

# **SHOULD TERRORISTS BE TRIED IN MILITARY OR CIVIL COURTS: A DILEMMA FOR DEMOCRATIC COUNTRIES**

By

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## **Background**

For many years the world has been faced with acts of terror. Most acts of terror are committed in democratic countries, since democracies are governed and administered by the Rule of Law, based on liberty, freedom and equality. These countries are open societies, so terrorists can infiltrate their borders easily and remain unnoticed. In these countries It is also easier to buy arms and **ammunition, to assemble, to hide, to plan and to train terrorists without being easily discovered.**

## **1.The experience of Israel**

In Palestine and, later, in Israel, we have been faced with many acts of Terror. It started over 100 years ago, way before the birth of The State of Israel in 1948. Arab terrorists infiltrated the border of cities, villages, kibbutzim and quarters, where Jews lived and quite often killed and maimed hundreds of innocent civilians, only because they were Jews.

## **2. The behavior of the Palestinians during the World War II**

In 1940 the leaders of the Palestinians collaborated with the Nazis in planning to kill all Jews in Palestine, once the German army, whose troops stationed near Egypt, would conquer Palestine. The main Arab leader in collaborating of this plan was the "Mufti"--Haj Amin Al-Husseini.

## **3. The applicable Law in Palestine from 1922 up to May 14, 1948**

Since 1922 the British Empire was ruling Palestine, following the resolution of The League of Nations to appoint Britain as a Mandatory ruler/administrator of Palestine. Upon the foundation of the State of Israel, one of the first constitutional laws adopted by its legislature, was the Law of Administration Powers and Justice), 1948 (hereafter "The Law of Administration.").

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(\*) The writer lost his 34 years old son-Hagay Shefi (34) -President and CEO of GoldTier Tech. Inc. NJ, while Hagay was a Keynote speaker at a Conference assembled at 106<sup>th</sup> floor of Tower 1- WTC (see memorial site: [www.hagayshefi.info](http://www.hagayshefi.info) Also see Google under Hagay Shefi )

Article 11 of the Law of Administration stated as follows:

*"The Law in force at the eve of termination under the British Mandate will continue to apply in Israel, so far as it is consistent with the future laws that will be enacted by the Israeli legislature and with the foundation of the State of Israel and subject that it will not violate new laws adopted by the legislature of Israel."*

#### **4. The Defense (Emergency) Regulations, 1945**

Among the British Mandate laws, Israel inherited the Defense (Emergency) Regulations of 1945. (hereafter "the Regulations"). These Regulations were enacted by the British High commissioner, and as such they are considered primary legislation in spite of their name - "Regulations".

5. The contents of these Regulations are based on the experience of Great Britain as an Empire and Ruler of Colonies. The power to enact these Regulations derived from Art. 6 of the Order of the King in Council of 1937. These regulations would be pre- conditions for the power to enact the Regulations, whose purpose was to protect public security, public order and to ensure supply of goods and services to the public.

#### **6. The Regulations have wide powers:**

To order the arrest of suspects, to deport them, to arrest any person that violates the Regulations, to arrange that any person who gets hurt unlawfully will be compensated, to bring violators of the Regulations before civil courts or before military courts that will operate according the Regulations, to put any person who, according information of the security service, endangers the security- under administrative detention. In addition : to impose penalties for either courts (military or civil) for violation of the Regulations or to impose penalties for either courts any other offence according any applicable law, to impose fines or penalties over any unlawful organization, to confiscate its property, to impose the rules of procedure and the rules of evidence to be applied by the military court, to declare that there *will not be right of appeal* on judgments and resolutions of military courts, unless it is changed by the Regulations.

#### **7. Article 7 of the Order of the King in council 1937 specifies:**

*"The High Commissionaire (today the Government of Israel) may, if he finds it necessary to transfer by Proclamation, his powers according Art. 6 to the Chief of General Staff of the Israel Defense Forces (IDF), subject to conditions and limitations, however any change will not affect the legality of the acts derived from these Regulations."*

In fact there was no right of appeal on military court in Israel until 1963.

