THE 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES AND THE PROMOTION OF HUMAN RIGHTS IN U.S. FOREIGN POLICY

HEARING

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 29, 2007

Serial No. 110–56

Printed for the use of the Committee on Foreign Affairs

Available via the World Wide Web: http://www.foreignaffairs.house.gov/

U.S. GOVERNMENT PRINTING OFFICE
34–485PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON FOREIGN AFFAIRS

TOM LANTOS, California, *Chairman*

HOWARD L. BERMAN, California
GARY L. ACKERMAN, New York
ENI F.H. FALEOMAVAEGA, American Samoa
DONALD M. PAYNE, New Jersey
BRAD SHERMAN, California
ROBERT WEXLER, Florida
ELIOT L. ENGEL, New York
BILL DELAHUNT, Massachusetts
GREGORY W. MEEKS, New York
DIANE E. WATSON, California
ADAM SMITH, Washington
RUSS CARNAHAN, Missouri
JOHN S. TANNER, Tennessee
LYNN C. WOOLSEY, California
SHEILA JACKSON LEE, Texas
RUBÉN HINOJOSA, Texas
DAVID WU, Oregon
BRAD MILLER, North Carolina
LINDA T. SÁNCHEZ, California
DAVID SCOTT, Georgia
JIM COSTA, California
ALBIO SIRES, New Jersey
GABRIELLE GIFFORDS, Arizona
RON KLEIN, Florida
VACANT
VACANT

ILEANA ROS-LEHTINEN, Florida
CHRISTOPHER H. SMITH, New Jersey
DAN BURTON, Indiana
ELTON GALLEGLY, California
DANA ROHRABACHER, California
DONALD A. MANZULLO, Illinois
EDWARD R. ROYCE, California
STEVE CHABOT, Ohio
THOMAS G. TANCREDO, Colorado
RON PAUL, Texas
JEFF FLAKE, Arizona
JO ANN DAVIS, Virginia
MIKE PENCE, Indiana
THADDEUS G. MCCOTTER, Michigan
JOE WILSON, South Carolina
JOHN BOOZMAN, Arkansas
J. GRESHAM BARRETT, South Carolina
CONNIE MACK, Florida
JEFF FORTENBERRY, Nebraska
MICHAEL T. MCCAUL, Texas
TED POE, Texas
BOB INGLIS, South Carolina
LUIS G. FORTUÑO, Puerto Rico

ROBERT R. KING, *Staff Director*
YLEEM POBLETE, *Republican Staff Director*
DAVID KILLION, *Senior Professional Staff Member*
GENELL BROWN, *Staff Associate*

CONTENTS

THE 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES AND THE PROMOTION OF HUMAN RIGHTS IN U.S. FOREIGN POLICY

THURSDAY, MARCH 29, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m. in room 2172, Rayburn House Office Building, Hon. Tom Lantos (chairman of the committee) presiding.

Chairman LANTOS. The committee will come to order.

We Americans take justifiable pride in our country's legacy as the world's leading promoter and defender of human rights. But the administration is neglecting this historic role, instead relegating human rights to the realm of mere rhetoric.

At a time when we are trying to marshal the civilized world to stand up to violent extremism and terror, today we absurdly find ourselves on the defensive in our human rights policy. In the face of sustained criticism of our own failure to adhere to the universe of human rights standards in prosecuting the war against terror, the United States has gone nearly mute rather than speaking out as we used to do. In the meantime, human rights observance deteriorates around the globe.

This year's *Country Reports on Human Rights Practices* issued by our Department of State, documents an alarming slide in adherence to human rights standards around the globe. The State Department has officially characterized 2006 as "the year of the pushback," citing aggressive campaigns to suppress civil society in a disturbing number of countries.

Some of the most salient examples of the pushback against human rights documented in the reports include new restrictive NGO laws and contract-style killings of pro-reform officials and prominent journalists in Russia, a systematic campaign to limit internet freedom in China, an increase in disappearances of activists and political opponents in Pakistan, expansion of Egypt's emergency laws to suppress freedom of speech and expression and increased harassments of opponents and the press by the Chavez regime in Venezuela.

Yet instead of standing up and sanctioning the world's most evil and illegitimate regimes as they become ever more brazen in brutalizing their dissidents, we seem to pull our punches. The most conspicuous recent example of this defeatism in our human rights

diplomacy is the decision of the administration for the second year in a row that it will not run for a seat on the United Nations Human Rights Council.

America's retreat from this body has enabled a cabal of military juntas, single party states and tin-pot dictators currently led by Algeria, Saudi Arabia and Cuba to outmaneuver our timid European allies and hijack the new council, turning it into a sham whose only purpose is to vilify Israel and castigate the United States.

Sadly, the United States recoil from multilateral human rights advocacy also extends to our bilateral relationship with major human rights violators that we are in a position to influence. We are wasting the chance to chasten and challenge such oppressive states as Russia, China, Egypt and Saudi Arabia.

It is long past time for the world's indispensable nation to recover from this wobbly period of moral doubt and confusion. We must re-emerge as the world's most vocal and uncompromising advocate of the universal values that are enshrined in our Constitution and in the Universal Declaration of Human Rights.

Such a U.S. re-emergence will help to reverse the alarming deterioration we see in global adherence to human rights standards. It will also help us to win the war on terrorism by encouraging the growth of modern, pluralist forces in nation states that might otherwise threaten to veer dangerously between secular autocracy and medieval theocracy.

