

HUMAN RIGHTS WATCH

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Cover photograph: Uighurs in the Xingjiang Uighur Autonomous Region, a predominantly Muslim area in China's northwest. The Uighurs are the largest of the many Turkic-speaking Muslim groups inhabiting the area. They have struggled for cultural survival in the face of a government-supported influx by Han Chinese migrants, as well as harsh repression of political dissent and any expression of their distinct identity. Since the September 11 attacks, China has tried to use the terrorism issue to justify its policies of repression against the Uighurs.

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We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those who hold power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

HUMAN RIGHTS WATCH

Human Rights Watch conducts regular, systematic investigations of human rights abuses in some seventy countries around the world. Our reputation for timely, reliable disclosures has made us an essential source of information for those concerned with human rights. We address the human rights practices of governments of all political stripes, of all geopolitical alignments, and of all ethnic and religious persuasions. Human Rights Watch defends freedom of thought and expression, due process and equal protection of the law, and a vigorous civil society; we document and denounce murders, disappearances, torture, arbitrary imprisonment, discrimination, and other abuses of internationally recognized human rights. Our goal is to hold governments accountable if they transgress the rights of their people.

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INTRODUCTION

Leadership requires more than a big stick and a thick wallet. It also requires a positive vision shared by others and conduct consistent with that vision. The campaign against terrorism is no exception to this rule. The United States, as a major target, has taken the lead in combating terrorism. But the global outpouring of sympathy that followed the attacks of September 11, 2001 has given way to growing reluctance to join the fight and even resentment toward the government leading it.

How was this goodwill depleted so quickly? In part the cause is traditional resentment of America and its role in the world—resentment which was softened only temporarily by the tragedy of September 11. In part it is opposition to U.S. policy in the Middle East. And in part it is growing disquiet that the means used to fight terrorism are often in conflict with the values of freedom and law that most people uphold and that U.S. President George W. Bush has said the United States is defending.

Despite its declared policy of supporting human rights, Washington in fighting terrorism has refused to be bound by human rights standards. Despite its tradition at home of a government under law, Washington has rejected legal constraints when acting abroad. Despite a constitutional order that is premised on the need to impose checks and balances, Washington seems to want an international order that places no limits on a nation's use of power save its own avowed good intentions. These attitudes jeopardize the campaign against terrorism. They also put at risk the human rights ideal.

This is hardly to say that Washington is among the worst human rights offenders. But because of the U.S. government's extraordinary influence, its willingness to compromise human rights to fight terrorism sets a dangerous precedent. Because of the leadership role it so often has played in promoting human rights, the weakening of its voice weighs heavily, particularly in some of the front-line countries in the war against terrorism where the need for a vigorous defense of human rights is great. For this reason, Human Rights Watch devotes much of the introduction to this year's World Report to highlighting this unfortunate trend in U.S. policy.

The European Union might have been expected to fill this leadership void. Instead, its excessive preoccupation with achieving consensus, and other concerns, frequently left it paralyzed. At a moment when Europe's growing unity might have enhanced its influence on human rights, the opposite occurred. Other voices, such as the U.N. Commission on Human Rights, were also compromised by governments' failure to require at least a modicum of interest in promoting human rights

as a condition of membership. On many human rights issues, the burden of moving forward fell on a handful of principled but less powerful governments acting alone or in small groups, such as Mexico, Canada, and Senegal.

Despite these troubling trends, there were some positive developments in 2002. The treaty to establish the International Criminal Court (ICC) went into effect, launching a tribunal with global scope to prosecute anyone responsible for genocide, war crimes, or crimes against humanity. The International Criminal Tribunal for the former Yugoslavia began the long-awaited trial of former Yugoslav President Slobodan Milosevic. After an intense campaign, a new treaty entered into force banning the forced recruitment of children under the age of eighteen or their use as combatants.

The people of East Timor gained their independence under an elected government, a fitting retort to the severe repression they had faced under Indonesian rule. Devastating civil wars ended in Angola (after twenty-seven years) and Sierra Leone (after a decade). In Sierra Leone, a special court and a truth commission were established to address atrocities of the recent past. Steps were also taken toward ending vicious civil wars in Sri Lanka and Sudan, where cease-fires were in place after some two decades of armed conflict.

African leaders made significant new commitments to transparent and accountable government and respect for human rights with the creation of the African Union and its adoption of the New Partnership for Africa's Development (NEPAD). The Organization of American States applied the newly created Inter-American Democratic Charter to thwart a coup attempt against a freely elected government in Venezuela.

In the Middle East and North Africa, Egypt's domestic courts convicted police officers of torturing detainees to death, and the Court of Cassation for a second time rebuffed a security court's conviction of democracy activist Saadeddin Ibrahim. In Algeria and Tunisia, activists and torture victims bypassed compromised local courts to seek justice in France. In Bahrain, women voted and stood for office in national assembly elections, a first in the Arabian Peninsula, and two local independent human rights organizations were allowed to register. Saudi Arabia adopted a criminal procedure code that prohibited torture and other ill-treatment and provided for oversight of prisons to ensure against unlawful detentions. Turkey, bidding to enter the European Union, abolished the death penalty and removed restrictions on the use of the Kurdish language; despite past interventions, its staunchly secular military accepted the electoral victory of a moderate political party with Islamist roots.

Yet serious problems remained in many parts of the world, from the continued killing of civilians in the Israeli-Palestinian conflict to a surge of communal violence in Gujarat, India; from the eruption of full-scale civil war in Nepal to continuing atrocities during wars in Colombia, Chechnya, and the Democratic Republic of Congo. There was a surge in large-scale deliberate attacks on civilians elsewhere as well, including Russians in Moscow, Australians and others in Bali, Germans in Tunisia, Israelis and Kenyans in Kenya, and French in Pakistan. Repressive dictatorships remained in such places as Burma, China, Iraq, North Korea, Saudi Arabia, and Vietnam. Industrialized governments continued to tighten their restrictions on refugees while doing far too little to provide treatment and care for the fifty-five

million Africans who are predicted to die prematurely of AIDS between 2000 and 2020.