**8. Article 1 of the Regulations specifies the following definitions:**

*"Military Court" – means a court established according part II of these Regulation"*

*"Civil Court offence" –means an offence against these regulations, whether tried or to be tried by the court of magistrate or district court."*

*"Military Court prosecutor" – means any commissioned officer of Israel Defense Forces (IDF) or any officer or person generally or specially authorized by the Chief of Staff of IDF to prosecute before Military Courts".*

Part II of the Regulations deals with *"Establishment and jurisdiction of Military Courts."*

**9. Art. 12 and the following Article state:**

*"The Chief of General Staff shall establish such Military Courts as he may deem necessary for the purpose of these regulations.*

*Military Court shall consist of a President who shall be an officer of or above the rank of field officer and two members who shall be commissioned officers of any rank. The judges will be appointed by the Chief of General Staff. A military Court shall sit at such times and places as the President shall direct."*

**10. Article 18 of the Regulations**

Article 18 states that *"Where at any time, any person accused of having committed any offence against these Regulations (whether it is an offence friable only in a Military Court or otherwise) appears or is brought before a magistrate, if so requested by or on behalf of the Attorney General or the Solicitor General, shall remit the case for trial before a military court and, if the accused person is in custody or on bail, shall either release him on bail or remand him in custody (as the magistrate may direct) to appear before a military court:*

*Provided that in the case of a person arrested committed, or suspected of having committed, a Military Court offence punishable by death, the magistrate shall not release such person on bail unless a police officer not below the rank of Superintendent certifies in writing that in his opinion, having regard to all the circumstances of the case, the course of justice will not be Prejudiced by such release."*

**11. The reform of 1963-granting the Right of Appeal on Military Courts' Judgments**

In 1963 the Legal Corps of the I.D.F. issued, 15 years after Israel was declared independent, in spite of the fact that there was no right of appeal on military court judgments in Israel according the Regulation, an amendment to the Military Justice

Law, 1955. This amendment established the Right of Appeal on a judgment or on any Resolution of military court established according the Defense (Emergency) Regulations. Such appeal **should** be made before the Military Court of Appeal. The right to appeal was provided to both the accused (if he was not acquitted) and to the Military Prosecutor.(Art.440(a) )

The conviction and the sentence ought not to receive the confirmation of the chief of The General Staff, as long as the period for lodging an appeal ceased and no appeal was lodged (Art.440f.)

## **12. The amendment of the Regulation in 1979**

In 1979, the Knesset (Israel's Parliament) adopted a new Law which amends the Regulations. The new Law's name was the Law of Emergency Powers (Administrative Detentions), 1979. The law states that administrative detention **may** last up to 6 month, and that within 48 hours the detainee must be brought before a district court Judge. The judge would check if there is enough ground to suspect that the detainee's freedom endangers the security of Israel. The Judge may also determine if the period of detention that is requested by the prosecutor is reasonable under the circumstances. This procedure shall take place every 3 month of detention. Other amendments in the Law relate:

- 1) to abolish the power of deportation from Israel to another country even if the detainee is an Israeli citizen (art. (112)(1)) and
- 2) to abolish the power to prevent an Israeli citizen from entering back to Israel, if he is out of Israel (art. 112 (2) of the Regulation) and
- 3) to abolishing regulation 85(j) that declared the "unlawful" freedom fighters of the Jews against the British administration.

## **13. The reform of 1999 in Israel: Cessation of bringing in Israel terrorists before military courts.**

In 1999 the 9<sup>th</sup> JAG of IDF, Major General Ilan Shiff, thought that after so many years of bringing terrorists who committed offences in Israel before military courts and considering the reduced number of terror acts in Israel, it was time to bring such accused before civil courts. He was of the opinion that in time of peace you don't have to bring your own lawful citizens or residents before military courts. He recommended to the Attorney General of Israel to use his powers according Art, 18 of the Regulations and to instruct that persons who committed offences friable both before military courts and civil courts will be brought before a c i v i l court. The AG adopted Gen. Shiffs' recommendation and Since 1999 this rule has been the practice in Israel. The Regulations are still in effect and if the situation changes, the legal policy may be also changed as well, and the military courts' system may be restored.