We should be under no illusions. The United States has never been a perfect paragon of the principles we aspire to and champion. The history of our nation is one of a slow narrowing of the hypocrisy gap between what we aspire to and what we currently are.

Certainly our transgressions in fighting the war against terrorism are startling reminders of just how imperfect we remain. But our current struggle to maintain our values in fighting this war and to hold our leaders accountable for human rights violations made in prosecuting it should never cause us to abandon those who are struggling and giving their lives to achieve human freedom.

In reviewing this year's catalog of human rights abuses and assessing our Government's response to them, our committee is privileged to have before us today two extraordinary and very distinguished former Assistant Secretaries of State for Human Rights, Democracy and Labor, Ambassador John Shattuck, Chief Executive of the Kennedy Library Foundation, and Dean Harold Koh, Dean of the Yale Law School.

I will briefly introduce them when it is their turn to speak, and I will very much look forward to their testimony, but first I want to turn to my dear friend and colleague from New Jersey, who has been a proud champion of human rights globally, Congressman Chris Smith of New Jersey.

Mr. SMITH OF NEW JERSEY. I thank the very distinguished chairman for yielding, and I want to echo his concerns about human rights around the world, as well as thank him for his leadership. We have served together for almost three decades, and he has done a remarkable job on human rights. It has always been a privilege to be his partner and to work side by side with him.

Let me just say, Mr. Chairman, that over the past three decades we have seen a steady increase in the quality, candor and scope of the annual *Country Reports on Human Rights Practices*. In fighting the plague of human rights abuse, sunlight is often the best disinfectant. On the whole, the country reports shine brightly into some very dark corners. We owe a debt of gratitude to the men and women of the Department of State who work so hard to compile them.

As we do not claim as the United States to be perfect and are ourselves subject to universal ideals that we espouse, the United States continues to be the world's most prominent champion of fundamental human rights. This Congress I have reintroduced, as you know, the Global Online Freedom Act of 2007 which seeks to promote and defend human rights related to this increasingly influential communications media.

I am pleased to note that the State Department has already implemented one of the action items of this proposed legislation by including important additional information in the country reports such as the domestic legal authority for internet restrictions and penalties imposed for the exercise of free speech via the internet.

This information is critical to efforts to address internet repression in countries like Vietnam, China, Tunisia and Belarus and to convince governments that free speech restrictions are contrary to their national interests.

It is worth noting that most of the major human rights efforts undertaken by the United States Government in recent decades, including the country reports themselves, have been the result of congressional mandates. The Jackson-Bannock Amendment, the International Religious Freedom Act, the Torture Victims Relief Act, the Lautenberg Amendment, the Trafficking Victims Protection Act, the North Korea Human Rights Act. These were congressional initiatives undertaken in the face of skepticism and sometimes outright opposition by the executive branch.

For example, I recall when my friend, Assistant Secretary Shattuck, appeared before my subcommittee 10 years ago to oppose the International Religious Freedom Act. He argued that he was "particularly concerned" that the bill would harm the very people it seeks to help because it would legislate a hierarchy of human rights into our laws that could severely damage "our effort to ensure that all aspects of basic civil and political rights are protected."

At the time I pointed out that IRFA was value added and, like sanctions against South Africa which I supported in the 1980s and the Jackson-Bannock Amendment which risked super power confrontation to assist Soviet Jews, the International Religious Freedom Act was in addition to, not in lieu of, any existing law. It would strengthen, not weaken, our laws.

Not surprisingly, the doomsday prophecy did not come to pass, so it is my view that once such issues have been forced by legislation the executive branch eventually internalizes and often embraces those human rights priorities.

For example, religious freedom and trafficking are now mainstream policy priorities that receive far more international attention and action than they did before the laws were on the books.

Other mandates are embraced more slowly such as the refugee title of the North Korean Human Rights Act which has not yet been adequately implemented.

I certainly do not wish to appear to downplay the serious human rights violations in many countries of the world, including Zimbabwe with its recent horrific crackdown on political opposition. Just this week the chairman offered a resolution which passed in the committee, H. Con. Res. 100, that significantly takes the Zimbabwe Government and Mugabe to task.

I would like to point out that there is also recent horrific crackdown in North Korea, Eritrea, Belarus, Burma, Saudi Arabia, Cuba, Ethiopia and Iran. The report provides the serving details about how these countries in particular, though not exclusively, continue to thwart universal principles of respect for fundamental human rights.

However, time limitations prevent me from examining each one so I will focus the spotlight on three human rights violators in particular: China, Sudan and Vietnam. This year's report repeats the assessment of prior years that the Chinese Government's human rights record remained poor. Even when many of us thought the situation could not get much worse, it adds that the Chinese record "in certain cases deteriorated."

One of those areas often ignored or downplayed by the international community is the appalling lengths to which the Government of China will go to enforce its one-child-per-couple limit. The Chinese Government, as we all know, has had a long record of oppressing its people, especially its women, through its population control program.

Beijing does not deny levying human fines against people who have children that the state deems to be illegal. In fact, at a hearing that I chaired several years ago, Secretary Dewey then of PRN testified that "couples who give birth to an unapproved child are likely to be assessed a social compensation fee which can range from one-half of the local average annual household income to as much as 10 times that level."

