



Darfur and Abu Ghraib

By Kenneth Roth*

Among the myriad human rights challenges of 2004, two pose fundamental threats to human rights: the ethnic cleansing in Darfur and the torture of detainees at Abu Ghraib. No one would equate the two, yet each, in its own way, has had an insidious effect. One involves indifference in the face of the worst imaginable atrocities, the other is emblematic of a powerful government flouting a most basic prohibition. One presents a crisis that threatens many lives, the other a case of exceptionalism that threatens the most fundamental rules. The vitality of the global defense of human rights depends on a firm response to each—on stopping the Sudanese government’s slaughter in Darfur and on changing the policy decisions behind the U.S. government’s torture and mistreatment of detainees.

In Darfur, the western region of Sudan, massive ethnic cleansing has sparked much international hand-wringing and denunciation but little effective action. The systematic violence against civilians by Sudanese government forces and government-backed militia constitutes crimes against humanity and has even been described by some as genocide, yet the international response has been little more than to condemn the atrocities, feed the victims, and send a handful of poorly equipped African forces to try, largely in vain, to stop the slaughter. No serious pressure has been put on the Sudanese government to halt its murderous campaign. No meaningful protective force has been deployed. Coming a decade after the Rwandan genocide, the mass murder in Darfur mocks the vows of “never again.” How can governments honestly mouth those words when their actions fall so shamefully short?

Immediate action is needed to save the people of Darfur. The U.N. Security Council—or, failing action by that body, any responsible group of governments—must deploy a large force capable of protecting the civilian population, prosecute the killers and their commanders, disband and disarm the Sudanese government’s militia, and create secure

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conditions so displaced people can return home safely. Continued inaction risks undermining a fundamental human rights principle—that the nations of the world will never let sovereignty stand in the way of their responsibility to protect people from mass atrocities.

The U.S. government's use of torture at Abu Ghraib prison in Iraq poses a different kind of challenge: not because the scale of the abuse is as large as Darfur, but because the abuser is so powerful. When most governments breach international human rights and humanitarian law, they commit a violation. The breach is condemned or prosecuted, but the rule remains firm. Yet when a government as dominant and influential as the United States openly defies that law and seeks to justify its defiance, it also undermines the law itself and invites others to do the same. The U.S. government's deliberate and continuing use of "coercive interrogation"—its acceptance and deployment of torture and other cruel, inhuman, or degrading treatment—has had this insidious effect, well beyond the consequences of an ordinary abuser. That unlawful conduct has also undermined Washington's much-needed credibility as a proponent of human rights and a leader of the campaign against terrorism. In the midst of a seeming epidemic of suicide bombings, beheadings, and other attacks on civilians and noncombatants—all affronts to the most basic human rights values—Washington's weakened moral authority is felt acutely.

As the Bush administration begins its second term, its challenge is to make human rights a guiding force for U.S. conduct and to establish America's credibility as a defender of human rights. As a first step, President Bush and the U.S. Congress should establish a fully independent investigative commission—similar to the one created to examine the attacks of September 11, 2001—to determine what went wrong in the administration's interrogation practices and to prescribe remedial steps. Washington should also acknowledge and reverse the policy decisions behind its torture and mistreatment of detainees, hold accountable those responsible at all levels of government for the mistreatment of detainees, and publicly commit to ending all forms of coercive interrogation.

Darfur

Many reasons can be cited for the world's callous disregard for the death of an estimated 70,000 people and the displacement of some 1.6 million more in Darfur. The second essay of this volume describes several of these reasons. None, however, justifies this cruel indifference. Once more, the U.N. Security Council has been hampered by its permanent members' threatened parochial use of their veto—a veto that, as recommended by the U.N.'s high-level panel on global threats, should never be

exercised “in cases of genocide and large-scale human rights abuses.” This time, China has been the primary problem, demonstrating more concern for preserving its lucrative oil contracts in Sudan than for saving thousands of lives. Russia, protecting its own valuable arms sales to Khartoum, has seconded this cold-hearted unresponsiveness.

The non-permanent members also share culpability. Algeria and Pakistan have been models of Islamic solidarity, so long as that is defined as fealty to an Islamic government rather than commitment to the lives of Muslim victims. Other African members of the council, Angola and Benin, placed a premium on loyalty to a fellow African government. In the U.N. General Assembly, scores of governments, hostile to any human rights criticism because of their own poor records, opposed even discussing Sudan’s murderous campaign, let alone condemning it.