## **14. The way Israeli Courts tried terrorists**

As explained above, the military courts conducted the trials against the terrorists

in Israel until 1999 in a most efficient way. No trial, even the most complicated, lasted more than two years. The District Courts and the Magistrate Courts that started to maintain trials in 1999 did it most efficiently. This article analyses the legal situation in Israel and does not relate to the military courts system in the occupied territories which are based on Art. 66 of the 4<sup>th</sup> Geneva convention.

### **15. UN Resolution 181**

On November 29, 1947, the General Assembly of the United Nations adopted resolution No. 181, declaring the partition of Palestine and confirming that there was a place for two national homes in Palestine: One for the Palestinian Arabs and one for the Jewish People. On May 14, 1948 the British Government left Palestine, and the provisional government of the Jewish People in Palestine chaired by David Ben-Gurion, declared the establishment of a Jewish State that would be called "the State of Israel". Unfortunately, the Palestinians, backed by the neighboring Arab states rejected the UN resolution and began a new series of bloodshed and acts of terror against the Jews in Palestine. Acts of terror started, actually, in Palestine over 100 years ago, early on the 19<sup>th</sup> century. Therefore the Arab contention that their attacks against Israel started mainly due to the Israel occupation at the six days war and that they will cease bloodshed if Israel will withdraw to the pre-1967 borders is baseless. The reasons for the terrorism were, and still are, hate towards Jews that have been always considered infidels and "foreigners" in the region.

### **16. How to define an act of terror?**

The United Nations tried for many years to reach a definition of act of terror without success, however most democratic countries would probably suggest: *"an unlawful act of violence that its purpose is to cause death or injury or act of violently against property with political intention"*

### **17. Military Justice**

For many years democratic states have been considering and discussing the question, whether to bring perpetrators of terror acts before a military court or before a civil (Federal) court. There is a slogan saying that *"MILITARY JUSTICE IS TO JUSTICE WHAT MILITARY MUSIC IS TO MUSIC"*. Personally, I don't support this slogan. If I would have to Judge from my own experience as a former Judge Advocate General and as Military Judge in Israel IDF, I would say that if the Military Court belongs to a real democracy, one may expect Justice even in a military court. Having said that, it does not mean that legal proceedings before a regular civil court is equal to those administered before military courts.

In my opinion, the rule of regularity looks considerably much better whenever the legal proceedings take place before a civil court and there is a common presumption that it assures better the rights of the accused.

**18. The Legal Status in USA regarding trials of terrorists that violated the Principle of Distinguishing between attacking targets of non-combatants such as WTC and legitimate targets of combatants**

As a father who lost his son in the mass murder by Al-Qaeda war-criminals and with my background as JAG of IDF (1979-1984), and former General Counsel of the Israel Ministry of Defense (MOD) (1988-1994), I followed, daily, the legal developments that were related to these grave War Crimes in all their aspects, including, of course, the investigations and the legal proceedings that took place (and are still taking place before Military Commission in Guantanamo) since 9/11/2001.

I had always had full respect and appreciation to the US legal system. However I carry with me sad thoughts about the US mishandling of both the investigation stage and the legal process concerning the bringing terrorists to Justice. It starts with the fact that the terrorist Zacharias Moussaoui (known as the "20<sup>th</sup> hijacker of 9/11") did not disclose between the day of his arrest (August 16, 2001 and September 11, 2001), facts known to him about the plan of Al-Qaeda to destroy buildings full of civilians by using passenger's airplanes. It is quite possible that he was not properly interrogated. Had he been properly and sophisticatedly interrogated we could have possibly extracted information that would have prevented the disaster of 9/11. There was no need to use force during the investigation, this is prohibited in USA and in Israel as well. Sophisticated investigation does not need to use force. Zacharias Moussaoui was arrested on August 16<sup>th</sup> 2001, it is quite reasonable that a more sophisticated investigation would have prevented the big tragedy that befell thousands of people and their families throughout the world. There is no need to use force during the investigation. Once the investigators knew that Moussaoui attended a course of "limited" flying (waiving lessons for take-off and landing), there could have been and should have been a much more **sophisticated investigation without using force. This is legitimate, possible and effective.**