Indeed, this is a horrific government that decides which children are legal and which are not, and which children will be allowed to live and which will be put to death. These acts are truly a crime against humanity, sadly executed in conjunction with the U.N. Population Fund. UNFPA has funded, provided technical support and, most importantly, provided cover for massive crimes against humanity of forced abortion and involuntary sterilization.

Tens of millions of children have been slaughtered; their mothers robbed of their children, by the state. This barbaric policy makes brothers and sisters illegal and makes women the pawns of the population control cadres.

This barbaric policy has now given rise to a new problem in China. An article published in *The Guardian* several years ago stated that China could find itself dealing with as many as 40 million single men by the year 2020, and that is only a few years away, because of the one-child-per-couple policy.

According to the article, Li Weixiong, a population advisor to the Chinese Government, said a cultural preference for boys was creating an artificial disparity between the number of boys and girls,

representing a serious threat to building a well-off society. He then also said the lack of women in China will lead to a dramatic rise in prostitution and in the trafficking of women. This is by no means a sensational prediction, he said.

On that point Mr. Li is right. In fact, the combined effort of the birth limitation policies and traditional preference for male children resulted in a disproportionate abortion of female unborn children at the rate of 116.9 to 100 overall and a shocking 162 to 100 for second pregnancies.

As a direct result of these ongoing crimes against humanity and especially against girls, China today is missing millions of girls, girls who were murdered in the womb simply because they are girls.

A couple of years ago the State Department suggested that as many as 100 million girls of all ages are missing; that is to say they should be alive and well and are not, a direct consequence of the government's one-child-per-couple policy. This gendercide constitutes one of humanities' worst blights and a far greater peril to peace and security than is being credited at this time.

This world is all too aware of the continuing genocide in Sudan, appropriately identified as such in the country reports. Current reports estimate that the conflicts in Darfur and southern Sudan have resulted in the deaths of about 2 million people in the south and upwards of 450,000 in the north and left over 4 million others, especially in the south, either displaced or as refugees, and many of those are in camps today of course in the north and Darfur.

When confronted with such numbers, one must also take into account the attending human rights violations, including the abuse of children, extensive trafficking in persons and the acts of torture and violence against women.

Just 2 weeks ago, I introduced a House resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release several political prisoners and prisoners of conscience who have been recently arrested in a wave of government repression.

One of those individuals specifically mentioned in the resolution, Father Ly, has already spent over 13 years in prison since 1983 for his advocacy of religious freedom and democracy in Vietnam. Tomorrow Father Ly will be given a kangaroo trial for exercising his fundamental human rights, and he faces up to 20 years in prison in the likely event that he is convicted. We know he will be convicted.

This is a case worthy of particular attention as the Vietnamese Government audaciously resumed its past oppression of human rights after Congress agreed to Vietnam becoming an official member of the WTO in December. A focus of this hearing is the promotion of human rights in U.S. foreign policy, and it is important to keep in mind that those of us in Congress play an important role in our country's foreign policy.

While substantial criticism is likely to be leveled at the administration during the hearing for its shortcomings in promoting and defending human rights, those of us in Congress should also look in the mirror and ask what priority we give to human rights both individually and as an institution.

Mr. Chairman, I yield back, and I thank you.

Chairman LANTOS. Thank you, Mr. Smith.

Since our witnesses will have to leave at a specified time, I ask my colleagues to withhold their statements because I would like to introduce our two witnesses at this point.

We have an incredible embarrassment of intellectual riches sitting at the witness table. Dean Koh was educated at Harvard, Oxford and is a graduate of Harvard Law School. Secretary Shattuck received his undergraduate education at Yale, graduate work at Cambridge and is a graduate of Yale Law School.

Both served with extraordinary distinction as Assistant Secretaries of Human Rights, and I urge all of my colleagues to read their curriculum vitae, which is a major undertaking. Their curriculum vitae remind me of Dean Koh's eulogy of Father Drynan when Father Drynan was asked how he could have achieved all the things he did in a lifetime. His response was, "Celibacy."

That is not your excuse, and I merely want to state for the record and on behalf of full disclosure that both of our distinguished witnesses are dear personal friends, and I am grateful for their presence here.

I would also like to state at the outset we invited the current Assistant Secretary of State for Human Rights. A scheduling conflict prevented his appearance at this hearing, but we hope to have him at a later time.

Dean Koh, we will begin with you.

STATEMENT OF THE HONORABLE HAROLD HONGJU KOH, DEAN, YALE LAW SCHOOL (FORMER ASSISTANT SECRETARY FOR DEMOCRACY, HUMAN RIGHTS AND LABOR AT THE DEPARTMENT OF STATE)

Mr. KOH. Thank you, Mr. Chairman. Thank you, members of the committee. It is a pleasure to appear again before this committee to testify regarding both the state of our Government's human rights policies and the 2006 *Country Reports on Human Rights Practices*.

In presenting those reports a few weeks ago, the current Assistant Secretary of State for Democracy, Human Rights and Labor, Mr. Lowenkron, accurately called 2006 the year of the pushback, as the chairman noted, but what he did not analyze fully is precisely why that pushback is occurring.

I would suggest that this global pushback can be traced in part to the world's reaction to the current administration's obsessive focus on the war on terror, which has taken an extraordinary toll on our global human rights policy.

As the reports reveal, 6 years of defining our human rights policy through the lens of the war on terror has clouded our human rights reputation, it has given cover to abuses committed by our allies in that war, it has blunted our ability to criticize and deter gross violators elsewhere, and we have committed a number of unnecessary and self-inflicted wounds, particularly our counterproductive policies on Guantanamo, torture, denial of habeas corpus for suspected terrorists, military commissions, our unsigning of the International Criminal Court and, as the Chair noted, our disengagement with the U.N. Human Rights Council.