U.S. POLICY AND THE CHALLENGE OF TERRORISM

Terrorism is antithetical to human rights. Its continuing spread in 2002 was a major challenge. Because targeting civilians for violent attack is repugnant to human rights values, the human rights movement has a direct interest in the success of the anti-terrorism effort. Yet, Washington's tendency to ignore human rights in fighting terrorism is not only disturbing in its own right; it is dangerously counter-productive. The smoldering resentment it breeds risks generating terrorist recruits, puts off potential anti-terrorism allies, and weakens efforts to curb terrorist atrocities.

Terrorism cannot be defeated from afar. Curbing terrorism requires the support of people in the countries where terrorists reside. They are the people who must cooperate with police inquiries rather than shield terrorist activity. They are the people who must take the lead in dissuading would-be terrorists. But if they see Washington embracing the governments that repress them, they will hardly be inclined to help. Their reluctance only increases if their entire community is viewed as suspect, as many people from the Middle East and North Africa now feel.

Clearly, Washington needs to take extra security measures. But the U.S. government must also pay attention to the pathology of terrorism—the set of beliefs that leads some people to join in attacking civilians, to believe that the ends justify the means. A strong human rights culture is an antidote to this pathology, but in too many places Washington sees human rights mainly as an obstacle to its goals. Human rights and security are mutually reinforcing, but too often Washington treats them as a zero-sum game.

Even at the height of the Cold War, the U.S. government understood the need for a positive vision. It understood that the United States could not only be against communism. It had to stand *for* democracy, even if at times that support was solely rhetorical. Similarly, it will not work for the U.S. government today to be only against terrorism. It will have to be in favor of the values that explain what is wrong with attacking civilians—the values of human rights.

There have been hints of such a positive vision—in prominent parts of a speech that President Bush gave at West Point, in June; in part of his administration's new National Security Strategy, released in September; and in the conditions for disbursing increased international assistance (the Millennium Challenge Account), announced in November. But this rhetorical embrace of human rights has translated only inconsistently into U.S. conduct and foreign policy.

The sad irony is that for much of the past half century, the United States has often been a driving force behind the expansion of the human rights ideal. It took the lead in drafting the Universal Declaration of Human Rights and building the international human rights system, and it has lent its voice and influence on behalf of human rights in many parts of the world. Even in 2002, the Bush administration tried to advance human rights in places where the war on terrorism was not implicated, such as Burma, Belarus, and Zimbabwe. It also recognized the connection

between repression and terrorism, and to a limited extent tried to promote human rights in some places that were more directly involved in the fight against terrorism, such as Egypt and Uzbekistan.

Yet this long engagement on human rights has been compromised in three important respects. First, in several key countries involved in the campaign against terrorism, such as Pakistan and Saudi Arabia, even rhetorical U.S. support for human rights has been rare—often nothing more than the State Department’s once-a-year pronouncements in its global human rights report. Washington has also shown little inclination to confront such influential governments as Russia, China, and Israel that are using the fight against terrorism to cloak or intensify repression aimed at separatist, dissident, or nationalist movements that are themselves often abusive.

Second, even when the U.S. government does try to promote human rights, its authority is undermined by its refusal to be bound by the standards it preaches to others. From its rejection of the Geneva Conventions to its misuse of the “enemy combatant” designation, from its threatened use of substandard military commissions to its misuse of immigration laws to deny criminal suspects their rights, Washington has waged war on terrorism as if human rights were not a constraint.

Third, Washington has intensely opposed the broader enforcement of international human rights law, from the International Criminal Court to more modest efforts to affirm or reinforce human rights norms. (Similar exceptionalism can be seen in such matters as the administration’s rejection of the Kyoto Protocol on global warming or its blocking of efforts to strengthen the Biological Weapons Convention.) This opposition suggests a radical vision of world order. Certain influential elements in the administration seem to view international law as an unnecessary impediment—a set of rules that in the future might constrain the United States in unforeseeable and inconvenient ways. Given America’s overwhelming economic and military strength, they reasoned, U.S. interests are better served by case-by-case negotiations.

But even American might has limits. Shared norms—of commerce, peace, or human rights—are needed so that most governments voluntarily abide by them. Pressure may still be needed to rein in recalcitrant governments, but an effective global order depends on most governments living voluntarily by agreed-upon rules. Even if the result is disappointing in a particular case, most governments recognize that a system of law is in their interest over the long run. But that logic breaks down if the superpower routinely exempts itself from the enforcement of international law. If shared norms give way to relations built on power alone, the world will revert to a pre-modern, Hobbesian order. That can hardly be in the long-term interest of the United States or anyone else.

In 2002, Washington’s neglect of human rights was seen in its behavior in international fora, its bilateral relations with other governments, and its own treatment of terrorist suspects.

INTERNATIONAL FORA

At the multilateral level, the U.S. government consistently opposed any effort to

enforce human rights standards. This posture was not entirely new. Both Democratic and Republican administrations have always kept human rights treaties at arm’s length. The U.S. government has never ratified half of the six leading human rights treaties (including the Convention on the Elimination of All Forms of Discrimination Against Women) as well as the leading treaty governing modern armed conflict (the First Additional Protocol of 1977 to the Geneva Conventions of 1949). Even when the U.S. government has ratified a human rights treaty, it has done so in a way that denies Americans the ability to enforce the treaty in any court, whether international or domestic. Yet in 2002, this resistance to enforceable human rights standards intensified.

It was on display at the U.N. Commission on Human Rights, the leading U.N. human rights body. Mexico proposed a resolution that stressed the importance of fighting terrorism consistently with human rights. The resolution did not condemn any nation; it simply reaffirmed an essential principle. Yet Washington opposed even this seemingly uncontroversial statement. It was joined by Algeria, India, Pakistan, and Saudi Arabia—hardly committed supporters of human rights. Ultimately, Mexico withdrew the resolution. The U.N. General Assembly later adopted a similar resolution by consensus after Washington failed to derail it.