Even the champions of human rights in Darfur—Washington foremost among them—have seemed more focused on limiting their obligation to the people of Darfur than on ending the killing. A large U.N.-authorized military force is clearly needed to protect Darfur residents and to create conditions of security that might allow them to return home safely. But the United States and its Western allies have handed the problem to the African Union, a new institution with few resources and no experience with military operations of the scale needed. The situation cries out for involvement by the major military powers, but they have chosen to be unavailable. The United States, the United Kingdom, and Australia are bogged down in Iraq, with the United States going so far as to say that “no new action is dictated” by its determination that the killing in Darfur amounts to genocide; France is committed elsewhere in Africa; Canada, despite promoting the “responsibility to protect,” is cutting back its peacekeeping commitments; NATO is preoccupied in Afghanistan; the European Union is deploying forces in Bosnia. Everyone has something more important to do than to save the people of Darfur from inhuman brutality at the hands of the Sudanese government and its militia.

Another key step for ending the ethnic cleansing is to ensure that those responsible for murder, rape, and other atrocities—and their commanders—face their day in court. The Sudanese government has done nothing real to see justice done. International prosecution is needed to silence the smug denials of responsibility emanating from Khartoum and to signal to the people of Darfur that the world no longer considers their demise and dislocation acceptable. Just as impunity invited Khartoum to extend its murderous ways from the killing fields of southern Sudan to Darfur, so prosecution would demonstrate a refusal to tolerate in Darfur the kinds of government-sponsored atrocities that have plagued southern Sudan for over two decades.

To its credit, the Security Council established an international commission of inquiry for Darfur—a possible prelude to prosecution. When the commission reports back at the end of January, the council will have to decide whether to refer the situation to the International Criminal Court. Will China see past its oil contracts to allow the referral to go forward? Will the United States overcome its antipathy for the court to allow prosecution of crimes it calls genocide? Or, as the people of Darfur suffer and die, will it insist on wasting time setting up a separate tribunal? The Security Council's many professions of concern will ring hollow if its answer to the desperate pleas from Darfur is, through delay or inaction, to let impunity reign.

Darfur today stands as testament to a profound failure of will to prevent and redress the most heinous human rights crimes. Despite countless denunciations and endless professions of concern, little has been done to protect the people of Darfur. A failure of this magnitude challenges the fundamental human rights principle that the governments of the world will not turn their backs on people facing mass atrocities. For if the nations of the world cannot act here, when will they act? How, ten years after the Rwandan genocide, can the gap between concern and action remain so wide? How, when the worst of human cruelty is on display, can the world remain so indifferent? As the death toll rises and the charade of feigned protection becomes painfully obvious to all, we must insist that the nations of the world finally rescue the people of Darfur. Either that or vow “never again” to say “never again.”

Coercive Interrogation

The U.S. government's systematic and continuing use of coercive interrogation jeopardizes a pillar of international human rights law—a centuries-old proscription, reaffirmed unconditionally in numerous widely ratified human rights treaties, that governments should never subject detainees to torture or other cruel, inhuman, or degrading treatment. Yet in fighting terrorism, the U.S. government has treated this cornerstone obligation as merely hortatory—a matter of choice, not duty.

This disdain for so fundamental a principle has done enormous damage to the global system for protecting human rights. Broad public condemnation has certainly greeted the U.S. government's use of torture and other abusive techniques. To some extent that outrage has reinforced the rules that Washington violated—but not enough. Washington's lawless example is so powerful, its influence so singular, that its deliberate breach threatens to overshadow the condemnations and leave human rights law significantly weakened. If even so basic a rule as the ban on torture can be flouted, other rights are inevitably undermined as well.

To make matters worse, the Bush administration has developed outrageous legal theories to try to justify many of its coercive techniques. Whether defining torture so narrowly as to render its prohibition meaningless, suggesting bogus legal defenses for torturers, or claiming that the president has inherent power to order torture, the administration and its lawyers have directly challenged the absolute ban on abusing detainees.

The problem is compounded by the weakening of one of the most important governmental voices for human rights. Washington's record of promoting human rights has always been mixed. For every offender that it berated for human rights transgressions, there was another whose abuses it ignored, excused, or even supported. Yet despite this inconsistency, the United States historically has played a key role in defending human rights. Its embrace of coercive interrogation—part of a broader betrayal of human rights principles in the name of combating terrorism—has significantly impaired its ability to mount that defense.