All of these have diminished our standing as the world's human rights leader and reveals again that our longstanding commitment to human rights is a major source of our soft power and so it is necessary for this administration and the next to return to a set of policies that are true to our enduring principles.

I submitted a detailed statement, which I hope I can give to the record.

Chairman LANTOS. Without objection.

Mr. KOH. Thank you.

It makes three simple points. First, it analyses the change worked in the last 6 years. At the beginning of this century there were four basic ideas that ran our foreign policy: Diplomacy backed by force, the idea that the human rights principle is an important element of our soft power, an approach to human rights enforcement that focuses on telling the truth and on a consistent approach to the past, present and future, and a recognition that we can't do it alone. We need to use global cooperation among global democracies to solve global problems.

The last 6 years have completely disrupted that strategy. As we have seen in Afghanistan and Iraq, we have now shifted from diplomacy backed by force to force backed by diplomacy. We have sacrificed our soft power by our use of hard power. We now fail to tell the full truth about our human rights conduct or that of our allies.

We have avoided application of universal standards, and we put our own human rights practices center stage by promoting double standards for our allies and ourselves, shifting the focus from the grotesque human rights practices of the terrorists to our own misconduct and leaving other pressing issues ignored or unaddressed.

We have abandoned our consistent approach to the past, present and future by refusing to participate in the International Criminal Court. We have lost focus on accountability for the past, even though ironically the administration is now in a kind of benign coexistence in reality with these international criminal courts, and we have been ineffective in curbing ongoing abuse in a whole range of countries.

We haven't built our capacity for preventing future abuse. Our democracy building efforts have stalled, and we have weakened multilateral institutions that we need to work with.

Now, I think these patterns are very clear if you do a detailed examination of the reports. I want to applaud my former colleagues at the State Department for this monumental effort.

These reports are produced with great diligence, but through the reports you see decisions that were made not at the staff level, including, for example, troubling changes in terminology, the shift from the rubric of torture to torture and abuses, a broader label, and underreporting of human rights violation in a whole range of countries which I document in my testimony, particularly with regard to our rallies in the war on terror and even allies who have trade objectives in common with us.

Most fundamentally, Mr. Chairman, I think the reports tell a story of failure of policy in five different areas. First, with regard to genocide in Darfur, one of the most glaring issues of our time. We called what is going on in Darfur genocide some time ago, and

we have done little about it. Congress has worked on the issue, but I think the time to act is now.

Secondly, our reduced efforts with regard to our allies, and particularly Pakistan and Saudi Arabia deserve special mention as I describe in the testimony.

Next with regard to the so-called axis of evil countries, Iraq, Iran, North Korea plus Afghanistan, another country in which we have not just done aggressive rhetoric, but also military intervention. Over the years their human rights record, if anything, seems to be deteriorating, and that is especially disturbing, as Mr. Smith said, with regard to Iran and to North Korea.

And then finally with regard to our traditional geopolitical allies, China, as you have noted. Here my fault is not with the reporting which is detailed, but with a human rights record which is declining, and what is clear is that China has exploited our performance to say that we have no standing to criticize their human rights performance.

While the traditional litany of violations with regard to China continue, the ones mentioned by Mr. Smith, there are new ones: Limitations on internet freedom, which we find extremely disturbing, and the enlisting of private American companies as sensors of free expression within their own country.

The Russia report shows that President Putin has quite shrewdly exploited our antiterrorist rhetoric to give him more sway and freedom to act with regard to Chechnya under the guise of antiterrorism.

And then finally a country of great concern to everybody on this committee, Cuba, one of the most severe human rights violators. I have long been involved with activities regarding human rights in Cuba, along with your colleague, former Congressman Sam Gejdenson.

I recently visited Havana, with all appropriate governmental licenses I need to add, to mark the fourth anniversary of Cuban Spring, March 1993 when Castro's state security fanned out and arrested dozens of democracy activists.

We visited, among others, the extraordinarily courageous Oswaldo Paya, who has been extraordinarily diligent and effective in trying to bring about a democratic transition even in the face of extraordinary repression.

I asked one Cuban citizen what can the United States do to object to the continued detention of Cuban Spring activists, and he said when they raise that issue all the Castro government has to say is Guantanamo, and they are silenced.

Mr. Chair, I think we all realize that the country we all love can do better. It must do better. It should do better, and that should be a bipartisan effort. Rebuilding and repairing the damage is a huge job, and we need to begin immediately.

In my testimony I identify four steps that should be taken. First with regard to Darfur, the immediate enactment of legislation that targets sanctions, new sanctions on individuals, revenue flows from the blood oil sector, capital market sanctions, creating mechanisms for sharing information with the International Criminal Court, refugee protection and calling for the deployment of peacekeepers into Darfur.

Secondly, working more to both tell and disseminate the truth. These country reports, for example, should not simply be published. They should be translated into the language of every country, and the people in those countries should be able to link to our State Department Web site to read what is going on in their own country.

Third, a point you made, Mr. Chairman, reengaging with the multilateral human rights institutions, particularly the International Criminal Court and the Human Rights Council. We have to be seen as supporting the success of these institutions, not as enemies for them.

