**Questionable National Security Practices, Clean Operations Strategies, Ethics and the Importance of the ‘Other’**

The actors involved in the national security operations of the United States (US) vary widely from highly visible institutions such as the US Army, specially trained subgroups such as the US Navy Marines and smaller organisations such as the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation. Furthermore, the US state often works in conjunction with other states, non-state actors and quasi-state actors in the course of national security operations.¹ The size and variety of actors involved in these operations creates spaces that can, if it is willed, be drawn on to implement ethically questionable practices. The exploitation of these spaces should be, at least in theory, kept in check by, among other things, democratic accountability, an independent judicial branch and civil society actors who monitor the actions of the US’s national security apparatus.²

Nonetheless, the US has deployed, or supported others in their deployment of, questionable practices. This deployment of questionable practices has been well


documented. However, what has been missing is a thorough conceptualisation and documentation of the means that have been utilised to exploit and construct spaces that have been drawn on to prevent information related to this deployment from leaking into the public domain and being utilised by US citizens, the US judicial system and civil society to hold the US state to account. It is this gap that this paper aims to begin to fill via the presentation of an original analytical framework.

It will begin by briefly laying out the Kantian duty bound stance that this paper will utilise to define what a questionable national security practice is. It shall then move on to lay out a conceptualisation of the strategies that are deployed by the US to prevent information about its use of questionable practices from seeping into the public domain. These strategies will be labelled clean operations strategies and the grounding of this label in the work of Darius Rejali will be laid out. Next this paper will draw on the work of Ruth Jamieson and Kieron McEvoy on the use of ‘othering’ by the US to demonstrate the importance of such ‘othering’ within the clean operations phenomenon. It will move on to apply the clean operations framework to the experiences of two detainees held in US led detention operations during the Iraq War: Yunus Rahmatullah and Amanatullah Ali. While this is happening, a particular focus on the importance of ‘othering’ will be maintained. Before the experience of Rahmatullah and Ali are examined some brief context about US led detention operations during the Iraq War will be given. The final section of this piece will briefly apply the insights from the bulk of the piece to the treatment of a third detainee (DTN), Manadel al-Jamadi, whose detention experience in Iraq, on the face of it

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seems very different to that of Rahmatullah and Ali. This paper shall illuminate the parallels that exist between the treatment of all three DTNs.

As well as its original analytical contribution this piece will draw from civil case filings recently made with the UK Supreme Court by the lawyers of Rahmatullah.\(^4\) These documents provide valuable new insights and details into the treatment of Rahmatullah.

**National Security Practices, US Law, Bureaucratic Regulations and Ethics**

The laws and regulations that govern the national security operations of the US are complex and, often-times, opaque. In theory, all laws within the US (and as a consequence all actions carried out by the US state) should be compatible with the US Constitution.\(^5\) However, innumerable interpretations of this document exist and, in many instances, people on opposing sides of an issue will claim their position is backed up by different parts of the US Constitution.\(^6\) This situation is compounded in the international arena by the size, scale and scope of the national security operations of the US, with parts of the US’s national security bureaucracy operating to differing sets of standard operating procedures and regulations.\(^7\)

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\(^4\) These papers were filed on the 27\(^{th}\) of July 2014. This paper was submitted on the 18\(^{th}\) of August 2014, for presentation on the 4\(^{th}\) of September 2014.: Leigh Day Solicitors (2014) *Re-Amended Particulars of Claim in Yunus Rahmatullah v The Ministry of Defence and The Foreign and Commonwealth Office.*


\(^6\) As well as being bound by the text of the US constitution, the US state is also bound by any international treaties that it signs. This flows from Article 6 of the US Constitution which states that ‘all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land’. : Ibid.

ethical nature (or at least a universalist interpretation of ethics) of a law is not necessarily a key factor of whether a law (and the practices that flow from it) are written and passed by legislators. As such, someone working within the US’s national security bureaucracy could find themselves implementing a policy that others in another part of the bureaucracy are prevented from carrying out, that some see as being compatible with the US Constitution but others do not, that some may say goes against an international treaty and that others still claim is ethically flawed. As a consequence, it is often hard to define what actions are and are not permitted by law and the exact regulations that individuals are operating under. Moreover, even if one were able to clearly document this in all cases, such an adherence would not necessarily take ethical considerations into account. As a consequence, this paper shall privilege ethical considerations above an adherence to US law when considering which practices are labelled as questionable. As already noted, this paper shall adopt a Kantian duty bound framework for carrying out such ethical considerations. The next section will feature a brief explanation of this framework as well as a demonstration of how it can be applied to national security operations.

Kantian Duty Bound Ethics and National Security Practices

Kantian duty bound ethics are premised on the assertions put forward by Immanuel Kant that individuals should always treat others as ends in themselves and ‘never as means’ to an end and that they should ‘[a]ct only according to that
maxim by which’ they feel ‘should become a universal law’. As such, individuals should not utilise others to pursue goals beyond the agency of an individual for some, supposedly, higher goal or calling, nor should they exploit the power dynamics between them or act in a manner that they do not believe should be applied on a universal basis. Kant’s conception of duty bound ethics flows from the centrality of morality within his thinking that saw him call for ‘practical laws […] which make actions a duty’ that ‘in general […] serve as the principle of morality’. One of the main features of this approach is that duty bound morality should guide the actions of individuals, regardless of the end result of the action.