Governments facing human rights pressure from the United States now find it increasingly easy to turn the tables, to challenge Washington's standing to uphold principles that it violates itself. Whether it is Egypt defending renewal of its emergency law by reference to U.S. anti-terror legislation, Malaysia justifying administrative detention by invoking Guantánamo, Russia citing Abu Ghraib to blame abuses in Chechnya solely on low-level soldiers, or Cuba claiming the Bush administration had “no moral authority to accuse” it of human rights violations, repressive governments find it easier to deflect U.S. pressure because of Washington's own sorry post-September 11 record on human rights. Indeed, when asked by Human Rights Watch to protest administrative detention in Malaysia and prolonged incommunicado detention in Uganda, State Department officials demurred, explaining, in the words of one, “with what we are doing in Guantanamo, we're on thin ice to push this.”

Similarly, many human rights defenders, particularly in the Middle East and North Africa, now cringe when the United States comes to their defense. They may crave a powerful ally, but identifying too closely with a government that so brazenly ignores international law, whether in Iraq, Israel and the occupied territories, or the campaign against terrorism, has become a sure route to disrepute. To his credit, President Bush, in a November 2003 speech, deplored “sixty years of Western nations excusing and accommodating the lack of freedom” in the Arab world. Recalling U.S. efforts to roll back Communist dictatorships in Eastern Europe, President Bush committed the United States to a new “forward strategy of freedom.” Yet because of animosity toward Washington's policies, the close collaboration with civil society that characterized U.S. pro-democracy efforts in Eastern Europe is now more difficult in the Middle East and

North Africa. This animosity is not anti-Americanism, as it is often misconstrued in an effort to dismiss it, but anti-American policyism.

Washington's loss of credibility has not been for lack of rhetorical support for concepts that are closely related to human rights, but the embrace of explicit human rights language seems to have been calculatedly rare. The Bush administration speaks often of its devotion to "freedom," its opposition to "tyranny" and "terrorism," but rarely its commitment to human rights. The distinction has enormous significance. It is one thing to pronounce oneself on the side of the "free," quite another to be bound by the full array of human rights standards that are the foundation of freedom. It is one thing to declare oneself opposed to terrorism, quite another to embrace the body of international human rights and humanitarian law that enshrines the values that reject terrorism. This linguistic sleight of hand—this refusal to accept the legal obligations embraced by rights-respecting states—has facilitated Washington's use of coercive interrogation.

What has been particularly frustrating about Washington's disregard for international standards is how senseless, even counterproductive, it has been—especially in the Middle East and North Africa, where counterterrorism efforts have focused. Open and responsive political systems are the best way to encourage people to pursue their grievances peacefully. But when the most vocal governmental advocate of democracy deliberately violates human rights, it undermines democratically inclined reformers and strengthens the appeal of those who preach more radical visions.

Moreover, because deliberately attacking civilians is an affront to the most basic human rights values, an effective defense against terrorism requires not only traditional security measures but also reinforcement of a human rights culture. The communities that are most influential with potential terrorists must themselves be persuaded that violence against civilians is never justified, regardless of the cause. But when the United States disregards human rights, it undermines that human rights culture and thus sabotages one of the most important tools for dissuading potential terrorists. Instead, U.S. abuses have provided a new rallying cry for terrorist recruiters, and the pictures from Abu Ghraib have become the recruiting posters for Terrorism, Inc. Many militants need no additional incentive to attack civilians, but if a weakened human rights culture eases even only a few fence-sitters toward the path of violence, the consequences can be dire.

And for what? To vent frustration, to exact revenge—perhaps, but not because torture and mistreatment are needed for protection. Respect for the Geneva Conventions does not preclude vigorously interrogating detainees about a limitless range of topics. The

U.S. Army's interrogation manual makes clear that abuse undermines the quest for reliable information. The U.S. military command in Iraq says that Iraqi detainees are providing more useful intelligence when they are not subjected to coercion. In the words of Craig Murray, the United Kingdom's former ambassador to Uzbekistan who was speaking of the U.K.'s reliance on torture-extracted testimony, "We are selling our souls for dross."