With regard to the council, I support the recommendations of Human Rights Watch and Freedom House that a special envoy be appointed to the Human Rights Council to see how the U.S. can work with it. As you pointed out, the Human Rights Council has had a highly imperfect first year, but we cannot expect it to be a more credible institution without U.S. participation and leadership.

If we do not engage, others will take it over as they are starting to do, and without engagement our self-defeating claim that the council doesn't work and is hostile to our interests will become a self-fulfilling prophecy.

With regard to the International Criminal Court, we have in fact moved from a policy of aggressive hostility to de facto engagement, and I think the need for the International Criminal Court is becoming manifest. We have consented to the referral of the Darfur matter, and let me point out that a recent survey from Chicago showed that 91 percent of the American people favored the use of international criminal prosecution with regard to Darfur genociders.

I think it is time for Congress to move to demonstrate our changed attitude by repealing key provisions of the American Service Members Protection Act of 2002, which has wasted untold diplomatic capital with key allies who we need and has obstructed our ability to cooperate with the International Criminal Court.

Finally, I think we need to support democratic oppositions and promote democratic transitions wherever they occur, and we should start with Cuba. As you know, Cuba has a window of opportunity for democracy. There are four possibilities: The status quo, violence and chaos, economic liberalization of a Chinese style, or what we all really want, a peaceful democratic transition promoted by nonviolent, pro-democracy leaders. Of those, the most prominent and distinguished is Oswaldo Paya.

The Cuban people have to be in charge of their future. We need to stand in solidarity with them as we have historically done with democratic movements. We need to see that the transition is designed and led by Cubans themselves. A change is coming soon. We have to be ready for it and to support it by reference to the genuine will of the people.

In closing, I will simply repeat a statement I made to the committee 4 years ago which remains now. In pursuit of the war against terror, the administration has allowed some human rights concerns to fall by the wayside and sacrificed others. Democracy and human rights cannot be pursued in a piecemeal fashion. September 11 reveals that the U.S. must work to achieve its objectives within a framework of international law, holding ourselves to the same standards to which we hold others.

Mr. Chairman, we do have the tools to make the world safer and more democratic, but only if we use them fairly and wisely.

Thank you. I am ready to answer your questions.

[The prepared statement of Mr. Koh follows:]

Statement of Harold Hongju Koh
Dean and Gerard C. & Bernice Latrobe Smith
Professor of International Law, Yale Law School
Before the House Committee on Foreign Affairs
regarding

The 2006 Country Reports on Human Rights Practices and the Promotion of Human Rights in U.S. Foreign Policy

March 29, 2007

Thank you, Chairman Lantos and Members of the Committee, for inviting me here today.

I am pleased to appear again before this Committee to testify regarding the state of our government's human rights policies, and the recently issued 2006 State Department Country Reports on Human Rights Practices. As you know, I have served our country in both Republican and Democratic Administrations, and am now Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law at the Yale Law School, where I have taught since 1985.[1]

In presenting the 2006 Human Rights Country Reports several weeks ago, Assistant Secretary of State for Democracy, Human Rights and Labor Barry Lowenkron forthrightly called 2006 "the year of the pushback." He accurately stated, "As the worldwide push for greater personal and political freedom grows stronger, it is being met with increasing resistance from those who feel threatened by change."[2] What he did not fully analyze, however, is precisely why that pushback is occurring.

Let me suggest that this global pushback can be traced in part to the world's reaction to the current Administration's obsessive focus on the War on Terror, which has taken an extraordinary toll upon our global human rights policy. The 2006 Country Reports on Human Rights reveal that six years of defining our human rights policy through the lens of the War on Terror have clouded our human rights reputation, given cover to abuses committed by our allies in that "war," and blunted our ability to criticize and deter gross violators elsewhere in the world. Unnecessary, self-inflicted wounds—such as our counterproductive policies on Guantanamo, torture, denial of habeas corpus for suspected terrorist detainees, military commissions, the International Criminal Court,

---

[1] I served as an Attorney-Adviser at the Office of Legal Counsel of the U.S. Department of Justice from 1983-85, and as Assistant Secretary of State for Democracy, Human Rights and Labor from 1998-2001. A brief *curriculum vitae* is attached as an appendix to this testimony. Although I sit on a law school faculty as well as on the boards of numerous organizations, the views expressed here are mine alone.

[2] See On-The-Record Briefing on the State Department's 2006 Country Reports on Human Rights Practices by Assistant Secretary of State for Democracy, Human Rights and Labor Barry F. Lowenkron, March 6, 2007 http://www.state.gov/g/drl/rls/rm/2007/81468.htm#bfl

and the U.N. Human Rights Council—have gravely diminished our standing as the world's human rights leader.[3] Our government's shortsighted actions have undermined America's longstanding commitment to human rights principle as a major source of our "soft power." In the next few years, this Administration and the next must recognize this failing and return to a consistent set of human rights policies that are true to our enduring principles.

Let me analyze first, the ways in which our approach to the War on Terror has undermined the strength and effectiveness of the Administration's efforts to promote human rights over the past few years; second, troubling trends in the Country Reports, particularly in the conduct of certain governments that can be traced to the United States' weakened human rights efforts; and third, ways in which this Administration and the next should reverse that trend, through enhanced bilateral efforts and increased engagement with multilateral human rights mechanisms.