A classic way of documenting how this thinking operates is the ticking bomb scenario (TBS). In this scenario readers are asked to consider a situation involving a captured individual, usually identified as a ‘terrorist’, who has information related to a bomb which is set to explode and kill a large number of innocent individuals. It is generally assumed, and sometimes explicitly stated, that due to the hardened resolve of the ‘terrorist’ in captivity the only way to extract actionable intelligence in a short time period is to subject them to torture. It is also generally assumed that the ‘terrorist’ is in the possession of someone working on behalf of a state. In such a scenario someone operating to a Kantian duty bound code of ethics would not torture the ‘terrorist’, even though not doing so could mean the failure to gain information that may prevent the ticking bomb from exploding. This rejection of the

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use of torture would stem from a refusal to treat people, regardless of their moral character, as a means to an end, from a rejection of questionable actions carried out in the name of supposed higher causes and the need to act only in a manner that can be universally applied.

The consequences of adopting a duty bound approach are profound and stretch much further than a theoretical TBS. If, for instance, it was always embedded into the laws and regulations that govern the national security operations of states then actions such as the targeted killing of individuals carried out in the name of national security, torture (regardless of the euphemistic name it is given), which exploits deliberately manipulated differentials in power relations, and the deliberate bombing of civilian populations would likely not feature in national security operations. Moreover, attempts at legal and ethical justifications of such practices would be challenged and disregarded rather than being adopted as official policy. However, as the ever growing documentary record shows, states of all hues have exploited nationalist feeling and crafted legal frameworks that raise ethical questions and have justified the targeting of civilians in pursuit of their national security goals. As a result of these potentially positive effects this paper will adopt Kantian duty bound thinking to define questionable practices. Such practices will be defined as acts that treat people as a means to an end rather than an end in themselves and those that are (morally) selective rather than universalist in their treatment of individuals.
**Clean Torture to Clean Operations**

‘Dictators generally have no interest in violence that leaves no marks; intimidation can require that they leave bloody traces of their power in every public square. […] However[,] the police, the military, and the secret services [within democratic states] are constrained by constitutions and monitored by judges and internal review boards, by a free press, and by human rights organizations’ who seek to prevent the use of questionable practices by democratic states.’

Darius Rejali

The above quote captures the difference in the dynamics between societies that operate as dictatorships with little citizen engagement and those that, ideally at least, exist in democratic societies with engaged citizenries and civil societies. Yet, it comes from a book that examines the means that are utilised by democratic states to cover up their use of torture. Rejali labels the phenomenon of democratic states deliberately attempting to circumvent monitoring ‘clean torture’. The clean torture strategies Rejali identifies are exceedingly varied, with some making use of modern technology (torture via telephone magneto), others relying on little more than a knowledgeable application of brute force (hitting a DTN on the side of the head with a telephone directory) and more still that exploit little more than the human body’s aversion to prolonged exposure to certain physical positions (forced standing).

Despite these variations, what such techniques have in common is that they leave

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12 Ibid., 5/68/140-146/315.
little, or preferably no, lasting physical trace and, as a consequence, can be used as part of a clean torture regime designed to avoid detection.

The insights garnered by Rejali on torture can be extended to examine a related phenomenon that is present in the wider national security operations of the US. Namely, that the US has regularly adopted similar strategies, of which strategies related to the use of torture are just a subset, as part of its broader national security operations when it has deployed questionable practices. This paper will label strategies that attempt to prevent US citizens from knowing what is done in their name and judges, journalists and members of civil society from carrying out oversight of questionable practices ‘clean operations strategies’. As such, all clean torture strategies could be labelled clean operations strategies, but not all clean operations strategies relate to torture.

This paper will now expand upon the modes of monitoring identified by Rejali at the start of this section. It will demonstrate that while those who operate within the spaces identified by Rejali can use their roles to challenge and monitor the use of questionable practices, such monitoring and challenge does not always necessarily take place. This next section will illustrate this point by focusing on the actions of those within the US Congress.

**Monitoring and Spheres of Contention**

Although it would be impossible to quantify all the factors that affect the decisions made on US national security policy, it is possible to identify points within
its body politic that allow space for the challenge of official national security narratives and where the monitoring of questionable practices can take place. These points include the media, the judiciary, elected bodies, academia and civil society. This paper will label these points’ spheres of contention. This label will be adopted because it highlights the fact that these distinct, although often inter-connected, spheres offer the possibility that such challenge and monitoring will take place. Yet, this label leaves open the possibility that such monitoring will not be carried out by those who inhabit these spheres and that, in some cases, those who inhabit these spheres may act to legitimise the use of questionable practices by the US and its allies. It also leaves analytical space for the, very real possibility, of contention both within and across different spheres about what constitute legally or morally questionable practices, how large a role those operating within these spheres feel they should have in the monitoring of such practices and the forms that such monitoring should take.

Rather than being seen as fixed across time and space, spheres of contention should be viewed as dynamic points within the body politic of the US. This dynamism stems from, among other things, the personalities, views and agendas of those who occupy these spheres at any point in time, the strength of the narrative emanating from the US’s national security apparatus (both in terms of its moral character and volume) and the broader political narrative within the US at any one point in time. As such, when examining spheres of contention it is vital to bear in mind that they are ever shifting points of debate, discussion and personnel that often feature as much tension within and between those who occupy them as exists between their occupants and the national security apparatus that they have the potential to monitor.
This piece will now demonstrate the mixed role that these spheres can play by examining the role of the US Congress in monitoring the deployment of questionable practices.

