Quo Vadis Guantanamo?
Reflections on the U.S. Supreme Court’s Boumediene Decision

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1. Introduction
The detention facility the Bush Administration has created at Guantanamo Bay, Cuba, to confine those labelled “enemy combatants” in the “war on terror” has drawn massive criticism from European politicians and legal scholars. One of the most strident condemnations came from Johan Steyn, an English Lord of Appeal, who coined the term “legal black hole” henceforth often used to describe the facility. At the time of his writing this probably was a very accurate description. The American administration had expressly denied the applicability of the Geneva Conventions to “enemy combatants”. Other mechanisms for their protection were not yet in place. Yet, the metaphor may carry even further than Lord Steyn initially thought. Black holes – scientists assume – first suck into them everything

that comes close and, thus, grow rapidly. That’s exactly what happened at first with Guantanamo – at times there were over 1000 “enemy combatants” detained in the two camps. Over a longer time period, however, black holes are expected to shrink – as was the case with Guantanamo. At the time of going to press the number of detainees has declined to some 260. New mechanisms of review and legal oversight, largely forced upon the Administration by Congress and the Supreme Court, have contributed to this development. The last phase in the evolution of a black hole is evaporation. The black hole dissolves. Some argue that we may have entered this last stage with the U.S. Supreme Court’s recent decision in Boumediene v. Bush. That decision and its practical impact will be analysed below. To understand its reasoning and intricacies, however, it is necessary to first take a glance at the complicated history and evolution of the detention camp.

2. A War on Terrorism

2.1. The European View

Guantanamo Bay is the most visible (and arguably the most infamous) symbol of America’s so called “war on terrorism”. Located at a naval base, run by military personnel and under supervision of the Defence Department and the President as commander-in-chief Guantanamo cannot be mistaken for an ordinary prison. While trials are held for some of the detainees, the defendants are not charged with ordinary domestic offences but with “war crimes” and military officers both preside over the trials and play the role of interrogators, prosecutor, counsel and jurors. Most detainees will likely never be charged, but merely interrogated and held for preventive purposes.

Guantanamo, thus, stands for a break from a legal tradition that regarded terrorist acts not as warfare but as ordinary crimes. The European states in the past have dealt with different terrorist groups – the IRA, the Bader-Meinhof Group or ETA – mainly through the criminal justice system. The criminal law tradition is still alive within the European Union and has not been discarded even after more

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4) 553 U.S. (2008); available at: <www.supremecourts.gov/opinions/07pdf/06-1195.pdf> (Citations refer to this version of the decision).