The U.S. government similarly opposed efforts to strengthen the prohibition against torture. It objected to a proposed new Optional Protocol to the Convention Against Torture, which establishes a system for inspecting detention facilities where torture is suspected—an important preventive measure. Yet, as a matter of policy, the United States opposes torture and has even ratified the Torture Convention. If Washington wants to avoid scrutiny under this new inspection procedure, it could simply decide not to ratify the protocol, which, as its name suggests, is optional. Its decision, instead, to try to deprive other nations of this added human rights protection stems from an evident desire to avoid strengthening any international human rights law that might even remotely be used to criticize its own conduct. The torture protocol came to a vote before the U.N. General Assembly in December, where the United States was one of only four governments to oppose it, against 127 supporters.

At the U.N. General Assembly Special Session on Children, in May, the U.S. government sought to prevent any reference to the Convention on the Rights of the Child. The United States is the only country in the world not to have ratified the treaty (other than Somalia, which has no recognized national government). The special session—the highest level U.N. summit on children in a decade—presented an important opportunity to reaffirm the rights contained in the convention. But Washington objected to any mention of the concrete rights of children, preferring vaguer reference to their “well-being.”

U.S. opposition to the enforcement of human rights standards was most extreme in the case of the International Criminal Court. The court has numerous safeguards to address Washington’s legitimate concern about politicized prosecutions. These include narrowly defined crimes, extensive oversight by several independent panels of judges, provision for impeachment of an abusive prosecutor by a mere majority of the states party (most of which are democracies and close U.S. allies), and the ability of a national government to avoid ICC prosecution altogether by conduct-

ing its own good-faith investigation and, if appropriate, prosecution. Moreover, the ICC does not purport to exert jurisdiction over a suspect unless the suspect's government has ratified the court's treaty or the suspect is alleged to have committed a crime on the territory of a government that has ratified the treaty—both long-accepted bases of jurisdiction.

Yet, the Bush administration declared a virtual war on the court. It repudiated former U.S. President Bill Clinton's signature on the ICC treaty. It threatened to shut down U.N. peacekeeping unless U.S. participants in U.N.-authorized operations were exempted from ICC jurisdiction. It threatened to cut off military aid to governments unless they agreed never to deliver American suspects to the court. And President Bush signed legislation authorizing military intervention to free any American suspect held by the ICC—dubbed the “Hague Invasion Act.” With occasional exceptions, the administration did not discourage governments from ratifying the ICC treaty, and as of mid-December, eighty-seven governments had joined the court—well above the sixty needed for the treaty to take effect. But the U.S. government's efforts to exempt Americans from investigation and prosecution advanced a double standard that threatened to undermine the court's legitimacy.

By these multilateral interventions, across a wide range of issues, the U.S. government signaled that human rights standards are at best window-dressing. They are fine, grand pronouncements, but their universal enforcement—enforcement that might even indirectly affect the United States—is to be avoided. Such hypocrisy only undermines these norms. It also undermines the credibility of the United States as a proponent of human rights, whether in fighting terrorism or in combating more traditional repression and abuse.

BILATERAL RELATIONS

In its bilateral relations, the U.S. government did make some efforts to promote human rights while fighting terrorism. After September 11, for example, many assumed that Washington's already muted engagement on human rights issues in the front line states of Central Asia would end; in fact, in some ways it intensified. The U.S. military presence in Uzbekistan, Kyrgyzstan, and Tajikistan associated the United States with these countries' repressive policies—as did frequent presidential summits and enhanced aid packages. And Washington consistently exaggerated their progress toward reform to justify continued aid. But more often than in the past, U.S. officials pressed the region's leaders to release prisoners, respect media freedoms, and allow civil society to function, in part due to more frequent interaction at all levels between U.S. officials and governments in the region. The United States also took its first limited steps to use its leverage with these countries to promote human rights, canceling a high-level meeting with the Kazakh foreign minister with the aim of freeing a Turkmen dissident detained on Kazakh soil, and suspending a trade mission to Kyrgyzstan over its refusal to allow an independent printing press.

In Colombia, linked by Secretary of State Colin Powell to the global war on terrorism, Washington also took several positive new steps—indicting top leaders of Colombia's paramilitary and guerrilla organizations who were implicated in grave

human rights abuses as well as drug trafficking, canceling the U.S. visa of a senior Colombian admiral linked to gross abuses, and suspending assistance to a Colombian air force unit implicated in a serious violation of the laws of war. Once again, the U.S. government exaggerated Colombia's progress in meeting human rights conditions attached to U.S. military aid, which continued to send mixed signals to the Colombian military. Nevertheless, Washington's actions sent a stronger message than in the past that Colombia must break remaining ties between its armed forces and abusive paramilitary groups.

Despite these positive examples, however, Washington's support for human rights in countries that were critical to the fight against terrorism was at best inconsistent and at worst completely muted. Afghanistan, the primary focus of anti-terrorism efforts in 2002, illustrated the problem. The removal of the highly abusive Taliban raised the prospect of greater freedom for the Afghan people. And if one judged by Kabul, the Afghan capital where international peacekeepers patrolled, life had improved dramatically. But the U.S. government sought security for the rest of the country on the cheap. It offered at best lukewarm support to the deployment of international troops outside of Kabul (European governments were equally reluctant) and took few meaningful steps to demobilize factional forces or establish a professional Afghan army. Instead, it delegated security to resurgent warlords and provided them with money and arms.

In some parts of the country, the consequences looked much like life under the Taliban—a far cry from President Bush's vow, reiterated in October, to help Afghanistan “claim its democratic future.” For example, Ismail Khan, the Herat-based warlord in western Afghanistan, stamped out all dissent, muzzled the press, and bundled women back into their burqas. Those who resisted faced death threats, detention, and sometimes even torture. Afghans who had taken refuge in Iran during Taliban rule complained that they had been freer there than under Khan. Yet U.S. Defense Secretary Donald Rumsfeld, during a visit to Herat in April, called Khan an “appealing person.” Under growing pressure to address the violence and insecurity outside of Kabul, the Bush administration announced in November that it would send a small number of soldiers and civil affairs officers to Afghan regional centers. This was a positive step, but one too small to end warlord abuses.

