

Federal Court



Cour fédérale

Date: 20080104

Docket: T-324-07

Ottawa, Ontario, January 4, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

AMNESTY INTERNATIONAL CANADA and  
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicants

and

CHIEF OF THE DEFENCE STAFF  
FOR THE CANADIAN FORCES,  
MINISTER OF NATIONAL DEFENCE and  
ATTORNEY GENERAL OF CANADA

Respondents

**ORDER**

ON READING the written motion record and consent of the parties, and upon hearing the parties by teleconference,

**THIS COURT ORDERS that:**

1. The determination of a separate issue, pursuant to rule 107(1) of the *Federal Courts Rules*, on the basis of the following questions:
  1. Does the *Canadian Charter of Rights and Freedoms* apply during the armed conflict in

Afghanistan to the detention of non-Canadians by the Canadian Forces or their transfer to Afghan authorities to be dealt with by those authorities?

2. If the answer to the above question is "NO" then would the *Charter* nonetheless apply if the Applicants were ultimately able to establish that the transfer of the detainees in question would expose them to a substantial risk of torture?

2. That pursuant to rule 107(2) of the *Federal Courts Rules* the procedure applicable to the determination of this question shall be as follows:

- i) the hearing into this matter shall take place on Friday, January 25, 2008;
- ii) the parties may rely upon any of the evidence in their mutual records as filed in relation to the applicants' motion for injunction to be heard on January 24, 2008;
- iii) the previously filed Affidavits of Prof. Christopher Greenwood and Prof. Michael Byers may be relied upon by the parties on the condition that the parties provide written notice of their intent to rely upon the same on or before Wednesday, January 9, 2008;
- iv) cross-examination, if any, in respect of these Greenwood and Byers Affidavits shall be completed by January 14, 2008;

- v) the moving parties' (respondents') Memorandum of Fact and Law (or record if Greenwood Affidavit is filed) shall be served and filed on or before January 18, 2008;
- vi) Responding parties' Memorandum of Fact and Law (or record if the Byers Affidavit is filed) shall be served and filed on or before January 22, 2008;  
and
- vii) Either party may also file, as part of their authorities and without the need to produce by way of a formal affidavit, any United Nations Resolutions they believe are applicable to the determination of this issue.

“Anne Mactavish”

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Judge