US Congress:

In the summer of 2012 a number of leaks and news stories documented aspects of the US’s drone program in Pakistan and Yemen. The leaks to the New York Times related to the US’s drone program and revealed that President Barack Obama chaired meetings that acted as the culmination of a process of “‘nominations’” that led to the construction of lists of ‘terrorists for kill or capture’ with ‘the capture part […] [becoming] largely theoretical’ by the summer of 2012.¹³ It was also revealed that the CIA and the Joint Special Operations Command (JSOC) had been given ‘expanded authority’ which allowed them to ‘fire on targets based solely on their intelligence “signatures”’ which were constructed when ‘patterns of behaviour’ were ‘detected through signals intercepts, human sources and aerial surveillance’ which indicated ‘the presence of an important operative or a plot against U.S. interests’.¹⁴ The leaks also show that guilt by association was a key part of the way that the strikes were being managed, with ‘all military-age males in a strike zone [considered] as combatants […] unless there is explicit intelligence


posthumously proving them innocent’. According to an unnamed US official this method is likely to account for the low levels of civilian casualties supposedly attached to the program. However, ‘three former senior intelligence officials expressed disbelief that the number could be so low’, with one official stating that “It bothers me when they say there were seven guys, so they must all be militants, [...]. They count the corpses and they’re not really sure who they are”. The leaks to the *New York Times* demonstrated the use of numerous questionable practices such as the use of kill lists, the assassination of people because of a signature rather than firm information and the role of guilt by association in the labelling of drone strike casualties. Furthermore, they also highlighted the use of clean operations strategies such as the labelling of all males within a certain age range as combatants, both of which were augmented and ‘obscured by awkward secrecy rules’.

The response within the US Congress was indicative of its dual status as both a monitoring and legitimizing agent. On the one hand, a group of 26 members of Congress wrote to Obama to state that they were ‘concerned that the use of such “signature” strikes could raise the risk of killing innocent civilians’ and noted that the US’s ‘drone campaigns have virtually no transparency, accountability or oversight’ and claimed that they were ‘concerned about the legal grounds for such strikes’. Moreover, they stated their belief that drones were ‘faceless ambassadors that cause civilian deaths’ and called on Obama to

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15 Becker & Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*.  
16 Ibid.  
17 Ibid.
‘explain the process by which “signature” strikes are authorized and executed; mechanisms used by the CIA and JSOC to ensure that such killings are legal; the nature of the follow up that is conducted when civilians are killed or injured; and the mechanisms that ensure civilian casualty numbers are collected, tracked and analysed’.  

On the other hand, however, another campaign was carried out within congress to condemn the so called “cascade” of leaks that led to this information coming to light.  

Republican Senator John McCain for instance stated that

‘These leaks clearly were not done in the interest of national security or to reveal corrupt or illegal actions about which the public has a right to know, as in the case of legitimate whistleblowers’. 

McCain, along with others, such as House Armed Services Committee Chairman Howard McKeon, claimed that the leaks of information had come from within the Obama administration. With their campaign against the leaks, McCain and McKeon removed attention away from the controversial practices the leaks revealed and focused instead on the, supposed, harm they did to US national

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21 Cohen, Congressional Leaders Call for Halt to ‘Cascade of Leaks’.
security and on how to prevent such leaks from happening in the future, presumably via the use of more successful clean operations strategies.

The events of the summer of 2012 demonstrate both the potential for monitoring of questionable practices that the US Congress holds, along with the ability of its members to legitimise such practices. One group of elected representatives tried to hold the executive to account when details of the use of numerous questionable practices such as the use of kill lists, the assassination of people because of a signature rather than firm information and the role of guilt by association in the labelling of drone strike casualties came to light. Yet this attempt was matched, if not exceeded by a campaign dedicated not to preventing such practices from being carried out but, instead, to ensuring that information about their use did not seep into the public domain in the future. The double edge sword of the US Congress, perhaps best represented by the effort being put in by elected representatives such as McCain to attempt to ensure clean operations strategies are successful in the future, is reflective of the picture in other spheres of contention.

Clean Operations Strategies

As a result of the monitoring carried out within the spheres of contention, as well as the need to appear accountable to the US electorate, a large number of strategies have been developed and deployed by various arms of the US’s national security apparatus to try and prevent information seeping into the public domain, or being brought to the attention of monitors, about the deployment of questionable
practices. The shape that these strategies take are incredibly varied and can draw on highly technical means (hacking into a computer used by a congressional inquiry into torture carried out by the CIA)\textsuperscript{22} or be very crude (the destruction of images of abuse).\textsuperscript{23} They can also, among other things, draw on the US’s relationship with the national security apparatus of other states (taking/swapping DTNs from/with other states),\textsuperscript{24} see the US exploit its relations with non-state actors (fostering the growth of militias),\textsuperscript{25} use official channels of communication to hide the transfer of funds to pay for questionable practices (the use of diplomatic pouches to transfer cash)\textsuperscript{26} and be utilised in conjunction with one another to cover up a questionable policy (among other things those involved in the Iran-Contra affair utilised a Saudi Arabian arms dealer as a conduit, solicited funds from third parties including The Sultan of Brunei to fund the operation and transferred funds to Nicaraguan Contras via a Swiss bank account in order to get round the so called Boland Amendments).\textsuperscript{27} Yet despite the myriad of differences between them, such strategies share the fact that they are deployed to prevent the use of questionable practices coming to light. It is strategies such as these that this paper is labelling clean operations strategies.