In Pakistan, General Pervez Musharraf pushed through constitutional amendments that extended his presidential term by five years, arrogated to himself the power to dissolve the elected parliament, and created a military-dominated National Security Council to oversee civilian government. But when asked about this disturbing trend, President Bush said in August, “My reaction about President Musharraf, he's still tight with us on the war against terror, and that's what I appreciate.” Only as an afterthought did President Bush also mention the importance of democracy. With Washington supporting Pakistan's military ruler and the repressive warlords next door in Afghanistan, it should have been no surprise that anti-American political parties were the big winners in October's parliamentary elections. Their victory as well in parallel local elections in the two provinces bordering Afghanistan will particularly complicate U.S. efforts to apprehend any residual Taliban and al-Qaeda forces in the area.

In Indonesia, an abusive military and allied militia have been major factors in separatist and communal strife. The government's inability to hold abusive military

figures accountable has been a major cause of popular discontent. Military-sponsored atrocities in East Timor in 1999 had led the United States to cut off some military assistance. But with Indonesia seen as a major front in the battle against terrorism, the Bush administration tried to resume military training, even though little if any progress had been made in subjecting the military to the rule of law. The administration also sought dismissal of a lawsuit brought in U.S. courts by victims of military atrocities in Aceh who sought compensation from ExxonMobil for its alleged complicity in the abuse. The administration justified its opposition to this effort to enforce human rights in part out of its fear that Indonesia would retaliate by stopping its cooperation in the war on terrorism.

Other U.S. allies in the war on terrorism received soft treatment for their human rights abuses. Russian President Vladimir Putin faced only mild criticism of his troops' brutal behavior in Chechnya. Despite the Bush administration's occasional criticism of China's conduct in its western Xinjiang province, where China has long cracked down on the Turkic-speaking Uighur majority, the administration's decision to designate the small East Turkistan Islamic Movement as a terrorist organization provided cover for Beijing's repression of the country's largest Muslim minority. Despite ongoing abuses by the Israeli military in fighting armed Palestinian groups and their suicide bombings, Washington frequently shielded Israel from international pressure and continued to supply it unconditionally with weapons and military assistance. Because Malaysian Prime Minister Mahatir bin Mohamad was outspoken in support of the campaign against terrorism, Washington also muted its criticism of his government, whether for its use of administrative detention or its continued detention on trumped-up charges of former Deputy Prime Minister Anwar Ibrahim.

The overriding message sent by these U.S. bilateral actions is that human rights are dispensable in the name of fighting terrorism. That policy may provide greater leeway for short-term security measures. But if an important aim is to build a culture of human rights in place of the pathology of terrorism, it sent a terrible signal to replace the values of respect for the life of every person with the view that the ends justify the means.

U.S. TREATMENT OF TERRORIST SUSPECTS

Washington's disregard for human rights standards could be found in its own conduct as well. Historically, the United States has complied with the requirements of international humanitarian law (the laws of war) with regard to belligerents captured in the course of an armed conflict. The United States upheld international standards in part out of recognition that they ultimately benefited U.S. soldiers as well. But the Bush administration's unjustifiably narrow reading of the 1949 Geneva Conventions effectively placed those captured abroad and detained at Guantánamo Bay, Cuba in a type of legal black hole—a form of long-term arbitrary detention at odds with international requirements. For instance, the Third Geneva Convention provides that captured combatants are to be treated as prisoners-of-war until a "competent tribunal" determines otherwise. Under the standards set out in the convention, the detainees who were former Taliban soldiers would

almost certainly qualify as POWs, while most of the detainees who were members of al-Qaeda probably would not. But the Bush administration refused to bring any of the detainees before a tribunal and unilaterally asserted that none qualified as POWs. By contrast, during the Gulf War, the United States convened more than one thousand tribunals for captured combatants.

The administration's flouting of international humanitarian law could not be explained by the exigencies of fighting terrorism. Treating the detainees as POWs would not have precluded the United States from interrogating them or prosecuting them for committing terrorist acts or other atrocities. And POWs, like other detained combatants, can be held without charge or trial until the end of the relevant armed conflict.

The administration's refusal to apply the Geneva Conventions seemed to stem in part from its desire to minimize public scrutiny of its conduct. For instance, in the absence of criminal prosecutions, the Geneva Conventions require that all detainees, regardless of their status, be repatriated once "active hostilities" have ended. In the case of at least the Taliban detainees, that would seem to require repatriation as soon as the war with the Afghan government was over—that is, presumably, upon the installation of Hamid Karzai as president. But by refusing to apply the Geneva Conventions, the administration avoided making such a determination.

The U.S. government took custody of some detainees in suspect circumstances. In October 2001, it sought the surrender of six Algerian men in Bosnia suspected of planning attacks on Americans. After a three-month investigation, Bosnia's Supreme Court ordered the men's release from custody for lack of evidence. When rumors spread of U.S. efforts to seize the suspects anyway, Bosnia's Human Rights Chamber—which was established under the U.S.-sponsored Dayton peace accord and includes six local and eight international members—issued an injunction against their removal. Yet in January 2002, under pressure from Washington, the Bosnian government ignored this legal ruling and delivered the men to U.S. forces, who whisked them out of the country, reportedly to Guantánamo.

The line between war and law enforcement gained importance as the U.S. government extended its military efforts against terrorism outside of Afghanistan and Pakistan. In November, the U.S. Central Intelligence Agency used a missile to kill Qaid Salim Sinan al-Harethi, an alleged senior al-Qaeda official, and five companions as they were driving in a remote and lawless area of Yemen controlled by tribal chiefs. Washington accused al-Harethi of masterminding the October 2000 bombing of the U.S.S. Cole which had killed seventeen sailors. Based on the limited information available, Human Rights Watch did not criticize the attack on al-Harethi as an extra-judicial execution because his alleged al-Qaeda role arguably made him a combatant, the government apparently lacked control over the area in question, and there evidently was no reasonable law enforcement alternative. Indeed, eighteen Yemeni soldiers had reportedly been killed in a prior attempt to arrest al-Harethi. However, the U.S. government made no public effort to justify this use of its war powers or to articulate the legal limits to such powers. It is Human Rights Watch's position that even someone who might be classified as an enemy combatant should not be subject to military attack when reasonable law enforcement means are available. The failure to respect this principle would risk creating a huge loophole in due process protections worldwide. It would leave everyone open

to being summarily killed anywhere in the world upon the unilateral determination by the United States (or, as the approach is inevitably emulated, by any other government) that he or she is an enemy combatant.