I. How the War on Terror Has Undermined Our Human Rights Policy

At dawn of the 21st century, a viable global human rights strategy for the United States seemed to be emerging, which combined four factors:

1. *Diplomacy backed by Force*: Diplomacy backed by force in service of human rights;
2. *Power based on Principle*: A recognition that consistent adherence to human rights principles and standards constitutes a major source of our "soft power;"
3. *A Simple Approach to Human Rights Enforcement*: based on telling the truth, and taking a consistent approach to the past, present, and future: promoting accountability, addressing ongoing abuses, and forestalling future abuses through preventive strategies such as democracy-building; and
4. *Using Cooperation Among Global Democracies to Solve Global Problems*: encouraging both international and national and public and private institutions to work together to set universal standards for the consistent implementation of human rights and humanitarian norms.[4]

Tragically, the last six years have deeply disrupted that strategy. As evidenced by Afghanistan and Iraq, we have shifted from diplomacy backed by force to force backed by diplomacy, seeking to build democracy from the top down rather than from the bottom up. The United States has used hard power at the expense of its commitment to human rights principle as a source of soft power, and now finds itself in a position of military overstretch.

---

[3] The Introduction to this year's reports indirectly acknowledges this, stating "We recognize that we are writing this report at a time when our own record, and actions we have taken to respond to the terrorist attacks against us, have been questioned," and agreeing that "U.S. laws, policies and practices governing the detention, treatment and trial of terrorist suspects have evolved considerably over the last five years."

[4] This approach is elaborated more fully in Harold Hongju Koh. "A United States Human Rights Policy for the 21st Century," 46 *Saint Louis Univ. L.J.* 293 (2002).

As I elaborate below, we now fail to tell the full truth about our human rights conduct, or that of our allies in the War on Terror. Increasingly, we avoid application of universal standards: whether the rules against torture and cruel inhuman or degrading treatment or Common Article Three of the Geneva Conventions. But the United States cannot lead the world with moral authority unless we hold ourselves to the same high standards that we demand from others. The U.S. has put its own human rights practices center stage by promoting double standards for our allies, and arguing in favor of "law-free zones" (like Guantanamo), "law-free practices" (like extraordinary rendition), "law-free persons" (who are dubbed "enemy combatants"), and "law-free" courts, (like the system of military commissions, which have failed to deliver credible justice and are currently being challenged in our courts for the recent stripping of the writ of habeas corpus).[5] Through these misguided policies, the Administration has shifted the world's focus from the grotesque human rights abuses of the terrorists to America's own human rights misconduct, leaving other, equally pressing issues elsewhere ignored or unaddressed.

Similarly, we have abandoned a consistent approach to past, present, and future abuses. By unwisely opposing the International Criminal Court (ICC), we have lost our focus on accountability for past abuses. The Bush Administration has regularly opposed efforts to redress human rights abuses through civil liability under the Alien Tort Claims Act, although the Carter and Clinton Administrations had filed briefs in support of victims' claims. Ironically, despite its avowed hostility toward international criminal adjudication, in the past few years, the Bush Administration has retreated from outright opposition toward international criminal adjudication to a de facto policy of benign coexistence with mechanisms of accountability. Recently, for example, the Bush administration consented to the U.N. Security Council's referral of the Darfur genocide case to the International Criminal Court, passively supported ICC prosecutions in Congo and Uganda, called for prosecution of Charles Taylor before the Special Court for Sierra Leone (and indicted his son, Chuckie), and strongly supported the prosecutions of both Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia and Saddam Hussein before the Iraqi Special Tribunal.

As I elaborate below, we have proven notably ineffective in curbing ongoing abuse: (1) in the face of genocide in Darfur; (2) as committed by our major allies, especially those in the War on Terror such as Saudi Arabia and Pakistan; (3) in the so-called "Axis of Evil" countries --North Korea, Iran, and Iraq—as well as in Afghanistan, notwithstanding our military interventions; and (4) in such traditional geopolitical rivals as China, Russia, and Cuba.

Finally, we have not built our capacity for preventing future abuse. Around the world, our democracy-building efforts have stalled. And we have weakened multilateral and regional institutions for global cooperation in the implementation of human rights and humanitarian norms—the ICC, the United Nations, the Human Rights Council—even while shying away from closer collaboration with democratic coalitions in Europe, Latin

[5] For elaboration of these points, see Harold Hongju Koh, "Setting the World Right," 115 Yale L.J. 2350 (2006), available at http://www.yalelawjournal.org/archive_abstract.asp?id=592

America, and Africa. This year, the United States refused to join the International Convention on the Protection of All Persons from Enforced Disappearance and refused to participate meaningfully in the negotiation of the Convention on the Rights of Persons with Disabilities, even though our country has significant expertise in this area, could have contributed importantly to the content and implementation of the Convention, and exhibits among the best disability practices in the world.

II. Troubling Trends and Ineffective Responses

These broad patterns become evident upon reading the 2006 State Department annual country reports on human rights practices. Let me applaud my former colleagues at the Bureau of Democracy, Human Rights and Labor and throughout the Foreign Service for their extraordinary diligence in producing these reports, which this year reflect a number of welcome developments.[6] For thirty years, these reports have formed the heart of U.S. human rights policy, by providing the official information base upon which all branches of the federal government can make policy judgments.[7]

When I was Assistant Secretary of Democracy, Human Rights and Labor, I gave only one directive regarding these reports: *Tell the truth.* Reasonable minds may differ about what *policy consequences* should flow from the same truthful reporting about human rights conditions, but should not differ materially about what the true facts are. Yet in too many respects, this year's Country Reports show, we are not telling the full truth either about our human rights conduct, or that of our allies in the War on Terror.