As with all research that strives to highlight and privilege any specific phenomenon, there is a chance that when one is attempting to understand a single phenomenon manifest itself that one fails to factor in the role that other factors (be they monetary limitations, logistical challenges, convenience, incompetence…) may have played in the decision to adopt a strategy that seems deliberately designed to avoid the censure of monitors. However, in many cases these other factors are actually related to, and could in fact be some of the drivers that cause the adoption of a clean operation strategy. If one thinks about the circumstances that led to the Iran-Contra operation alluded to in the previous paragraph, it was the limitations (logistical and financial) placed on policy makers by the Boland Amendments that made people such as Oliver North believe that they had to step outside of the normal bounds of national security policy.²⁸ As such, it is not that every decision related to the deployment of a controversial policy should be seen as a deliberate attempt at the deployment of a clean operation strategy, but instead that the consideration of such strategies should be carried out with an awareness of why they are being deployed and how they fit into the wider operation.

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As already demonstrated, there are many strategies that have been adopted by arms of the US’s national security bureaucracy in order to cover up questionable practices. However, in many cases these strategies are bound together by the fact that they utilise tactics that reflect each other, often to cover up a disparate spread of

²⁸ Ibid.
abuses. This piece will now move on to focus on a group of strategies that rely on the use of those designated as ‘other’ to prevent information about the use of questionable practices from coming to the attention of monitors. It will do so by first laying out how the ‘other’ has been conceptualised in the work of Jamieson and McEvoy and then move on to apply this conceptualisation to events that occurred within detention operations during the Iraq War.

**Othering and Clean Operations**

According to Jamieson and McEvoy ‘othering’ deliberately repositions ‘the state within wider governance networks of non-state actors (e.g. indigenous paramilitaries, mercenaries, private contractors) or indeed state surrogates’. This repositioning, Jamieson and McEvoy assert, ‘renders the task of identifying and prosecuting the planners and perpetrators of violations [of international law] particularly difficult’. They identify two distinct categories of ‘othering’ that states are able to draw on; Perpetrator Othering (PO) and Victim Othering (VO). To give shape to their definition of PO Jamieson and McEvoy point to the collusion between death squads and states, the training given to perpetrators who engage in questionable acts, the use of private military corporations and deliberate attempts at perfidy. The three interrelated forms of VO identified by Jamieson and McEvoy are territorial, outsourcing and judicial othering.

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When elaborating on how PO can operate in a democratic context Jamieson and McEvoy point to the ‘[n]umerous high-profile killings attributed to loyalist paramilitaries in Northern Ireland [that] have subsequently been identified as having been carried out by members of the locally recruited regiment of the British Army’ and the local police force. In this context the UK state took advantage of the porous relationship between loyalist paramilitary death squads and arms of the UK state to collude in a campaign against members of the republican community and was able to maintain a modicum of distance by drawing on the (supposed) status of loyalist paramilitaries as those who operated outside of the UK state.

Another example used to explain PO by Jamieson and McEvoy is the existence of ‘elitist’ groupings of military and security personnel. Groups of such elite personnel, it is noted, often have a ‘strong sense of organizational self’ and are able to act as perpetrators who have been othered due to the fact that they benefit from ‘less rigorous political or legal oversight mechanisms than their mainstream colleagues’. Moreover, drawing a link between special forces and the types of death squads identified above Jamieson and McEvoy highlights the fact that US ‘Special Forces were also heavily involved in the training and direction of pro-state paramilitary death squads which operated in jurisdictions like Guatemala, El Salvador, Nicaragua and other places’ during the so called Dirty Wars of the Cold War.

In order to expand on their explanation of VO Jamieson and McEvoy use the ‘cross-border cooperation in the kidnapping, torture and enforced disappearance of suspected Leftist subversives’ during the US facilitated Operation Condor that saw

30 Ibid. 506.
31 Ibid. 507.
32 Ibid. 509.
co-operation between various Latin American states during the 1970s as an example. Among other things this cooperation saw Argentina allow Uruguayan forces ‘access to Uruguayan nationals living in Argentina for their interrogation and or disappearance’. In this instance at least three states benefited from VO, with the US benefiting from this strategy as states linked to it implemented judicial othering in pursuit of those perceived as ‘Leftist subversives’, Argentina gaining by allowing forces from another state to carry out repressive acts within its territory that clamped down on people living within its borders who aligned themselves with an ideology that was perceived as a threat and Uruguay benefiting from the fact that it was operating outside of its territorial borders and, as such, it was harder for those carrying out interrogations and disappearances in its name to be held accountable by domestic judicial processes.