The appropriate line between war and law enforcement was crossed in the case of Jose Padilla, a U.S. citizen who the Bush administration claimed had flown from Pakistan to the United States to investigate creating a radiological bomb. The Bush administration arrested him as he arrived in the United States, but instead of charging him with this serious criminal offense and bringing him to trial, it unilaterally declared him an “enemy combatant.” That designation, it claimed, permitted it to hold him without access to counsel and without charge or trial until the end of the war against terrorism, which may never come. With no link to a discernible battlefield, that assertion of power, again, threatens to create a giant exception to the most basic criminal justice guarantees. Anyone could be picked up and detained forever as an “enemy combatant” upon the unverified claim of the Bush administration or any other government. As the year ended, the U.S. courts were considering this radical claim.

Due process shortcuts also plagued the Bush administration’s detention of some 1,200 non-U.S. citizens whom the government sought to question regarding their links to or knowledge of the September 11 attacks. Of this group, whose number has never been fully disclosed, 752 were detained on immigration charges but treated like criminals. Rather than grant them the rights of criminal suspects, the administration used immigration law to detain and interrogate them secretly, without their usual right to be charged promptly with a criminal offense and (in case of economic need) to government-appointed counsel. Immigration detainees would ordinarily be deported, allowed to leave the country voluntarily, or released on bond pending a hearing on their case. But these “special interest” detainees were kept in jail until “cleared”—that is, until proven innocent of terrorist connections—often for many months. By mid-December, none of them had been charged with a crime related to September 11.

President Bush’s November 2001 order authorizing the creation of military commissions to try non-American suspects lacked the most basic due process guarantees and raised the prospect of trials that would have been a travesty of justice. In March 2002, the Defense Department issued regulations for the new commissions that corrected many of the due process problems of the original order. However, the commissions are still to operate without even the fair-trial standards applicable in U.S. courts-martial. Defendants in such courts-martial are entitled to appeal to the United States Court of Appeal for the Armed Forces—a civilian court outside the control of the executive branch—and ultimately to petition the U.S. Supreme Court. But the commission regulations permit appeal only to another military panel of people who must answer to the president. That makes the president, through his surrogates, both prosecutor and judge. Especially as applied away from the exigencies of the battlefield, these compromised commissions violate the minimum legal requirement of “an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure” (Geneva Conventions, Protocol I, art. 75, reflecting customary international law). If these commissions are used to try detainees who should be considered prisoners-of-war,

and thus are entitled to the more protective procedures of a court-martial, the Bush administration would open itself to war crimes charges.

CONSEQUENCES FOR THE CAMPAIGN AGAINST TERRORISM

The U.S. government’s willingness to sidestep human rights as it fights terrorism has potentially profound and dangerous consequences. At the very least, it means that the United States is a party to serious abuse. If Washington provides assistance to abusive warlords in Afghanistan or a military dictatorship such as Pakistan’s, it becomes complicit in the abuses that they foreseeably commit.

In addition, as noted, Washington’s neglect of human rights threatens to impede its campaign against terrorism. As President Bush himself has observed, repression fuels terrorism, by closing off avenues for peaceful dissent. Yet if the U.S. campaign against terrorism reinforces that repression, it risks breeding more terrorists as it alienates would-be allies in the fight against terrorism.

Washington’s subordination of human rights to the campaign against terrorism has also bred a copycat phenomenon. By waving the anti-terrorism banner, governments such as Uzbekistan seemed to feel that they had license to persecute religious dissenters, while governments such as Russia, Israel, and China seemed to feel freer to intensify repression in Chechnya, the West Bank, and Xinjiang. Tunisia stepped up trying civilians on terrorism charges before military courts that flagrantly disregard due-process rights. Claiming that asylum-seekers can be a “pipeline for terrorists” entering the country, Australia imposed some of the tightest restrictions on asylum in the industrialized world. Facing forces on the right and left that have been designated terrorists, Colombia’s new president, Álvaro Uribe, tried to permit warrantless searches and wiretaps and to restrict the movement of journalists (until the country’s highest court ruled these measures unconstitutional).

In sub-Saharan Africa, some of the mimicry took on absurd proportions. Ugandan President Yoweri Museveni shut down the leading independent newspaper for a week in October because it was allegedly promoting terrorism (it had reported a military defeat by the government in its battle against the Lord’s Resistance Army rebel group). In June, Liberian President Charles Taylor declared three of his critics—the editor of a local newspaper and two others—to be “illegal combatants” who would be tried for terrorism in a military court. Eritrea justified its lengthy detention of the founder of the country’s leading newspaper by citing Washington’s widespread detentions. Zimbabwean President Robert Mugabe justified the November 2001 arrest of six journalists as terrorists because they wrote stories about political violence in the country. Elsewhere, even former Yugoslav President Slobodan Milosevic defended himself against war-crimes charges by contending that abusive troops under his command had merely been combating terrorism.

The inconsistency of Washington’s attention to human rights abroad has also weakened an important voice for human rights when it does speak out. The most dramatic example occurred in the case of Saadeddin Ibrahim, the Egyptian democracy activist who was sentenced in July to seven years in prison for his peaceful political activities. To its credit, the Bush administration not only protested but

also said it would withhold an incremental increase in aid that might have gone to Egypt. This was a dramatic step—the first time in the Middle East that the United States had conditioned aid on the positive resolution of a human rights case. But in light of Washington’s long history of closing its eyes to human rights abuses in the Middle East, and the its failure to protest Egypt’s similar persecution of Islamists for non-violent political activity, many Egyptians distrusted its motives, and even some Egyptian human rights groups denounced the action. In early December, Egypt’s highest appeals court—with a long tradition of independence from the government—reversed Ibrahim’s conviction and ordered a new trial. But Washington’s voice was clearly shown to have been compromised as a means to build broad public support for human rights.