**19. The un-reasonable long periods of trials of 9/11/01 War-Criminals against the USA**

The trials of the most notorious terrorists of 9/11/2001 against civilians on US soil lasted in Re Moussaoui and still lasts against the other main planners of the attack that have been detained close to 9 years. Among them is the Master Mind of 9/11 attack (and many other known attacks) known as –Khalid Sheik Muhammad (K.S.M.).

I decided not to comment more on this subject in this article. I prefer to bring to your attention the relevant background of the legal process directly from the Wikipedia Free Encyclopedia.

The contents of the following link speaks for itself:

[http://en.wikipedia.org/wiki/Trials\\_related\\_to\\_the\\_September\\_11\\_attacks](http://en.wikipedia.org/wiki/Trials_related_to_the_September_11_attacks)

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## Zacarias Moussaoui

[Zacarias Moussaoui](#) was in jail in Minnesota when the [September 11 attacks](#) unfolded. On December 11, 2001, Moussaoui was [indicted](#) by a federal [grand jury](#) in [United States District Court](#) for the [Eastern District of Virginia](#) on six federal charges: conspiracy to commit acts of terrorism transcending national boundaries, conspiracy to commit aircraft piracy, conspiracy to destroy aircraft, conspiracy to use weapons of mass destruction, conspiracy to murder United States employees, and conspiracy to destroy property.<sup>[1]</sup> The indictment of Zacarias Moussaoui named as unindicted co-conspirators Ramzi Bin al-Shibh and Mustafa al-Hawsawi, among others, for their role in the attack "to murder thousands of innocent people in [New York](#), [Virginia](#) and [Pennsylvania](#)."

On January 12, 2002, Moussaoui refused to enter any plea to the charges and so Judge Leonie Brinkema entered pleas of not guilty. A hearing was held on April 22, 2002, to determine his right to self-representation, for by then Moussaoui had declined the assistance of his court-appointed attorneys, and asked to defend himself. At another hearing on June 13, 2002, Brinkema deemed him competent to defend himself and allowed the case to move forward. However, Moussaoui later requested the occasional assistance of attorneys to help him with technical issues.

Moussaoui admitted his involvement with al-Qaeda, but claimed he was not involved in the 9/11 attacks. Rather, he claimed that he was preparing for a separate attack. Khalid Sheikh Mohammed had earlier told investigators that Moussaoui met with him prior to September 11, but that he, Mohammed, chose not to use him. No evidence directly linking Moussaoui to the 9/11 attacks has yet been released.

The trial highlighted a tension in the United States between the [judiciary](#) and [national security](#). Moussaoui made requests for access to confidential documents and the right to call captive al-Qaeda members as witnesses, notably bin al-Shibh, [Khalid Shaikh Mohammed](#), and [Mustafa Ahmed al-Hawsawi](#). Both requests were claimed by prosecutors to be potential threats to national security. Brinkema denied the motion to access confidential documents, although Moussaoui was permitted to use several al-Qaeda prisoners as witnesses.

Brinkema put the death penalty "off limits"

**On October 2, 2003**, in reply to government defiance of her order to provide access to Moussaoui's witnesses. The [Fourth Circuit Court of Appeals](#) reversed the Brinkema ruling, holding that the US government could use summaries of interviews/interrogations of these witnesses.