To add further weight to the concept of VO Jamieson and McEvoy point to the ‘jurisdiction shopping’ carried out by the US when it was running its post 9/11 rendition system which allowed the US to ‘commit human rights violations by proxy’. To illustrate their point they draw on an (in)famous quote from former CIA employee Bob Baer who stated that ‘If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear – never to see them again – you send them to Egypt’.36

Taken together the two broad categories of ‘othering’ put forward by Jamieson and McEvoy help inform an understanding of numerous aspects of the clean operation phenomenon. They demonstrate that both PO and VO are powerful tools

33 Ibid. 515.
34 Ibid. 515.
35 Ibid. 516.
36 Ibid. 516.
that can be adopted by the US (or any other state) if it is attempting to avoid monitors and draw, either directly or indirectly, on questionable practices. It contributes to a conceptualisation of the manner in which the US state engages with other states in its implementation of questionable practices and how outsourcing and jurisdictional manipulation can be drawn on to facilitating the implementation of such practices against individuals and, critically for this paper, how they can be used to prevent information about the use of such practices becoming public knowledge.

**Iraq War Detention Operations**

US led detention operations during the Iraq War came under close scrutiny as a result of pictures taken at Abu Ghraib prison.\(^{37}\) These pictures, among other things, depicted naked detainees in a human pyramid and a naked detainee being dragged around by a lead tied round his neck.\(^ {38}\) The offending pictures were taken in the fall of 2003 and made public in spring 2004. The furore surrounding these pictures was one of the most high profile scandals of the War on Terror (WOT).

US led detention operations continued until the handing over of the last prisoner to Iraqi custody in December 2011 and were multi-faceted, ever-evolving and drew on numerous types of sites that carried out various roles and engaged with

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the US’s wider mission in Iraq in differing ways. DTNs were generally captured by US forces engaged in the conflict and held initially at a Foreword Operating Base (FOB). These FOBs were spread throughout the country and included FOB Delta, which was in Eastern Iraq near the Iranian border, and FOB Packhorse, which was located in Tikrit in Northern Iraq. While at such facilities, DTNs should have been ‘in-processed’ and allotted the same rations as US military personnel. Following this, those detainees not released were transferred to larger facilities such as Abu Ghraib, located to the west of Baghdad, Camp Cropper Theatre Internment Facility, located at Baghdad International Airport, and Camp Bucca, in Southern Iraq near the border with Kuwait. DTNs could be held for 14 days at FOBs before being transferred to central facilities. Some facilities utilised pre-existing infrastructure, with the most infamous being the adoption of the notorious Baathist era jail at Abu Ghraib, while others, such as Camp Bucca, were constructed by US forces on their arrival in Iraq. As well as this US run core, detention operations during the conflict

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40 Phillips, None of us were like this Before: American Soldiers and Torture, 56-58.

were also run by UK forces, the Iraqi state and militias with links to the US.\footnote{House of Commons Intelligence and Security Committee (2005) \textit{The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq}. House of Commons. 21-16.; Madlena, C.; Mahmood, M.; O’Kane, M.; Smith, T. (2013) Revealed: Pentagon’s Link to Iraqi Torture Centres. Available at: \url{http://www.theguardian.com/world/2013/mar/06/pentagon-iraqi-torture-centres-link} (Accessed: 2\textsuperscript{nd} November 2013).} Moreover, as will be highlighted in the next section, DTNs were also rendered from Iraq and held within the wider US detention system that has operated in the post 9/11 era.

The Abu Ghrabi scandal demonstrated that the use of questionable practices was not alien to these detention operations. The next section will look at the experience of two DTNs who were subject to the use of both PO and VO as part of the wider use of clean operations strategies. These examples will show how PO and VO were vital to the deployment of questionable practices in US led detention operations during the Iraq War.

\textbf{Iraq War Detention Operations, Yunus Rahmatullah and Amanatullah Ali, Othering and Clean Operations}

Yunus Rahmatullah was captured alongside Amanatullah Ali in the Al Saidiya district of Baghdad as part of a mission named Operation Aston in February 2004.\footnote{Cobain, I. (2012) \textit{Special Report: Rendition Ordeal that Raises New Questions About Secret Trials}. Available at: \url{http://www.theguardian.com/world/2012/apr/08/special-report-britain-rendition-libya} (Accessed: 13\textsuperscript{th} August 2014); Leigh Day Solicitors, Re-Amended Particulars of Claim in Yunus Rahmatullah v The Ministry of Defence and The Foreign and Commonwealth Office, 4.; Norton-Taylor, MoD and Foreign Office sued by Pakistani Citizen in Iraq Torture Case.} The men were captured by elite members of the UK armed forces from the Special Air Services (SAS), working as part of a ‘joint UK-US special forces task force’ that
captured ‘large numbers’ of detainees in Iraq. Their detention happened after MI5, a UK intelligence service, ‘tracked them as they travelled across Iran and into Iraq’ after being wrongly suspected of being members of Lashkar-e-Taiba (LET), an extremist Sunni group. They hail from Pakistan, had been renting rooms in the same building and had decided to start a ‘rice importation business’ together. According to Rahmatullah, on the night of his capture he was ‘awoken by gunfire’ at 1am and a ‘number of vehicles pulled up outside the apartment, including one that was large like a tank but with six big tyres and no tread and another that was an army vehicle’. Next, soldiers who were ‘all wearing sand-coloured military uniforms with a camouflage pattern and carrying large rifles with telescopic lenses and laser pointers’ attached to them ‘stormed into the apartment’. They ‘began hitting […] [Rahmatullah] with the butts of their rifles, repeatedly striking him in the stomach and head, causing him to lose consciousness’.