EUROPEAN UNION

As Washington forsakes its traditional role as a strong if not always consistent proponent of human rights, one would have hoped that the European Union, with its own tradition of promoting human rights, would fill the void. But Europe’s leadership was hampered by its own failure of political will, its undue deference to Washington, and the premium it puts on consensus at any cost.

The year did not begin auspiciously. At the annual session of the U.N. Commission on Human Rights in March and April, the absence of the United States—the first time in the history of the commission that Washington had not been voted a member—presented Europe with a test of its leadership. It failed. Without Washington to take the lead, the European Union did not even table a resolution on China’s continuing abysmal record on human rights. Instead, it pursued a pro-forma dialogue on human rights with Beijing. Europe did act on Chechnya, but half-heartedly. It engaged in long and futile efforts to negotiate with the Russian government a watered-down, consensus-based chairman’s statement instead of a critical resolution. That approach was inappropriate to begin with in light of Russian security forces’ persistent atrocities and Russian authorities’ utter failure to bring abusive forces to justice. When the negotiations ended in stalemate, the E.U. belatedly tabled a critical resolution, but it lost by a single vote—the first defeat of a Chechnya resolution in three years.

In the case of China, key European governments have shown far more interest in building economic ties than in promoting human rights—even though the one need not preclude the other. The E.U. has thus left it to the United States, which also places a higher value on economic relations with China, to take the lead in condemning Beijing’s closed political system.

European deference to Washington was most visible in conflicts over the International Criminal Court. The E.U. deserves credit for being among the court’s leading defenders in the face of the Bush administration’s intense opposition. But European governments were too quick to compromise on matters of principle, largely because the United Kingdom was determined to bridge the gap between Europe and the United States. For instance, in June and July, as noted, Washington threatened to use its veto on the U.N. Security Council to end various peacekeeping missions unless the council exempted American participants in U.N.-authorized

operations from ICC jurisdiction. Washington’s threat was unsustainable, since it would have required, for example, removing the U.N. forces that keep Sierra Leone from descending back into vicious conflict and that serve as a buffer between Hezbollah and Israel’s northern border. Yet rather than stand on principle, France and especially Britain endorsed a “compromise” that exempted American troops for one year. Whether this is a reasonable compromise or a face-saving step toward American impunity will depend on whether these countries acquiesce in extending this agreement when the year’s exemption expires in July 2003.

Similarly, largely at Britain’s insistence, the European Union failed to agree on a common rejection of Washington’s attempt to enter into bilateral immunity agreements under article 98 of the ICC treaty. Article 98 permits bilateral agreements to determine which of two interested governments has the prior claim to investigate and, if appropriate, prosecute a suspect. But article 98 must be read in light of the treaty’s overriding purpose—to empower the ICC to oversee any such prosecutorial effort and ensure that it is carried out in good faith. Several European governments suggested that it would be enough if Washington simply vowed to pursue any suspect sent its way under an article 98 agreement. But the entire purpose of the ICC is never to trust unverified pledges of prosecution. That is the system that allowed such tyrants as Augusto Pinochet, Idi Amin, and Pol Pot to escape with impunity. European nations (and other ICC supporters) must recognize that no agreement is valid under article 98 unless both parties recognize the oversight authority of the ICC. As of mid-December, E.U. governments had not done so. However, only fifteen governments worldwide had entered into these bilateral immunity agreements.

Part of the explanation for the European Union’s weak record on human rights is the premium it places on consensus no matter the consequences. A consensus rule reflects a preference for inaction unless there is unanimous support for action. Its purpose is to guard against undue intrusions on the interests of a single member state. On certain internal E.U. matters, this rule may be a reasonable concession to national sovereignty. It can even be useful in holding prospective member states to higher human rights expectations. But when it comes to promoting human rights outside the arena of would-be E.U. members, it has proved harmful, as shown by the E.U.’s record on Chechnya, China, and the ICC.

To succeed, the promotion of human rights must be consistent and vigorous. But the E.U.’s consensus rule produces the lowest common denominator. Any single member can water down or stop common action to protect human rights. Inaction becomes the default position.

As the U.S. voice for human rights fades, the cost of E.U. inaction increases. Its effect will only compound as the number of E.U. members grows from fifteen to twenty-five. At least when it comes to promoting human rights, it is time for Europe to adopt a different decision-making threshold. One alternative would be to allow a supermajority to speak for the E.U., perhaps with a right for dissenting governments to opt out.

The difficulty of achieving a strong consensus could be mitigated somewhat if individual E.U. governments saw themselves as free to promote human rights more vigorously than the E.U. common foreign policy—that is, if the common policy were seen as a floor rather than a ceiling. Historically, this occurred. For example,

in 1997, Denmark alone sponsored a critical resolution on China at the U.N. Commission on Human Rights. Similarly, Germany has traditionally taken a stronger stand than the E.U. as a whole in support of the ICC. The Nordic countries have done the same for the Great Lakes region of Africa and, together with the United Kingdom, for Burma. Individual interventions do not have the power of collective action, but they are better than nothing.

Increasingly, however, E.U. members seem to be denying themselves this latitude, or at least using the preference for common action as an excuse not to act beyond the consensus. This problem was particularly acute in 2002 with regard to China and Chechnya. Delegates at the U.N. commission repeatedly cited the E.U. common policy as a reason why they could not push harder (or at all) for a critical resolution.

This trend should be resisted. The presumption that no one acts unless everyone does may make sense for internal matters, where a premium is placed on regularity across borders. But it is an unnecessary restraint when it comes to the external promotion of human rights. The E.U. common foreign policy should be seen as the minimum that all members must support, not a constraint on those willing to do more for human rights.