**On March 21, 2005**, the [United States Supreme Court](#), without comment, declined to hear Moussaoui's pre-trial [appeal](#) of the Fourth Circuit's decision, returning the case to Brinkema.

**On April 22, 2005**, in one of the court sessions near the end of that phase of the proceedings, Moussaoui surprised the whole audience by pleading guilty to all charges, while at the same time denying having any intention to produce a massacre like 9/11. He said that it was not his conspiracy, and that he intended to free Sheikh [Omar Abdel-Rahman](#). According to Moussaoui, his master plan was to hijack a [Boeing](#) 747-400, since the plane is one of a few that could reach [Afghanistan](#) from the US without any intermediate stops.

**On February 6, 2006**, Moussaoui shouted "I am al-Qaeda. They do not represent me; they are Americans," referring to his attorneys while being escorted from the courtroom in front of 120 potential [jurors](#).<sup>[2]</sup>

**In March 2006**, during the Moussaoui trial, several premises made headlines, including FBI agents stating that the bureau was aware, years before the attacks in 2001, that al-Qaeda planned to use planes to destroy important buildings,<sup>[3]</sup> and Brinkema's decision to consider dismissal of the death penalty. Brinkema announced her decision in response to a violation by the attorney for the Transportation Security Administration, [Carla Martin](#), of a pretrial order barring witnesses from exposure to any opening statements or trial testimony. Martin had e-mailed seven [Federal Aviation Administration](#) officials describing opening statements of the prosecution and commentary on government witnesses from the start of the testimony,<sup>[citation needed]</sup> effectively 'coaching the witnesses'.<sup>[4]</sup> Brinkema said, "In all the years I've been on the bench, I have never seen such an egregious violation of a rule on witnesses," and described the situation as a "significant error by the government affecting the... integrity of the criminal justice system of the United States in the context of a death case." However, days later, under significant media attention, Brinkema decided not to dismiss the case, and instead ruled that witnesses could not testify and the government would be allowed to continue to seek the death penalty.<sup>[5]</sup>

**On March 27, 2006**, Moussaoui testified that he and "shoe bomber" Richard Reid had planned to crash a hijacked airplane into the [White House](#) in the September 11 attacks. No direct connection between Moussaoui and Reid had ever before been alleged, and this testimony contradicted earlier testimony by Moussaoui that he had been intended for an operation after September 11. When asked why he had previously lied, he stated that "You're allowed to lie for jihad. You're allowed any technique to defeat your enemy."<sup>[6][7]</sup> There has been commentary in the mainstream media that Moussaoui's preference to die as an identified 9/11 plotter rather than receive a life sentence as a member of an unrealized scheme throws doubt on his self-admitted connection to 9/11.<sup>[8][9][10]</sup>

Since Moussaoui was in jail in Minnesota when the September 11 attacks unfolded in seeking a death sentence, prosecutors were required to prove that he "intentionally participated in an act... and the victim died as a direct result of the act." Moussaoui admitted he knew about the attacks and did nothing to stop them.

Having entered a guilty plea, Moussaoui was eligible for the [death penalty](#). Germany said it would not release evidence against Moussaoui unless the US promised not to seek death as punishment. On **April 27, 2005**, French Justice Minister [Dominique Perben](#) said, "When France gave elements of information about Mr Moussaoui to the American justice, I obtained a written engagement of the United States not to use these elements to require or execute the death penalty."<sup>[11]</sup>

**On March 13, 2006**, Brinkema recessed the death-penalty case against Moussaoui because of a breach against the rules on witnesses. Seven [FAA](#) officials were previously sent emails by [TSA](#) attorney [Carla Martin](#) outlining the prosecution's opening statements and providing commentary on government witnesses from the first day of testimony. Martin was placed on administrative leave over the incident and may face contempt of court charges. On March 14, 2006, Brinkema ruled that the prosecution could continue to seek the death penalty against Moussaoui, but could not use key



witnesses coached by Martin. On April 3, 2006, the jury in his case decided that Moussaoui was eligible for the death penalty.