None of this is to say that the United States is the worst human rights abuser. Perusal of this year's annual Human Rights Watch World Report will show many more serious contenders for that notorious title. But the sad truth is that Washington's unmatched influence has made its contribution to the degradation of human rights standards unique.

It is not enough to argue, as its defenders undoubtedly will, that the Bush administration is well intentioned—that it is the "good guy," in the words of the *Wall Street Journal*. A society ordered on intentions rather than law is a lawless society. Nor does it excuse the administration's human rights record, as its defenders have tried to do, to note that it removed two tyrannical governments—the Taliban in Afghanistan and the Ba'ath Party in Iraq. Attacks on repressive regimes cannot justify attacks on the body of principles that makes their repression illegal.

To redeem its credibility as a proponent of human rights and an effective leader of the campaign against terrorism, the Bush administration needs urgently to reaffirm its commitment to human rights. For reasons of principle and pragmatism, it must, as noted, allow an independent, September 11-style investigative commission to examine completely its interrogation practices. The administration must then acknowledge the wrongfulness of its conduct, hold accountable all those responsible (not just a small group of privates and sergeants), and publicly commit itself to ending all forms of coercive interrogation.

Cover-Up and Self-Investigation

When the photos from Abu Ghraib became public, the Bush administration reacted like many abusive governments that are caught red-handed: it went into damage-control mode. It agreed that the torture and abuse featured in the photographs were wrong, but sought to minimize the problem. The abusers, it claimed, were a handful of errant soldiers, a few "bad apples" at the bottom of the barrel. The problem, it argued, was contained, both geographically (one section of Abu Ghraib prison) and structurally (only low-level soldiers, not more senior commanders). The abuse photographed at Abu Ghraib and broadcast around the world, it maintained, had nothing to do with the decisions and policies of more senior officials. President Bush vowed that "wrongdoers

will be brought to justice,” but as of early December 2004, no one above the rank of sergeant is facing prosecution.

Key to this damage control was a series of carefully limited investigations—ten so far. Most of the investigations, such as those conducted by Maj. Gen. George Fay and Lt. Gen. Anthony Jones, involved uniformed military officials examining the conduct of their subordinates; these officers lacked the authority to scrutinize senior Pentagon officials. The one investigation with the theoretical capacity to examine the conduct of Defense Secretary Donald Rumsfeld and his top aides—the inquiry led by former Defense Secretary James Schlesinger—was appointed by Rumsfeld himself and seemed to go out of its way to distance him from the problem. (At the press conference releasing the investigative report, Schlesinger said that Rumsfeld’s resignation “would be a boon to all America’s enemies.”) The Schlesinger investigation lacked the independence of, for example, the September 11 Commission, which was established with the active involvement of the U.S. Congress. As for the Central Intelligence Agency—the branch of the U.S. government believed to hold the most important terrorist suspects—it has apparently escaped scrutiny by anyone other than its own inspector general. Meanwhile, no one seems to be looking at the role of President Bush and other senior administration officials.

When an unidentified government official retaliated against a critic of the Bush administration by revealing his wife to be a CIA agent—a serious crime because it could endanger her—the administration agreed, under pressure, to appoint a special prosecutor who has been promised independence from administration direction. Yet the administration has refused to appoint a special prosecutor to determine whether senior officials authorized torture and other forms of coercive interrogation – a far more serious and systematic offense. As a result, no criminal inquiry that the administration itself does not control is being conducted into the U.S. government’s abusive interrogation methods. The flurry of self-investigations cannot obscure the lack of any genuinely independent one.

The Policies behind Abu Ghraib

The abuses of Abu Ghraib did not erupt spontaneously at the lowest levels of the military chain of command. They were not merely a “management” failure, as the Schlesinger investigation suggested. They were the direct product of an environment of lawlessness, an environment created by policy decisions taken at the highest levels of the Bush administration, many long before the start of the Iraq war. They reflect a determination to fight terrorism unconstrained by fundamental principles of international human rights and humanitarian law—even though the United States and

governments around the world have committed to respect those principles even in time of war and severe security threats. The Bush administration's decisions received important support in the United States from a chorus of partisan pundits and academics who, claiming that an unprecedented security threat justified unprecedented measures, were all too eager to abandon the fundamental principles on which their nation had been founded. Those decisions included:

