, [2002] 1 SCR 3 at para. 54

[10] See also *Canada v. Schmidt*, [1987] 1 S.C.R. 500 at p. 522 in which La Forest, J. recognized [in the context of extradition to torture] that "the manner in which the courts deal with the fugitive on surrender, whether that course of conduct is justifiable or not under the law of that country, may be such that it would violate the principles of fundamental justice to surrender an accused under those circumstances."

right to life, liberty and security conforms with principles of fundamental justice.[11] In a more recent decision, however, the Supreme Court of Canada has made clear that no such balancing exercise ought to take place in the s. 7 analysis. In *Charkaoui*, the Court held:

> Unlike s. 1, s. 7 is not concerned with whether a limit on life, liberty or security of the person is *justified*, but with whether the limit has been imposed in a way that respects the principles of fundamental justice. Hence, it has been held that s. 7 does not permit "a free-standing inquiry... into whether a particular legislative measure 'strikes the right balance' between individual and societal interests in general" (*Malmo-Levine*, at para. 96). Nor is "achieving the right balance... itself an overarching principle of fundamental justice" (*ibid.*). As the majority in *Malmo-Levine* noted, to hold otherwise "would entirely collapse the s. 1 inquiry into s. 7" (*ibid.*). This in turn would relieve the state from its burden of justifying intrusive measures, and require the *Charter* complainant to show that the measures are not justified.[12]

15. The Court in *Charkaoui* made clear that security concerns cannot be used to excuse procedures that do not conform to fundamental justice at the s. 7 stage of the analysis.[13] By extension, therefore, whatever the security concerns at issue in the investigations of the Participants, they could not excuse conduct that resulted in the violation of the men's s. 7 rights and fundamental justice.

16. Despite its flawed approach to the s. 7 analysis, the Court in *Suresh* nevertheless confirmed that torture is an instrument of terror, not of justice, which is seen in Canada as fundamentally unjust.[14] The Court further confirmed its historic position that

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[11] *Suresh* at para. 45

[12] *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 SCR 350 at para. 21; *R. v. Malmo-Levine*, [2003] 3 SCR 571

[13] *Ibid.* at para. 23

[14] *Suresh* at para. 51

extraditing a person to face torture would be inconsistent with fundamental justice, and ultimately concluded that, "barring extraordinary circumstances, deportation to torture will generally violate the principles of fundamental justice protected by s. 7 of the *Charter*."[15]

17. Unfortunately, the Court in *Suresh* did appear to leave open the possibility that there might be a circumstance in which Canada's interest in combating terrorism and protecting public security might outweigh the claimant's interest in not being subjected to torture or other serious human rights violations.[16] The Participants submit that leaving the door ajar even slightly was an error on the Court's part. This aspect of the *Suresh* decision has been criticized on the basis that deportation to torture can **never** be justified. Critics have opined that if the events of 9/11 had not occurred just prior to its release, this aspect of the *Suresh* decision likely would have been different.[17]

18. Given that international law rejects deportation to torture even where national security interests are at stake,[18] the principles of fundamental justice under s. 7 of the *Charter* must similarly dictate that **conduct by Canadian officials which foreseeably could cause or contribute to the subjection of a Canadian citizen to torture or other serious human rights violation can never be in accordance with the principles of fundamental justice.** There is no difference in principle between sending a person to a state where there is a

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[15] *Ibid.* at para. 76

[16] *Ibid.* at para. 78

[17] See for example John Terry, "Human Rights and Security Interests: *Suresh v. Canada* and Its Uncertain Legacy" [2005] *Transatlantic Quarterly* 38 at 39

[18] *Suresh* at para. 75

material risk of torture and sending information about a person to a state where the same risk exists.[19]

19. Thus, the relevant standard of conduct could be termed as follows: If the proposed action (or refusal to act) could reasonably foreseeably cause or contribute to a violation of s. 7 rights (especially the right to be free from torture or other inhumane treatment, but also the important right to liberty), then the action (or omission) is proscribed. "Reasonably foreseeable" in this context does not require a civil standard of proof. Rather, so long as there is "more than a flimsy suspicion", the s. 7 rights are engaged.[20] Such a standard is supported by *Suresh* and the line of authorities preceding it, and is consistent with international human rights law and jurisprudence.[21]

20. In the alternative, even if the balancing exercise might theoretically result in a determination that national security interests outweigh the risk of torture, such conduct could not be saved by s. 1. It is to that balancing exercise that we now turn.