At Moussaoui's sentencing trial, FBI agent Greg Jones testified that prior to the attacks, he urged his supervisor, Michael Maltbie, "to prevent Zacarias Moussaoui from flying a plane into the World Trade Center." Maltbie had refused to act on 70 requests from another agent, Harry Samit, to obtain a warrant to search Moussaoui's computer.<sup>[12]</sup>

**On May 3, 2006**, the jury reached a verdict: that Moussaoui be sentenced to life in prison without the possibility of parole. Moussaoui was sentenced to six consecutive life terms on May 4,<sup>[13]</sup> as Judge Brinkema expressed her belief that the sentence was an appropriate one, inasmuch as it would deprive Moussaoui of "[martyrdom](#) in a great big bang of glory" and of the "chance to speak again", after Moussaoui entered the courtroom proclaiming his victory and asserting that the United States would "never get Osama bin Laden". As he was leaving the courtroom he said, "America, you lost and I won." And he clapped his hands twice. A single juror saved Moussaoui from death. The foreman of the 12-person federal jury told *The Washington Post* that the panel voted 11-1, 10-2 and 10-2 in favor of the death penalty on the three charges for which Moussaoui was eligible for execution. [\[1\]](#) A unanimous vote on any one of the three terrorism charges was required to return a death sentence.

**On May 8, 2006**, Moussaoui filed papers with the federal court in Alexandria, Virginia requesting to withdraw his guilty plea, stating that his earlier claim of participation in the September 11 plot was a "complete fabrication." He said that he was "extremely surprised" that he was not sentenced to death. "I now see that it is possible that I can receive a fair trial even with Americans as jurors," he said.<sup>[14]</sup> However, federal sentencing rules forbid pleas to be withdrawn after a sentence has already been executed, and Moussaoui had already waived his rights to [appeal](#).

**On May 13, 2006**, a group of US marshals ordered Moussaoui out of his holding cell in [Alexandria, Virginia](#) and flew him, via [Conair](#), from Virginia to Colorado to begin serving his sentence at the supermax [United States Penitentiary Administrative Maximum Facility](#), located in [Florence, Colorado](#).<sup>[15]</sup> The facility - considered the most secure federal penitentiary—is called the "[Alcatraz of the Rockies](#)".<sup>[citation needed]</sup> He is federal prisoner number 51427-054.<sup>[16]</sup>

**On July 31, 2006**, the 1,202 exhibits presented during the case of *United States v. Zacarias Moussaoui* were posted online,<sup>[17]</sup> marking the first time the exhibits of a criminal case in US courts were so published.<sup>[citation needed]</sup>

**On November 20, 2007**, Judge Brinkema publicly stated that the US government had provided incorrect information about evidence in the Moussaoui trial and that due to those actions, she was considering ordering a new trial in a related terrorism case, that of Ali al-Timimi, a Virginia Muslim cleric. Brinkema said that she could no longer trust the CIA and other government agencies on how they represent classified evidence in terror cases after Moussaoui case prosecutors admitted that the CIA had assured her that no videotapes or audiotapes existed of interrogations of certain high-profile terrorism detainees, but later, in a letter made public Nov. 13, two such videotapes and one audio tape were made known.<sup>[18]</sup>

### **Mounir El Motassadeq**

[Mounir El Motassadeq](#), a Moroccan living in Germany who belonged to the [Hamburg cell](#) apartment owned by [Mohamed Atta](#) and lived in by many other people who would later go on to lead the September 11, 2001 attacks, in February 2003 was convicted in Germany of over 3,000 counts of accessory to [murder](#) in direct relation to the September 11 attacks, but the conviction was rejected on appeal. Though the German Justice Ministry pressed the [United States](#) to allow [Ramzi bin al-Shibh](#) to testify, the US refused, and the verdict and sentence were set aside.