Adding to the problem is the lack of transparency in E.U. decision-making. Simply learning that a proposed policy is even on the table usually requires intensive detective work. The public typically is not informed of a policy debate until a decision has been made, and the positions taken by individual member states during the debate are generally not revealed. The democracy deficit produced by this secrecy is particularly pernicious in the case of human rights, where popular pressure is often needed to overcome the reluctance of many governments to promote human rights in the face of countervailing political or economic interests. As is increasingly heard in the corridors of the U.N. and other multilateral fora, this secrecy also alienates potential allies. They hardly appreciate being expected to wait for and then follow an E.U. pronouncement when they have little knowledge of or opportunity to influence the debate.

Consensus, uniformity, secrecy—all at times have their purpose. But the E.U.'s voice on human rights is too important to allow these procedural values to stand in its way. As the E.U. expands, it should also ensure that its essential role in promoting human rights around the world is preserved.

U.N. COMMISSION ON HUMAN RIGHTS

An alternative voice for human rights might have come from the U.N. Commission on Human Rights. But in addition to Europe's disappointing role, the commission has been hampered by a perverse incentive system that encourages abusive governments to flock to it for the purpose of weakening it and sparing themselves condemnation.

It is hardly surprising that there are more governments vying for membership on U.N. bodies than there are positions to go around. Particularly in the developing world, most rights-respecting governments seek membership on one of the U.N. bodies that address development issues, hoping to steer additional development

funds their way. But for abusive governments, their top priority is avoiding U.N. condemnation. They tend to congregate on the human rights commission. The result is that some two dozen of the commission's fifty-three members are governments with records of indifference if not hostility to human rights.

There is an urgent need to counteract this perverse set of incentives by adopting criteria for commission membership. If governments seek to join the leading U.N. body for promoting human rights, they should be required to show some basic commitment to human rights. That should include, at least, an open invitation for U.N. human rights investigators to enter their country, ratification of the six leading human rights treaties and compliance with their reporting requirements, and a record of not having recently been condemned by the commission. Adopting such criteria should be the top priority of any government interested in enhancing the effectiveness of the commission. It should also be a focus of efforts by the new U.N. High Commissioner for Human Rights, Sergio Vieira de Mello, in addition to his essential role as a high-profile public critic of abusive governments.

OTHER VOICES FOR HUMAN RIGHTS

Several governments have stepped forward to try to fill this leadership void on human rights. They cannot replace the power and influence of Europe and the United States but they can still play a helpful role.

Mexico under President Vicente Fox continued to be a consistent supporter of international human rights initiatives. It played a lead role in trying to fend off U.S. attacks on the International Criminal Court at the U.N. Security Council. It was joined by Canada, which though not a member of the council was outspoken in rejecting the Bush administration's vision of impunity for American suspects.

Senegal, South Africa, and Nigeria joined in creating the New Partnership for Africa's Development (NEPAD), which commits its members to democratization and the rule of law in return for foreign investment and international assistance. The initiative was formally adopted in July at the first summit of the African Union, a new incarnation of the Organization of African Unity whose constitutive act also included language on respect for human rights, democratic principles, and good governance as a condition for membership. A key innovation in NEPAD is the promise of "peer review"—a pledge that African governments will be jointly responsible for democratic development and respect for human rights, not only in their own countries but in neighboring countries as well.

However, African governments' conduct under NEPAD was disappointing. According to the U.N.'s usual rotation system, it was the turn of the African caucus to nominate the chair of the U.N. Commission on Human Rights for the session beginning in March 2003. In one of their first acts after the launching of NEPAD, African governments proposed Libya—a major funder of the African Union. To endorse such a long-time abuser of human rights to lead the U.N.'s foremost human rights body does not bode well for compliance with the NEPAD-related vows of meaningful peer review. Moreover, Nigeria, a key player in NEPAD, was one of the few countries to vote against creating the above-mentioned inspection regime to stop torture and, at home, failed to take meaningful steps to discipline

or prosecute soldiers responsible for massacring hundreds of civilians in two serious incidents in 1999 and 2001. South Africa, praised for its effective chairing of the 1998 session of the U.N. Commission on Human Rights, played a significantly more troubling role in 2002. South African President Thebo Mbeki offered only muted criticism of Zimbabwean President Robert Mugabe, despite his persistent violations of civil and political liberties and disturbing reports of politically motivated diversion of food in time of famine.

Norway and Canada—two major Western governments not burdened by the E.U. preoccupation with consensus—frequently played a positive leadership role on human rights. As noted, Canada was outspoken in defending the ICC from U.S. attack, although its advocacy of human rights in China was weak. Both Norway and Canada, drawing from their experience with the campaigns to ban landmines and end the use of child soldiers, continued to build a like-minded group of nations to address other serious human rights and humanitarian concerns. New Zealand also played a notably positive role in defending the ICC, although its traditional partner—Australia—supported Washington in its obstructionist efforts on the ICC and, as described above, set a disturbing precedent on the treatment of refugees.

POSSIBLE WAR IN IRAQ

At this writing, war in Iraq is threatening. Human Rights Watch takes no position on whether war should be launched. But in the interest of saving the lives of noncombatants, we are concerned about the way a war might proceed.

In human rights terms, Saddam Hussein is as bad as they come. In 1988, in the notorious *Anfal* campaign, he committed genocide against the Kurds. After using chemical weapons on at least forty occasions to drive Kurds from their highland villages, his forces rounded up and executed some one hundred thousand, mostly men and boys. In suppressing the 1991 uprisings, his forces killed an estimated thirty thousand Iraqis, mostly Kurds in the north and Shi'a in the south. In the following years, untold atrocities were committed against the Marsh Arabs. On a day-to-day basis, the Iraqi government uses arbitrary detention, torture, and execution to maintain power.

But the threatened war on Iraq is not a humanitarian intervention in the sense that it would be waged primarily for the purpose of benefiting the Iraqi people. If Saddam Hussein were overthrown in a palace coup and replaced by an equally repressive dictator who nonetheless was willing to cooperate in ridding the country of alleged weapons of mass destruction, there clearly would be no invasion. That said, Human Rights Watch does not discount the importance of stopping the possible use of weapons of mass destruction when there is a credible threat of their use. If this war is fought, however, it is essential that the attackers take into account the potential risks facing the Iraqi people, particularly in light of the atrocities that Saddam Hussein is obviously capable of committing.