When Rahmatullah regained consciousness he states he was ‘hooded and thrown into the back of a vehicle’. While he was in the vehicle Rahmatullah claims he ‘was beaten on his nose and around his eyes, causing him to lose consciousness

51 Ibid. 4.
52 Ibid. 4.
53 Ibid. 4.
54 Ibid. 4.
once again’. Eventually he was transferred to what he believes to have been a helicopter where ‘he was again beaten on his head with the soldiers’ weapons until he lost consciousness’. When he regained consciousness Rahmatullah recalls being on a military base in the custody of soldiers who had a ‘British flag on the right arm’ of their uniform. This site may have been Camp NAMA.

Although NAMA operated with high levels of secrecy, splinters of information about events at the site have seeped into the public domain. The site was staffed by, among others, CIA and JSOC personnel who operated under a rolling rostrum of names including ‘Task Force 20, Task Force 121, Task Force 6-26, Task Force 714 and Task Force 145’. The motto of staff at NAMA was ‘‘No Blood, No Foul’’ which, according to a US Department of Defense official, was a play on words of the maxim of NAMA staff that ‘‘If you don’t make them bleed, they can’t prosecute for it’’. To help maintain secrecy, few UK personnel were able to attend US run interrogations at NAMA, and rather than being standardised with others in Iraq, interrogation procedures at NAMA were carried out according to a Standard Operating Procedure (SOP) document imported from a special operations facility in Afghanistan that

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55 Ibid. 5.
56 Ibid. 5.
57 Ibid. 5.
58 The details given by Rahmatullah about his time in his first detention site are particularly interesting as it seems to suggest that, if it was NAMA, UK operations at the site were more extensive than has previously been reported. Most of the coverage by the media and work done by NGOs has highlighted the operations of the US and downplayed the role of the UK at the site. It has been previously alleged that UK personnel carried out ‘guard and transport duties at the secret prison’ and were allowed to attend some interrogations carried out by US personnel. However, the suggestion that UK personnel were responsible for carrying out interrogations at NAMA is a seemingly new development. As such, the testimony of Rahmatullah potentially offers an important evolution into the understanding of the operation of the site.: Cobain, I. (2013) Camp Nama: British Personnel Reveal Horrors of Secret US Base in Baghdad. Available at: http://www.theguardian.com/world/2013/apr/01/camp-nama-iraq-human-rights-abuses (Accessed: 14th August 2014); The Rendition Project, Yunus Rahmatullah and Amanatullah Ali.
included the use of "stress positions, sleep deprivation, and the use of dogs", while DTNs at NAMA were labelled as 'unlawful combatants' rather than Prisoners of War and, as such, were denied the protections they should have been afforded under the Geneva Conventions.\textsuperscript{62}

Following an initial interrogation at the site, which Rahmatullah states included a threat by the interrogator to kill him, Rahmatullah claims he was ‘tied to a vehicle by a rope’ and ‘was dragged along the ground for approximately 20 metres’ causing ‘his left arm, left shoulder and the left side of his face’ to become ‘badly scraped’ and to bleed ‘significantly’.\textsuperscript{63} Next he was thrown into a ‘pen containing a number of large dogs’ that attacked Rahmatullah ‘with their claws’ until the soldiers stopped them 20 minutes later.\textsuperscript{64} After this Rahmatullah posits that he was taken to see Ali and was told he was dead and that he had killed him. Rahmatullah denied this and ‘later learned that Mr Ali was not dead, but had been unconscious’.\textsuperscript{65} He later had his clothes cut off and was ‘drenched’ with water and was left naked in a room with the air conditioning turned up to full blast.\textsuperscript{66}

Next Rahmatullah states ‘a soldier poured water onto [his] face after placing a cloth over his mouth and nose causing ‘a sensation of drowning”, in a process otherwise known as a form of torture called waterboarding. This carried on until he ‘lost consciousness’.\textsuperscript{67} After being subject to more physical violence and verbal abuse, harsh interrogations and being held in a room with other naked men

\textsuperscript{63} Leigh Day Solicitors, Re-Amended Particulars of Claim in Yunus Rahmatullah v The Ministry of Defence and The Foreign and Commonwealth Office, 6.
\textsuperscript{64} Ibid. 6.
\textsuperscript{65} Ibid. 7.
\textsuperscript{66} Ibid. 7.
\textsuperscript{67} Ibid. 8.
Rahmatullah was told that ‘because he was not cooperating’ he would be handed ‘over to the Americans to be held at Abu Ghraib’.68

Rahmatullah was then transferred to another detention facility where he claims he was physically abused and told that ‘"If you don’t speak to us we will take you to Guantanamo Bay"’.69 For part of his time at the facility he was held in ‘a room where he was horrified to see six or seven naked detainees piled on top of each other’. He was ‘thrown on top of the detainees’ and detained there for ‘two or three days’. According to his lawyers Rahmatullah ‘is currently too traumatised to provide further details about that period of detention’.70 He was not told the name of this facility and it is likely that when staff at the facility gave names they used aliases (one interrogator who was white and seemed to speak no Arabic claimed his name was Abu Omar, the name of a DTN who was detained by the CIA in Milan and rendered to Egypt).71 He states he received medical treatment at this site before being transferred to Abu Ghraib (it is possible that he was already being held at Abu Ghraib and that this was an internal transfer).72