Motassadeq was re-tried and convicted on August 19, 2005 of "membership in a "terrorist organization". That conviction was also rejected an appeal.[\[2\]](#),[\[3\]](#),[\[4\]](#),[\[5\]](#)

**On February 7, 2006**, Germany's [Federal Constitutional Court](#) ordered an early release of Motassadeq. The highest court of Germany ruled there was an absence of proof that Motassadeq was informed about the [September 11](#) terrorist plot.[\[6\]](#)

**On November 15, 2006**, the German [Federal Supreme Court](#) ruled on the appeals: They considered the evidence as sufficient to prove that Motassadeq knew about and was involved in the preparation of the plan to hijack the planes and is hence guilty of [accessory](#) in 246 counts of [murder](#). This is the number of victims that died in the planes but does not include the victims on ground. The Oberlandesgericht (state Supreme Court) in [Hamburg](#) then took up the trial again in order to decide on the sentencing.[\[7\]](#) Two days later, the Federal Supreme Court also revoked the release order and Motassadeq was arrested again. On January 8, 2007, he was sentenced by the Oberlandesgericht Hamburg to 15 years in prison, the maximum sentence possible under German law. The [Federal Constitutional Court of Germany](#) did not accept to revise his case. On May 2 the [Federal Court of Justice of Germany](#) rejected a plea for revision. His lawyers are currently thinking about both calling upon the [European Court of Human Rights](#) and trying to get the case reopened - his two ultimate legal choices left.[\[8\]](#)

### **Khalid Sheikh Mohammed, Ramzi bin al-Shibh, Mustafa Ahmad al-Hawsawi, Ali Abd al-Aziz Ali and Walid Bin Attash**

(Main article: [United States v. Khalid Sheikh Mohammed, et al.](#))

**On February 11, 2008**, US [Department of Defense](#) charged [Khalid Sheikh Mohammed](#) as well as [Ramzi bin al-Shibh](#), [Mustafa Ahmad al-Hawsawi](#), [Ali Abd al-Aziz Ali](#) and [Walid Bin Attash](#) for the September 11 attacks under the [military commission](#) system, as established under the [Military Commissions Act of 2006](#).

These individuals were arrested in 2002-2003 in [Pakistan](#) and held by CIA in [undisclosed locations](#).

**On September 6, 2006**, [American President George W. Bush](#) confirmed, for the first time, that the [CIA](#) had held "high-value detainees" in secret interrogation centers.<sup>[\[citation needed\]](#)</sup> He also announced that fourteen senior captives, including Khalid Sheikh Mohammed, were being transferred from CIA custody, to military custody, at [Guantanamo Bay](#) and that these fourteen captives could now expect to face charges before Guantanamo military commissions.

**In a September 29, 2006** speech, President [Bush](#) stated "Once captured, [Abu Zubaydah](#), [Ramzi bin al-Shibh](#), and Khalid Sheikh Mohammed were taken into custody of the Central Intelligence Agency. The questioning of these and other suspected terrorists provided information that helped us protect the American people. They helped us break up a cell of [Southeast Asian](#) terrorist operatives that had been groomed for attacks inside the United States. They helped us disrupt an al Qaeda operation to develop [anthrax](#) for terrorist attacks. They helped us stop a planned strike on a US Marine camp in [Djibouti](#), and to prevent a planned attack on the US Consulate in [Karachi](#), and to foil a plot to hijack passenger planes and to fly them into [Heathrow Airport](#) and London's [Canary Wharf](#)."<sup>[\[19\]](#)</sup>

**In March 2007**, Mohammed testified before a closed-door hearing in Guantánamo Bay. According to transcripts of the hearing released by the Pentagon, he said "I was responsible for the 9/11 operation, from A to Z." The transcripts also show him confessing to: organizing the [1993 World Trade Center bombing](#); the [Bali nightclub bombings](#); and Richard Reid's attempted shoe bombing. He also confessed to planning attacks on [Heathrow Airport](#) and [Big Ben clock tower](#) in London, Pearl's

murder in 2002, and planned [assassination](#) attempts on [Pope John Paul II](#), [Pervez Musharraf](#) and [Bill Clinton](#).<sup>[20]</sup>