For example, this year's country reports evidence both: (1) troubling changes in terminology and (2) noticeable underreporting of human rights violations. In the Syria, Libya, and Pakistan reports, for example, the State Department now describes acts that it had previously described as "torture" under the broader linguistic category of "torture and abuse."[8] This change does not seem accidental. In the Justice Department's infamous

---

[6] For example, this year's reports assess the important work of human rights defenders. The Guiding Principles on Non-Governmental Organizations, announced by Secretary Rice in December 2006, set forth important guidelines to assess ours and other governments' treatment of human rights NGOs. Based on the work of the new Global Internet Freedom Task Force, this year's reports include useful reporting on issues of internet freedom in every country.

[7] The first of these reports, issued in 1977, ran only 137 pages and covered only a fraction of the world's countries. The last volume of the twentieth century covered 194 countries and totaled approximately 6,000 pages in typescript. When the 1999 reports were placed on the World Wide Web, well over 100,000 people read or downloaded parts on the first day that they appeared. *Introduction*, *in* U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (released Feb. 25, 2000), http://www.state.gov/www/global/human_rights/1999_hrp_report/overview.html. The country reports are now supplemented by the annual State Department country reports on religious freedom and trafficking.

[8] In the Syria Report, horrific torture techniques are listed in the exact same wording and order in both the 2006 and 2005 reports, but techniques that were previously described as "torture methods" in 2005 are now described as "methods of torture and abuse" in the 2006 report. Similarly, the Libya report lists the identical litany of torture techniques in 2005 and 2006, but the 2005 list of "methods of torture" is now called "methods of torture and abuse." Likewise, the Pakistan Report in 2005 referred to methods of "torture," while the identical methods in the 2006 Report are referred to as "severe abuse."

2002 "Torture Memo," the Office of Legal Counsel argued in favor of an absurdly narrow definition of torture—"[inflicting] physical pain . . . equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."[9] Yet as I have noted elsewhere, under that definition, many acts committed in Saddam Hussein's Iraq would not have counted as "torture," even though the Bush White House had previously called those very acts "torture" when they were committed by Saddam's regime.[10] Recently, the Administration has denied that it is engaged in or supporting torture,[11] but one might read the linguistic shift in the reports to suggest that it wants to preserve its freedom –as well as the freedom of the Syrians, Libyans, and Pakistanis--to commit actions that it now calls "abuse" as part of the War on Terror.[12]

Furthermore, the reports exhibit significant underreporting of human rights violations, especially when they are committed by U.S. allies. To give just a few glaring examples:

- The report on Indonesia fails to mention possible human rights violations committed by the U.S.-supported police anti-terrorism unit, Detachment 88.[13]

- The report on Afghanistan notes human rights abuses committed by government forces, including extrajudicial killings and torture, but claims that "elements of the security forces acted independently of government authority," even though President Karzai has appointed a number of warlords and known human rights abusers as regional police chiefs.[14] The report on Afghanistan mentions that some organizations "reported the presence of secret or unofficial prisons through 2005"

---

[9] Memorandum of August 1, 2002 from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, to Alberto R. Gonzales, Counsel to the President, Regarding Standards of Conduct of Interrogation under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2004), *available at* http://news.findlaw.com/nytimes/docs/doj/bybee80102mem.pdf, at 1.

[10] Such acts include "branding, electric shocks administered to the genitals and other areas, beating, pulling out of fingernails, burning with hot irons, and blowtorches, suspension from rotating ceiling fans, dripping acid on the skin, rape, breaking of limbs, denial of food and water, extended solitary confinement in dark and extremely small compartments, and threats to rape or otherwise harm family members and relatives" *See* Saddam Hussein's Repression of the Iraqi People, *available at* http://www.whitehouse.gov/infocus/iraq/decade/sect4.html, discussed in Harold Hongju Koh, "Can the President Be Torturer-in-Chief?," 81 *Indiana L.J.* 1145 (2006).

[11] Last year, President Bush told an interviewer: "I don't think a president can … order torture, for example…. Yes, there are clear red lines…." Interview with Bob Schieffer, CBS NEWS (Jan. 27, 2006), *available at* http://www.cbsnews.com/stories/2006/01/27/eveningnews/main1248952_page3.shtml.

[12] With respect to covered persons, who after the Supreme Court's recent decision in *Hamdan v. Rumsfeld,* 126 S. Ct. 2749 (2006), plainly include suspected Al Qaeda detainees, Common Article 3 of the Geneva Conventions prohibits "at any time and in any place whatsoever … violence to life and person, in particular … cruel treatment and torture [and] outrages upon personal dignity, in particular humiliating and degrading treatment." This prohibition simply confirms the existing legal obligations of American officials under the McCain Amendment (the Detainee Treatment Act) and two other treaties-- the Convention Against Torture, Articles 1-4 and 16, and Articles 7 and 10 of the International Covenant on Civil and Political Rights-- both of which the United States has ratified.