- The decision not to apply the Geneva Conventions to detainees in U.S. custody at Guantánamo, even though the conventions apply to all people picked up on the battlefield of Afghanistan. Senior Bush officials vowed that all detainees would be treated “humanely,” but that vow seems never to have been seriously implemented and at times was qualified by a self-created exception for “military necessity.” Meanwhile, the effective shredding of the Geneva Conventions sent U.S. interrogators the signal that, in the words of one leading counterterrorist official, “the gloves came off.”
- The decision not to clarify for nearly two years that, regardless of the applicability of the Geneva Conventions, all detainees in U.S. custody were protected by the parallel requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even when, at the urging of human rights groups, a senior Pentagon official belatedly reaffirmed, in June 2003, that the convention prohibited not only torture but also other forms of ill treatment, that announcement was communicated to interrogators, if at all, in a way that had no discernible impact on their behavior.
- The decision to interpret the prohibition of cruel, inhuman, or degrading treatment narrowly, to permit certain forms of coercive interrogation—that is, certain efforts to ratchet up a suspect's pain, suffering, and humiliation to make him talk. Not surprisingly, those methods became more coercive as they “migrated,” in the words of two Pentagon inquiries, from the controlled setting of Guantánamo to the battlefields of Afghanistan and Iraq.
- The decision to hold some suspects—eleven known and probably many more—in unacknowledged incommunicado detention, beyond the reach of even the International Committee of the Red Cross. Victims of such “disappearances” are at the greatest risk of torture and other mistreatment. For example, U.S. forces continue to maintain closed detention sites in Afghanistan, where beatings, threats, and sexual humiliation are still reported. Since late 2001, six persons arrested by U.S. forces in Afghanistan have died in custody—one as recently as September 2004.

- The refusal for over two years to prosecute soldiers implicated in the deaths of two suspects in U.S. custody in Afghanistan in December 2002, deaths ruled "homicides" by U.S. Army pathologists. Instead, the interrogators were reportedly sent to Iraq, where some were allegedly involved in more abuse.
- The approval by Defense Secretary Rumsfeld of some interrogation methods for Guantánamo that violated, at the very least, the prohibition of cruel, inhuman, or degrading treatment and possibly the ban on torture. These techniques included placing detainees in painful stress positions, hooding them, stripping them of their clothes, and scaring them with guard dogs. That approval was later rescinded, but it contributed to the environment in which America's legal obligations were seen as dispensable.
- The reported approval by an unidentified senior Bush administration official, and use, of "water boarding"—known as the "submarine" in Latin America—a torture technique in which the victim is made to believe he will drown, and in practice sometimes does.
- The sending of suspects to governments such as Syria, Uzbekistan, and Egypt that practice systematic torture. Sometimes diplomatic assurances have been sought that the suspects would not be mistreated, but if, as in these cases, the receiving government routinely flouts its legal obligation under the Convention against Torture, it was wrong to expect better compliance with the non-binding word of a diplomat.
- The decision (adopted from the Bush administration's earliest days) to oppose and undermine the International Criminal Court, in part out of fear that it might compel the United States to prosecute U.S. personnel implicated in war crimes or other comparable offenses that the administration would prefer to ignore. That signaled a determination to protect U.S. personnel from external accountability for human rights offenses that the U.S. government might authorize.
- The decision by the Justice Department, the Defense Department, and the White House counsel to concoct dubious legal theories to justify torture. Despite objections from the State Department and professional military attorneys, these government departments, under the direction of politically appointed lawyers, offered such absurd interpretations of the law as that President Bush has "commander-in-chief authority" to order torture. By that theory, Slobodan Milosevic and Saddam Hussein may as well be given the keys to their jail cells, since they, too, presumably would have had "commander-in-chief authority" to authorize the atrocities they directed.

These policy decisions, taken not by low-level soldiers but by senior officials of the Bush administration, created an “anything goes” atmosphere, an environment in which the ends were assumed to justify the means. Sometimes the mistreatment of detainees was merely tolerated, other times it was actively encouraged or even ordered. In those circumstances, when the demand came from on high for “actionable intelligence”—intelligence that would help respond to the steady stream of U.S. casualties at the hands of extraordinarily brutal Iraqi insurgents—it was hardly surprising that interrogators saw no obstacle in the legal prohibition of torture and mistreatment.