*Khalid Sheikh Mohammed as well as Ramzi bin al-Shibh, Mustafa Ahmad al-Hawsawi, Ali Abd al-Aziz Ali and Walid Bin Attash have reportedly been charged with the murder of almost 3000 people, terrorism and [providing material support for terrorism](#) and plane hijacking; as well as attacking civilian objects, intentionally causing serious bodily injury and destruction of property in violation of the law of war. The charges against them list 169 overt acts allegedly committed by the defendants in furtherance of the September 11 events". The charges include 2,973 individual counts of murder—one for each person killed in the 9/11 attacks.*<sup>[9]</sup>

The US government is seeking the [death penalty](#), which would require the unanimous agreement of the commission judges.

*[edit] Possible guilty plea* On 4 April 2011 Attorney General [Eric Holder](#) announced that Khalid Sheikh Mohammed and four other 9/11 terror suspects will face a military trial at the Guantanamo Bay detention facility. In announcing his decision, Holder blasted Congress for imposing restrictions on the Justice Department's ability to bring the men to [New York](#) for civilian trials. "After thoroughly studying the case, it became clear to me that the best venue for prosecution was in federal court. I stand by that decision today," Holder said. "As the president has said, those unwise and unwarranted restrictions (imposed by Congress) undermine our counterterrorism efforts and could harm our national security. Decisions about who, where and how to prosecute have always been - and must remain - the responsibility of the executive branch." Holder insisted, "We were prepared to bring a powerful case against Khalid Sheikh Mohammed and his four co-conspirators - one of the most well-researched and documented cases I have ever seen in my decades of experience as a prosecutor." He added, "Had this case proceeded in [Manhattan](#) or in an alternative venue in the United States, as I seriously explored in the past year, I am confident that our justice system would have performed with the same distinction that has been its hallmark for over 200 years." Holder had promised to seek the death penalty for each of the five men and on 4 April he warned that it is an "open question" if such a penalty can be imposed by a military commission if the defendants plead guilty.

## **Conclusion**

It seems clearly to me that democracies should refrain from bringing terrorists before military courts in time of peace, as a matter of regularity. Such a decision is expected to be applied in the case of the terrorist who was involved in the recent Boston Marathon massacre (\*\*).

A better choice would be, in my opinion, to bring them to justice before a civil court whose location is near to the place where the acts of terror were committed. Although I am not a US citizen, I support the [first decision](#) of US Department of Justice to bring Khalid Sheik Muhammad (K.S.M) and the other implicated terrorists, to justice before the district court of southern Manhattan.

There is no doubt in my mind that the Department of Justice was right in its first decision to bring Khalid Sheik Muhammad to justice in Manhattan. The appearance of justice and the people of NYC deserve, a closure and an end of the legal proceedings against the War-Criminals of Al-Qaeda. The families, the American people and the whole world waited and are still waiting anxiously to see that justice is done. Many thousands of families in US and

throughout the world are suffering from the results of 9/11 Mega-Terror attack on non-combatants. They deserve to see an end of the legal proceedings against the War Criminals of Al-Qaeda. The families, the American people and the whole world were waiting and are still waiting to see that Justice is done even if this would involve additional expenses in enhanced security of NYC during the trials.

I am sure that like me, the majority of the families of the victims are disappointed of the fact that a long period had past since 9/11 and since the terrorists had been in the hands of USA. Any democracy **must protect** itself and its government and to show that if terrorists are violating the security of the state, they will be brought to justice immediately or within a reasonable time.

On the other hand, I am also sure that those families are pleased that President Barack Obama ordered to bring the leader of the war criminals- Osama Bin-Laden- to Justice, even if it was by targeted killing which was **legitimate** under the circumstances.

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(\*\*) If it is true that the name of the terrorist has been provided to the US authorities of Law Enforcement long or even short time ago is true, it is **outrageous!**