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[19] There are analytical standards for determining forseeability which are applied by the courts in relation to human rights breaches. The standard for determining if a person has a well founded fear of persecution (which includes torture and other forms of cruel and inhumane treatment) if returned to the person's country is 'serious possibility' see *Adjei v M.E.I.*, [1989] F.C.J. No. 67 at para. 11. The Court in *Adjei* drew upon the reasoning of the House of Lords in *Reg. v. Governor of Pentonville Prison, Ex Parte Fernandez*, [1971] 1 W.L.R. 987, at p. 994 (per Lord Diplock), which addressed the obligation not to extradite a fugitive where he might, if returned, be prejudiced at his trial or punished, detained or restricted. The House of Lords adopted the serious reasons test in part because the decision maker was required to make an assessment of future events, not yet occurring. See also UNCAT General Comment on the Implementation of Article 3 in the Context of Article 22 of the *Convention Against Torture*, UN Doc. CAT/CIXX/Misc. 1 (1997), at paras. 6, 7. The standards for assessing risk to a person on removal to another state generally fall between more than a mere possibility and a balance of probabilities: *infra* footnote 20.

[20] *Chiau v. MCI,* [1998] F.C.J. No. 131. (T.D.) at para. 27; see also *Al Yamani v. Canada (Solicitor General),* [1996] 1 F.C. 174 (T.D.); *Ramirez v. Canada (M.C.I.)*, [1992] 2 F.C. 306; and *Sivakumar v. M.C.I.* [1994] 1 F.C. 433

[21] The prohibition against torture applies to **reasonably foreseeable breaches by other states**: Eur.Ct. H.R. *Soering Case,* judgment of 7 July 1989, Series A. No 161 at para. 91

C. SECTION 7 VIOLATION NOT SAVED UNDER SECTION 1

21. A violation of s. 7 will be saved by s. 1 "only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like."[22]

22. It is submitted that "exceptional circumstances" must be those where there is sound evidence of a danger to the national security of Canada that is direct, imminent and extremely serious. No such danger existed in the cases of the three Participants. No natural disasters, outbreak of war[23] or epidemics gave rise to exceptional conditions.

23. Even if it is established that there is a very serious, imminent and direct danger to Canada's national security, conduct that causes or contributes to the torture or other serious human rights violation of a Canadian citizen could not be saved under s. 1 unless the violation is proportionate to the threat. To demonstrate proportionality,

a) there must be a rational connection between the conduct and the elimination of the danger;

b) the conduct must be the last possible resort to eliminate the danger; and

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[22] *Suresh* at para. 78; *Re B.C. Motor Vehicles Act,* [1985] 2 SCR 486 at p. 518

[23] While the rhetoric of "war" is often used to describe anti-terrorism measures, it is unreasonable to characterize the 2001-2004 period as a period of armed conflict giving rise to exceptional conditions. For a discussion of the fallacy of the "war" terminology used by the Bush Administration and others, see Rapporteur Dick Marty's Report to the Council of Europe, "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report" (7 June 2007) at pp. 68-69 [available at http://assembly.coe.int].

c) the danger to Canada must outweigh the risk to the Canadian citizen in question.[24]

24. For the reasons set out under part B, above, where the violation in question is a risk of torture, the balancing exercise must always fall in favour of protecting the human rights of the individual in question. But even on a pure "rational connection" test, the conduct could never be saved under s. 1. In order to justify the conduct that is violative of the citizen's s. 7 rights, there must be a rational connection between the means –information sharing, for example, where it is reasonably foreseeable it could result in the torture of the individual – and the ends – elimination of the danger to security. There is no rational connection between torture and security.

25. Again, turning to *Suresh*, the Supreme Court of Canada has confirmed that torture does not increase security, let alone *eliminate* dangers to it. Likewise, the Supreme Court of Israel sitting as the High Court of Justice rejected torture as a legitimate tool to use in combating terrorism and protecting national security.[25]

26. The UN Rapporteur on Torture has similarly confirmed that torture does not promote national security[26] as have numerous others.[27] Indeed, an expert group of American

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[24] This s. 1 framework is analogous to the test for applying the "danger to the security of the country" exception in Article 33(2) of the Refugee Convention proposed by the UNHCR in *Suresh*.