To this day, the Bush administration has failed to repudiate many of these decisions. It continues to refuse to apply the Geneva Conventions to any of the more than five hundred detainees held at Guantánamo (despite a U.S. court ruling rejecting its position) and to many others detained in Iraq and Afghanistan. It continues to “disappear” detainees, despite ample proof that these “ghost detainees” are extraordinarily vulnerable to torture. It refuses to disown the practice of “rendering” suspects to governments that torture. It continues its vendetta against the International Criminal Court. It refuses to reject in anything but vague and general terms the many specious arguments for torture contained in the administration lawyers’ notorious “torture memos.” And it still refuses to disavow all forms of coercive interrogation or to adopt a clear policy forbidding it. Indeed, it reportedly continued as late as June 2004—long after the Abu Ghraib mistreatment became public—to subject Guantánamo detainees to beatings, prolonged isolation, sexual humiliation, extreme temperatures, and painful stress positioning – practices the International Committee of the Red Cross reportedly called “tantamount to torture.”

As the Bush administration assembles its cabinet for a second presidential term, President Bush seems to have ruled out even informal accountability. Secretary of State Colin Powell, the cabinet official who most forcefully opposed the administration’s disavowal of the Geneva Conventions, is leaving. Defense Secretary Donald Rumsfeld, who ordered abusive interrogation techniques in violation of international law, is staying. White House Counsel Alberto Gonzales, who sought production of the memos justifying torture and who himself wrote that the fight against terrorism renders “obsolete” and “quaint” the Geneva Conventions’ limitations on interrogation and the treatment of prisoners, has been rewarded with nomination as Attorney General. As for the broader Bush administration, the November elections seem to have reinforced its traditional disinclination to serious self-examination. Apparently seeing the election results as a complete vindication, it refuses to admit its role in Abu Ghraib and other interrogation abuses.

The Twisted Logic of Torture

A warped and dangerous logic lies behind the Bush administration's refusal to reject coercive interrogation. Many American security officials seem to believe that coercive interrogation is necessary to protect Americans and their allies from a catastrophic terrorist attack. Torture and inhumane treatment may be wrong, they contend, but mass murder is worse, so the lesser evil must be tolerated to prevent the greater one. Yet, aware of how fundamental the prohibition of torture is to modern civilization, even proponents of a hard-line approach to counter-terrorism are reluctant to prescribe systematic torture. Instead, they purport to create a rare exception to the rule against torture by invoking the "ticking bomb" scenario, a situation in which interrogators are said to learn that a terrorist suspect in custody knows where a ticking bomb has been planted and must force that information from him to save lives.

The ticking bomb scenario makes for great philosophical discussion, but it rarely arises in real life—at least not in a way that avoids opening the door to pervasive torture. In fact, interrogators hardly ever learn that a suspect in custody knows of a particular, imminent terrorist bombing. Intelligence is rarely if ever good enough to provide such specific, advance warning. Instead, the ticking bomb scenario is a dangerously expansive metaphor capable of embracing anyone who might have knowledge of unspecified future terrorist attacks. After all, why are the victims of only an imminent terrorist attack deserving of protection by torture? Why not also use torture to prevent a terrorist attack tomorrow or next week or next year? And once the taboo against torture is broken, why stop with the alleged terrorists themselves? Why not also torture their families or associates—anyone who might provide life-saving information? The slope is very slippery.

Israel provides an instructive example of how dangerously elastic the ticking-bomb rationale can become. In 1987, the Landau Commission in Israel authorized the use of "moderate physical pressure" in ticking-bomb situations. A practice initially justified as rare and exceptional, taken only when necessary to save lives, gradually became standard procedure. Soon, some 80 to 90 percent of Palestinian security detainees were being tortured—until, in 1999, the Israeli Supreme Court curtailed the practice.

Other schemes have also been suggested to allow only exceptional torture. Judges might be asked to approve torture. Consent of the highest levels of the executive branch might be required. Yet in the end, any effort to regulate torture ends up legitimizing it and inviting its repetition. "Never" cannot be redeemed if allowed to be read as "sometimes." Regulation too easily becomes license.

The Bush administration tried to allow just limited coercion through close regulation, but that, predictably, led to more expansive use. Once a government allows interrogators to ratchet up the level of pain, suffering, and humiliation, severe abuse will not be far behind. That's because a hardened terrorist is unlikely to be moved by minor discomfort or modest levels of pain. Once coercion is permitted, interrogators will be tempted to intensify the mistreatment until the suspect cracks. And so, cruel, inhuman or degrading treatment gives way to torture.