Rahmatullah believes his transfer to the second site was very short. After a five minute helicopter ride Rahmatullah was placed in a cell with other DTNs who stated that he was at Abu Ghraib.73 While at this site he was interrogated by ‘Abu Omar’ and another interrogator. During this interrogation they ‘threatened to torture

68 Ibid. 10.
69 Ibid. 11.
70 Ibid. 13.
73 Ibid. 14.
and kill him’ and ‘also kicked and punched him’. While they were held in Iraq, both Rahmatullah and Ali were denied access to International Committee of the Red Cross (ICRC) monitors because they had been captured by ‘special forces’ and, as such, were placed in a ‘special category’ of DTNs.

Between March and June 2004 Rahmatullah and Ali were both rendered from Iraq to Afghanistan. It is likely that this rendition flight took place on a CIA aircraft with the tail number N313P on the 11th or 12th of March and saw Rahmatullah and Ali moved from Baghdad to Kabul. Prior to his transfer Rahmatullah states that his ‘face and entire body were taped tightly with duct tape, leaving just a small hole underneath his nose’.

During interrogations at the next site, which he learnt after a year was Bagram in Afghanistan, he was told ‘he was now in America and the next stop would be Guantanamo Bay’. These interrogations saw him being ‘hit over the head, stomach and feet with a plastic bottle’. Rahmatullah recalls that he was held in numerous different parts of Bagram and was subject to many acts of physical aggression and cultural insensitivities from people working for various parts of the US’s national security apparatus. For much of the time when he was not being interrogated he was forced to wear goggles and ear mufflers, ‘meaning that he could neither see nor

74 Ibid. 15
77 Leigh Day Solicitors, Re-Amended Particulars of Claim in Yunus Rahmatullah v The Ministry of Defence and The Foreign and Commonwealth Office, 16.
78 Ibid. 17.
79 Ibid. 22.
80 Ibid. 16-13.
hear’. This sensory deprivation took place both when he was in solitary confinement and being held with other DTNs.\textsuperscript{81} Some of the personnel he came into contact with at Bagram were in civilian clothing\textsuperscript{82} and at certain points Rahmatullah was denied access to visiting Pakistani officials.\textsuperscript{83}

Rahmatullah was first allowed access to an ICRC representative in 2005. However, it was understood by Rahmatullah and other DTNs that those who provided the ICRC with information would be punished and, as such, DTNs in Bagram would ‘frequently boycott ICRC visits’.\textsuperscript{84} Rahmatullah’s family did not learn until May 2010 that he was being held in Afghanistan.\textsuperscript{85} During the later years of his detention he was allowed a short phone call to his family every two months, but these were allegedly monitored by ‘Afghan and/or US authorities’.\textsuperscript{86} A campaign has been run within the UK on behalf of Rahmatullah in order to bring evidence about his treatment to light. Many of these attempts have been stymied by the UK state because of fears of damaging the UK’s relationship with the US or because releasing such information would, allegedly, not have been in the public interest.\textsuperscript{87}

On May 15\textsuperscript{th} 2014 Rahmatullah was transferred to Pakistani custody and released on the 17\textsuperscript{th} of June 2014. As of August 2014 Rahmatullah was in the process of suing the UK state for complicity in his treatment.\textsuperscript{88} According to the Bagram Prisoner Campaign, as of September 2013 Ali was still held at Bagram Airbase. This probable continued detention is happening despite the fact that his

\textsuperscript{81} Ibid. 16-13. Especially pages 17-18.
\textsuperscript{82} This also reflected a pattern from other sites Rahmatullah was held in.: Ibid. 7/8/14/16.
\textsuperscript{83} Ibid. 29.
\textsuperscript{84} Ibid. 32.
\textsuperscript{85} Ibid. 32.
\textsuperscript{86} Ibid. 33.
\textsuperscript{88} Norton-Taylor, MoD and Foreign Office sued by Pakistani Citizen in Iraq Torture Case.
brother received a phone call in November 2011 saying the US was ready to release him into Pakistani custody.  

The detentions of Rahmatullah and Ali highlight the importance of both PO and VO to the covering up of the use of questionable practices within US led detention operations during the Iraq War, as well as within its wider WOT operations. From the minute they were captured by other forces (PO) from another state (PO) they were placed into a category of DTNs that ensured they were labelled something other than the vast majority of DTNs held by the US (VO). They were initially held in a detention facility that denied its DTNs rights they were due under international law, with one consequence being that they were denied access to the ICRC (VO). They were potentially held at Camp NAMA which was staffed by elite forces who operated to different SOPs than others elsewhere in Iraq (PO). Rahmatullah and Ali were then rendered across international borders without due process, a movement that allowed the US to engage in ‘jurisdiction shopping’ (VO). The court filings from Rahmatullah’s lawyers have further revealed that Rahmatullah was denied access to Pakistani officials (presumably on the basis of his DTN status) (VO), that he was subject to numerous acts of perfidy such as being given false locations and being given false identities by interrogators (PO) and that he was detained and interrogated by individuals wearing clothes other than official military uniforms (PO).

