

**Can Victims Sue State Officials for Torture?
Reflections on Rasul v. Myers from the Perspective of
International Law**

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In *Rasul v. Myers* the US Court of Appeals for the District of Columbia Circuit dismissed on 11 January 2008 appeals against decisions of the US District Court for the District of Columbia of 6 February 2006 and 8 May 2006, respectively. The original lawsuit was brought on behalf of four former Guantánamo detainees, citizens and residents of the United Kingdom, against the then Secretary of Defense, Donald Rumsfeld, the Chairmen of the Joint Chiefs of Staff and other senior military officers. The plaintiffs sought damages for their alleged maltreatment and torture at the US Naval Base at Guantánamo Bay in violation of international law and US constitutional and statutory law. The case raises important questions of international law which are addressed in this article. It puts to the test the assumption that post-World War II international law is characterized by a steady increase in the status and role of the individual. But is today an individual entitled to get his or her international human rights recognized by a foreign domestic court, and to be awarded damages if those rights have been violated? After briefly recalling those facts of the case and the arguments of the Court which are important for its evaluation from the perspective of international law, the article first examines the issue of a civil liability of a state, or state officials individually, for violations of human rights law and humanitarian law. The author then turns to the issue of enforcement of such a liability by a right of a victim to have access to the judicial system of the respective state. Thirdly, the article draws attention to the similarity of criminal punishment and punitive damages, arguing that a general exclusion of individual civil liability for acts of torture runs counter to the obligation of states to prosecute and punish individuals responsible for acts of torture. Subsequently, the issue of a personal immunity of state officials in civil proceedings is discussed. As a last important question of international law raised by the case, the author identifies the debatable compliance of the United States with Article 14(1) of the Convention against Torture, which obliges states parties to ensure in their legal systems that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation. The author concludes that, although the advanced process of a 'humanization' of international law suggests civil liability of state officials for violations of international law, so far states have not been ready to agree on it.