First, the attackers should do everything feasible to avoid civilian casualties by their own forces. This means, at minimum, avoiding such controversial practices as using cluster bombs near populated areas (as occurred during the Gulf War of 1991, the Yugoslav war of 1999, and the Afghan war of 2001-02). It means not

using military force to undermine civilian morale or to attack political supporters of a regime who are not directly contributing to the military effort (as occurred in Yugoslavia). And it means taking all feasible precautions to avoid misidentifying targets, especially in the case of “targets of opportunity” when the review system is necessarily abbreviated (as occurred in all three above-noted wars but particularly in Afghanistan, where special operations forces in the field were used extensively to identify targets).

Second, the U.S. and its allies must take into account the history of abuse already suffered by the Iraqi people and make serious attempts to prevent its recurrence. As noted, on numerous occasions as part of the 1988 *Anfal* genocide, Saddam Hussein used chemical weapons against Iraqi Kurds. Now, if he sees that the end of his rule is near, he is perfectly capable of resuming the slaughter by using chemical or biological weapons he might retain against his own people, perhaps even in an effort to embarrass his attackers. During the 1991 uprising, Iraqi rebel forces, both Kurdish and Shi'a, demonstrated that they are capable of summarily executing government officials, Baath Party members, and their perceived supporters. Unless restrained during a possible new war, there is every reason to believe that they will pick up where they left off, but this time as possible U.S. proxies. Also in 1991, some neighboring countries closed their borders to people fleeing the war in Iraq. Turkey, in particular, left Kurds to die of exposure to the winter cold on the mountains along its border. In the event of renewed war, it has publicly threatened to close its borders again.

Washington has taken some steps to prevent repetition of these abuses should it go to war. It has warned Iraqi troops that they will be prosecuted if they use weapons of mass destruction. And it has cautioned the relatively organized Kurdish forces against committing atrocities, although that message is difficult to deliver to less organized Shi'a forces. But more clearly must be done to avoid repetition of the Kosovo tragedy, when unprepared U.S. troops were forced to watch from the sidelines as the forces of Slobodan Milosevic escalated their attacks on Kosovar Albanian civilians in response to the NATO bombing campaign. Vigilance is particularly urgent because the possible availability of weapons of mass destruction in Iraq could produce killing on a much larger scale. In addition, neighboring governments must be pressured to respect the right of Iraqis to flee violence and take refuge elsewhere, especially given the substantial dangers they might face.

There is also the difficult issue of combatants who are taken prisoner. During the Afghan war, the United States took insufficient steps to prevent allied Northern Alliance forces from committing atrocities against prisoners. During the Gulf War, Iraq severely mistreated coalition prisoners-of-war. Steps must be taken to prevent a repetition of those abuses, although the Bush administration's degrading of the Geneva Conventions at Guantánamo will make some arguments in defense of captured combatants more difficult to advance.

Washington has also been reticent about its post-war strategy. Will the Bush administration commit to rebuilding the rule of law in Iraq, in contrast to the “war-lord strategy” it has pursued in Afghanistan? It has spoken about bringing senior Iraqi officials to justice, but will it ensure fair trials and independent tribunals? Will it subject to international scrutiny its own conduct and that of its allies or will it impose only victor's justice? The answers to these and similar questions will deter-

mine whether, even with Saddam Hussein gone, possible war with Iraq would hold much promise of improving the Iraqi people's plight.

CONCLUSION

The security threat posed by terrorism should not obscure the importance of human rights. Military or police action can be seductive. It leaves the impression that the problem is being addressed firmly, head-on. Concern with human rights, by contrast, may seem peripheral—of long-term utility, undoubtedly, but not a high immediate priority.

That view is profoundly mistaken. An anti-terrorism policy that ignores human rights is a gift to the terrorists. It reaffirms the violent instrumentalism that breeds terrorism as it undermines the public support needed to defeat terrorism. A strong human rights policy cannot replace the actions of security forces, but it is an essential complement. A successful anti-terrorism policy must endeavor to build strong international norms and institutions on human rights, not provide a new rationale for avoiding and undermining them.

THIS REPORT

This report is Human Rights Watch's thirteenth annual review of human rights practices around the globe. It addresses developments in fifty-eight countries, covering the period from November 2001 through November 2002. Most chapters examine significant human rights developments in a particular country; the response of global actors, such as the European Union, Japan, the United States, the United Nations, and various regional and international organizations and institutions; and the freedom of local human rights defenders to conduct their work.

This report reflects extensive investigative work undertaken in 2002 by the Human Rights Watch research staff, usually in close partnership with human rights activists in the country in question. It also reflects the work of the Human Rights Watch advocacy team, which monitors the policies of governments and international institutions that have influence to curb human rights abuses. Human Rights Watch publications, issued throughout the year, contain more detailed accounts of many of the issues addressed in the brief summaries collected in this volume. They can be found on the Human Rights Watch website, www.hrw.org.

As in past years, this report does not include a chapter on every country where Human Rights Watch works, nor does it discuss every issue of importance. The failure to include a particular country or issue often reflects no more than staffing limitations and should not be taken as commentary on the significance of the problem. There are many serious human rights violations that Human Rights Watch simply lacks the capacity to address.

The factors we considered in determining the focus of our work in 2002 (and hence the content of this volume) included the severity of abuses, access to the country and the availability of information about it, the susceptibility of abusive forces to influence, and the importance of addressing certain thematic concerns and of reinforcing the work of local rights organizations.

Unlike previous World Reports, this year's does not have separate chapters addressing Human Rights Watch's thematic work. Instead, this year's report incorporates such material directly into the report's regional overviews, country chapters, and a new chapter on "Global Issues." The change was made in the interests of streamlining the volume and mainstreaming developments in thematic areas into our country descriptions and analyses. The Human Rights Watch website can be consulted for more detailed treatment of our work on children's rights, women's rights, arms, academic freedom, business and human rights, HIV/AIDS and human rights, international justice, refugees and displaced, and lesbian, gay, bisexual, and transgender rights, and for information on our international film festival.