As most professional interrogators explain, and as the U.S. army's interrogation manual confirms, coercive interrogation is far less likely to produce reliable information than the time-tested methods of careful questioning, probing, cross-checking, and gaining the confidence of the detainee. A person facing severe pain is likely to say whatever he thinks will stop the torture. But a skilled interrogator can often extract accurate information from the toughest suspect without resorting to coercion.

Moreover, once the norm against torture is breached, it is difficult to limit the consequences. Those who face increased risk of torture are not only "terrorist suspects" but anyone who finds himself in custody anywhere in the world—including, of course, Americans. After all, how can the United States protest others' mistreatment of its troops when their jailors do no more than what Washington does to its own detainees?

In addition, a compromised prohibition of torture undermines other human rights. That endangers us all, in part because of the dangerous implications for the campaign against terrorism. Why, after all, is it acceptable to breach the fundamental prohibition of torture but not acceptable to breach the fundamental prohibition against attacking civilians? The torturer may justify his conduct by appeal to a higher good, but so do most terrorists. In neither case should the end be allowed to justify the means.

The European Union

As U.S. credibility on human rights wanes, there is an urgent need for others to assume the mantle of leadership. The European Union is an obvious candidate, but its performance has been inconsistent at best. At a formal level, the E.U. has embraced a rules-based order by holding that "establishing the rule of law and protecting human rights are the best means of strengthening the international order." It has also repeatedly affirmed that all measures against terrorism must comply fully with international human rights and humanitarian law. And it has been a firm supporter of the emerging international system of justice.

Yet European governments themselves have been willing to violate basic human rights standards—even those involving torture. Sweden, for example, sent two terrorist suspects to Egypt, a government with an established record of systematic torture. Stockholm tried to hide behind the fig leaf of diplomatic assurances from Cairo that the men would not be mistreated, but those assurances were predictably ignored. Germany, the Netherlands, Austria, and the United Kingdom have also returned or attempted to return terrorist or security suspects to places where they were at risk of torture. The United Kingdom refuses to rule out using information extracted from torture in court proceedings; its fig leaf is that it does not commission the torture itself, but merely passively receives its fruits, even though its ongoing relationship with intelligence partners ends up encouraging more torture.

A similar erosion of human rights standards governing the fight against terrorism can be found in certain E.U. members' detention practices. The U.K. government suspended core human rights obligations to allow it to detain indefinitely without charge or trial foreign nationals who were suspected of terrorist activity. In Spain, terrorism suspects can be held virtually incommunicado for up to thirteen days, with no ability to confer in private with an attorney. France asserts the right to detain for up to three years without charge the French nationals released from Guantánamo.

These abusive practices compromise the European Union's ability to fill the leadership void left by Washington's embrace of coercive interrogation. At a moment that calls for distance from misguided American practices, the European Union seems to be opting for emulation. A clear recommitment to human rights principle is immediately needed if the European Union is to serve as an effective counterweight to Washington's insidious influence on human rights standards.

The Way Forward

The strength of governments' commitment to human rights will be measured in large part by the response to two current challenges. Faced with Sudanese government-sponsored atrocities in Darfur, will the world continue to watch ethnic cleansing unfold, or will it respond meaningfully to end the murder, rape, arson, and forced displacement, and to force the Sudanese government to create secure conditions so the displaced can return home safely? The answer will determine whether the world can credibly argue that there are limits to the horrors it will allow a government to visit upon its people.

Faced with substantial evidence showing that the abuses at Abu Ghraib and elsewhere were caused in large part by official government policies, will the United States continue to treat the torture of detainees as the spontaneous misconduct of a few low-level

soldiers, or will it permit a fully independent, September 11-style investigative commission—the first step toward acknowledging the policy dimensions of the problem, punishing those responsible, and committing the United States to ending all coercive interrogation? These steps are necessary to reaffirm the prohibition of torture and ill treatment, to redeem Washington's voice as a credible proponent of human rights, and to restore the effectiveness of a U.S.-led campaign against terrorism.

In neither case will the proper response be easy. Saving the people of Darfur will require a significant commitment of international forces and resources. Acknowledging the depth of the problem at Abu Ghraib will be politically embarrassing. Yet both steps are necessary. It is time to look beyond the convenient excuses and rationalizations to reaffirm what should be the guiding human rights principles for every nation.