[25] *Suresh* at para. 74; *Hat'm Abu Zayda v. Israel General Security Service*, 38 I.L.M. 1471 (1999)

[26] Manfred Nowak, "UN Special Rapporteur on Torture, Manfred Nowak 26 June 2006 Statement", online: International Rehabilitation Council for Torture Victims <http://www.irct.org/Default.aspx?ID=1036>

[27] See for example Eitan Felners. "Torture and Terrorism: Painful Lessons from Israel" in Kenneth Roth & Minky Worden, eds., *Torture - A Human Rights Perspective* (New York & London: The New Press, 2005) 28 where the author argues persuasively that the "Israeli experience categorically proves the fallacy of believing - as some influential American policy-makers do today - that it is possible to legitimize the use of torture to thwart

"intelligence scientists" has criticized the CIA's use of "enhanced interrogation techniques" as ineffective in gathering accurate intelligence.[28]

27. In light of the absence of a rational connection between the use of torture and the elimination of threats to security, information sharing or other conduct by Canadian officials that exposes citizens to the risk of torture is contrary to fundamental justice and cannot be saved under a s. 1 analysis.

28. Thus, applying the *Charter* analytical framework to the question of standards of conduct, the Participants submit as follows:

(a) The *Charter* applied directly to the conduct of Canadian officials vis-à-vis Messrs. Almalki, El Maati and Nureddin.

(b) It was reasonably foreseeable that the conduct would result in a deprivation of the Participants' rights to life, liberty and security of the person. The conduct of Canadian officials, therefore, resulted in a breach of the Participants' s. 7 rights that did not conform with fundamental justice.

(c) The resulting violation was not rationally connected to the national security objectives under a s. 1 analysis because of the absence of exceptional

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terrorism attacks and at the same time restrict its use to exceptional cases."

[28] US National Defence Intelligence College, Intelligence Science Board, *Educing Information – Interrogation: Science and Art (Foundations for the Future)*, Phase I Report, Washington, D.C. completed December 2006.

circumstances, and of a rational connection between the conduct and the elimination of a serious threat to national security.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 25, 2008

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CASES AND AUTHORITIES

Statutory Authorities

1. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982

2. *Convention Against Torture,* UN Doc. CAT/CIXX/Misc. 1 (1997)

3. *Criminal Code,* R.S. 1985, c. C-46

4. *International Covenant on Civil and Political Rights,* G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

Cases

5. *Adjei v. M.E.I.*, [1989] 2 F.C. 680

6. *Al Yamani v. Canada (Solicitor General),* [1996] 1 F.C. 174 (T.D.)

7. *B.C. Motor Vehicles Act,* [1985] 2 SCR 486

8. *Canada v. Schmidt*, [1987] 1 S.C.R. 500

9. *Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76

10. *Charkaoui v. Canada (Citizenship and Immigration),* [2007] 1 SCR 350

11. *Chiau v. MCI,* [1998] F.C.J. No. 131

12. *Hat'm Abu Zayda v. Israel General Security Service*, 38 I.L.M. 1471 (1999)

13. *Li v. M.C.I.*, [2005] F.C.J. No. 1 (C.A.)

14. *Prosecutor v. Furundzija* (Dec. 10, 1998), Case No. 1T-95-17/I-T 10 (ICTY)

15. *Public Service Employee Relations Act (ALTA)*, [1987] 1 S.C.R. 313

16. *R.* v. *Hape* 2007 (S.C.C.) 26

17. *Ramirez v. Canada (M.C.I.)*, [1992] 2 F.C. 306

18. *Reg. v. Governor of Pentonville Prison, Ex Parte Fernandez*, [1971] 1 W.L.R. 987

19. *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269

20. *Sivakumar v. M.C.I.* [1994] 1 F.C. 433

21. *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038

22. *Soering Case,* judgment of 7 July 1989, Series A. No 161 (Eur.Ct. H.R.)

23. *Suresh v. Canada*, [2002] 1 S.C.R. 3

Secondary Sources

24. Eitan Felners, "Torture and Terrorism: Painful Lessons from Israel" in Kenneth Roth & Minky Worden, eds., *Torture - A Human Rights Perspective* (New York & London: The New Press, 2005) 28

25. Dick Marty, Report to the Council of Europe, "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report" (7 June 2007) [available at http://assembly.coe.int].

26. Manfred Nowak, "UN Special Rapporteur on Torture, Manfred Nowak 26 June 2006 Statement", online: International Rehabilitation Council for Torture Victims <http://www.irct.org/Default.aspx?ID=1036>

27. John Terry, "Human Rights and Security Interests: *Suresh v. Canada* and Its Uncertain Legacy" [2005] *Transatlantic Quarterly* 38 at 39

28. US National Defence Intelligence College, Intelligence Science Board, *Educing Information – Interrogation: Science and Art (Foundations for the Future)*, Phase I Report, Washington, D.C. completed December 2006.