Many of the instances of PO and VO related to the cases of Rahmatullah and Ali can be seen as clear clean operations strategies. The extra layers of secrecy that surround the actions of the elite forces that captured and detained Rahmatullah and Ali meant that it has been hard for those carrying out monitoring to gain a full picture of what transpired during Operation Aston. Their designation in a different category of detainee and the fact that they were detained at NAMA also combined to shroud extra layers of secrecy around their treatment and prevented details around their questionable treatment from entering the public domain or coming to the attention of monitors. The jurisdiction shopping the US engaged in via Rahmatullah and Ali’s rendition to Afghanistan ensured that they became residents of the US’s wider WOT detention operations, which made it even harder to track them. Moreover, the fact that they were unable to gain adequate access to the outside world meant that they were unable to aid others in fully documenting their (mis)treatment. Moreover, the failure of the UK to release information it held related to the treatment of Rahmatullah and Ali illustrates that the clean operations phenomenon cuts across states and can grow out of coordination among allies.

**Individual Experiences, but Indicative of Broader Trends**

Despite the fact that the journey of both Rahmatullah and Ali was unique, it is possible to draw insights about the use of questionable practices against them within US led detention operations during the Iraq War and the ‘othering’ and broader clean operations strategies that were drawn on to cover them up and broaden these out to begin to be able to analyse the experiences of others. The value of broadening out
these insights can be seen via a brief focus on the experience of another DTN who was briefly held within US led detention operations during the Iraq War, Manadel al-Jamadi.

al-Jamadi, who had been labelled a “high-value” CIA target as he was thought to be responsible for a number of attacks, including the bombing of the ICRC’s Baghdad headquarters in October 2003, was captured by US Navy Seals at 2am on the 4th of November 2003 at his home in Baghdad. He was transferred to CIA custody and taken for interrogation at Abu Ghraib. When this transfer had taken place he had a black eye and a cut on his face but was ‘walking and speaking’. When he arrived at Abu Ghraib he was not processed or counted in the official DTN count in the same manner as the main bulk of DTNs because he was a so-called OGA (meaning Other Government Agency, a euphemism for the CIA) “ghost prisoner” who was not to be included. He was then taken to a shower room for interrogation and within 45 minutes was dead. Al-Jamadi was interrogated by a private contractor working as a translator for the CIA and a CIA interrogator named Mark Swanner. According to an eye witness al-Jamadi was held in a position known as “Palestinian hanging”, that saw him hung from his arms while his arms were secured behind his back. Details about the treatment of al-Jamadi became public as part of the wider Abu Ghraib scandal.

Like Rahmatullah and Ali, al-Jamadi was subject to numerous forms of ‘othering’ operating as clean operations strategies. He was captured by an elite
branch of the US Navy (PO) after having been pre-ordained for special treatment by the CIA (VO). He was transferred to CIA custody (PO), was not processed in the same manner as other DTNs (VO) and was interrogated by a member of the CIA (PO) and a private contractor (PO). Each one of these instances of ‘othering’ can also be seen as clean operations strategies designed, at least in part, to make it hard for the monitoring of events to take place. Along with the parallels related to ‘othering’ and the use of clean operations strategies, the journey of al-Jamadi intersects with that of Rahmatullah, who was held and abused at Abu Ghraib just a couple of months after al-Jamadi’s death.

**Conclusion**

Considering the parallels between the treatment of Rahmatullah, Ali and al-Jamadi is important. On the face of it, apart from the fact that all three were held within US led detention operations in Iraq and Rahmatullah and al-Jamadi were both held at Abu Ghraib, the cases seem to have little in common. Rahmatullah and Ali were both held for over a decade (with Ali seemingly still held at Bagram Airbase as of August 2014) after being held at NAMA and, in the case of Rahmatullah at least, Abu Ghraib before being rendered out of Iraq to Afghanistan and being held at various parts of Bagram Airbase. By contrast al-Jamadi was captured by Navy Seals, very quickly transferred to CIA custody and taken to Abu Ghraib where he, after being interrogated for less than an hour, was dead. Yet, as demonstrated
above, ‘othering’ was embedded into the operating procedures of, as well as the security surrounding, those responsible capturing for DTNs, into the categorising of the DTNs and the way that sites managed different categories of DTNs and was key to the questionable practices that all three DTNs were subject to (and in the case of Ali may still be subject to). More to the point, when one views such instances of ‘othering’ as clean operations strategies the need to look for parallels between the structures and procedures that governed the treatment of these three DTNs becomes even more stark.

Documenting, understanding and analysing the experience of each DTN subject to questionable practices such as rendition and torture are important. As such, work done to monitor individual DTNs subject to abuse is vital in ensuring that as fuller a picture as possible is available in the public domain and can be used in attempts at trying to hold people accountable for the use of such practices. This paper has shone a light on a number of strategies that have been deployed to prevent such monitoring from taking place. It has focused on the experience of Rahmatullah and Ali and documented their experience both within US led detention operations in Iraq and, once they had been rendered to Afghanistan, the US’s wider WOT detention operations. However, it has also presented an analytical framework that can be drawn upon to broaden out the insights gained from the examination of individual experiences for those subject to the use of questionable practices, both within US led detention operations during the Iraq War and beyond. The incorporation of information and insights gleaned from recent court filings on behalf of Rahmatullah has added significantly to the ability of this paper to analyse and draw conclusions from real world events.
Work Cited