[13] Human Rights First, "State Department's Human Rights Reports Omit US Involvement in Abuses Abroad," March 7, 2007, *available at* http://www.humanrightsfirst.org/media/usls/2007/statement/316/index.htm

[14] Human Rights Watch, *World Report 2007* 239 (2007).

but fails to mention the U.S. role in detention operations in Afghanistan, particularly the well-known U.S. detention center at Bagram Air Force Base, where over 600 individuals are believed to detained.[15]

- Similarly, the report on Iraq omits any reference to the detention and interrogation activities of the United States in-country, counting only non-coalition force detainees and failing to mention the numerous U.S.-run Multi-National Force detention facilities in Iraq, which as of October 2006 held approximately 14,000 detainees throughout the country.

- The Jordan report estimates that 500,000 to 700,000 Iraqis are living in Jordan and notes that "[t]he government has tolerated the prolonged stay of many Iraqis beyond the expiration of the visit permits, under which they entered the country." But it makes little or no mention of the often miserable conditions in which Iraqi residents of Jordan live or the recent difficulties that Iraqis fleeing the war zone have had in gaining entry to Jordan.[16]

- The report on Egypt is overly positive about the multi-party elections that took place in 2005. Moreover, the report fails to mention that during the presidential election, President Mubarak had accepted greater press freedom and relaxed intimidation of opposition forces, only to reverse course in 2006 and extend the Emergency Law until 2008. Just this past Monday, Egypt essentially constitutionalized the Emergency Law by enacting antiterrorism amendments to its Constitution to give the President permanent emergency powers, in what appears to have been a rigged vote.[17] The government also postponed municipal elections, originally scheduled to take place last year, and cracked down on dissident and judges seeking greater independence. Nor does the Egypt Report mention that Italy has just indicted Italian and U.S. officials for their role in the abduction and transfer of an Egyptian cleric, Osama Hassan Mustafa Nasr, to Egypt where he was allegedly tortured.[18]

---

[15] Human Rights First, "State Department's Human Rights Reports Omit US Involvement in Abuses Abroad," March 7, 2007, *available at* http://www.humanrightsfirst.org/media/usls/2007/statement/316/index.htm

[16] A Human Rights Watch Report from November 2006, entitled *The Silent Treatment: Fleeing Iraq, Surviving in Jordan*, concludes that "hundreds of thousands of Iraqis living in Jordan face a daily threat of arrest, fines and deportation because the Jordanian government treats them as illegal immigrants rather than refugees" and that "[n]ow Jordan is refusing many Iraqis entry at its border."

[17] See Michael Slackman, *Charges of Vote Rigging as Egypt Approves Constitution Changes*, N.Y. Times, March 27, 2008, available at http://www.nytimes.com/2007/03/28/world/africa/28egypt.html?_r=1&ref=africa&oref=slogin.

[18] *Italy Indicts 31 Linked to CIA*, ASSOCIATED PRESS, Feb. 15, 2007, available at http://www.iht.com/articles/ap/2007/02/16/europe/EU-GEN-Italy-CIA-Kidnap.php. In addition, Human Rights Watch reports that two Egyptian asylum seekers living in Sweden were summarily expelled by Swedish authorities, transported to Egypt on a CIA-leased aircraft, and tortured in Egypt. One was was released without charge in October 2003, while the other was sentenced to twenty-five years in prison by a military tribunal that failed to meet basic fair trial standards. Human Rights Watch, *Black Hole: The Fate of Islamists Rendered to Egypt*, May 2005, http://hrw.org/reports/2005/egypt0505/egypt0505.pdf

- The Pakistan Report makes scant mention of Pakistan's role in detaining, interrogating, and transporting detainees, even though an EU parliamentary investigation and Human Rights Watch have chronicled several cases of torture and abuse of terrorist suspects on Pakistani soil.[19] Hundreds of people suspected of links to al-Qaeda or the Taliban have been arbitrarily arrested and detained, scores have become victims of enforced disappearance, and some have been unlawfully transferred to the custody of other countries, including the United States. Still, the United States has muted criticism of Pakistan in recent years, apparently because of Pakistan's support in the "War on Terror." The Pakistan Report cites a comprehensive report by Amnesty International,[20] but does not acknowledge specific findings in the Amnesty report that enforced disappearances of individuals believed to be Al Qaeda or Taliban soared after 2001; that hundreds have been arbitrarily arrested and detained; that some have been unlawfully transferred to the custody of other countries, notably to the U.S. for detention at Guantánamo, and that U.S. intelligence personnel appear to have known of or participated in the arbitrary detention and enforced disappearance of some terror suspects in Pakistan.

- Similarly, the reports on a number of the Council of Europe member states contain no reference to the 2006 Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly on the "alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states."[21] That damning report notes that "The United States, an observer state of our Organisation, actually created this reprehensible network, which we criticise in light of the values shared on both sides of the Atlantic. But we also believe ... that it is only through the intentional or grossly negligent collusion of the European partners that this 'web' was able to spread also over Europe." The report identifies as playing varying roles in violating the rights of specific named persons: Sweden, Bosnia-Herzegovina, the United Kingdom, Italy, Macedonia, Germany, and Turkey. The Council of Europe report also singles out Poland and Romania, for helping to run secret detention centers and

---

[19] An EU parliamentary investigation found that Murat Kurnaz, a Turkish citizen and German resident, was tortured after his arrest in Pakistan in 2001, as well as during his subsequent detention in Afghanistan and Guantánamo Bay. He was released without charge on 24 August 2006, after five years of extralegal detention. The temporary committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, "Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners," 26 January 2007, para. 83: http://www.europarl.europa.eu/comparl/tempcom/tdip/pc382246.pdf According to Human Rights Watch: "As the US State Department's annual human rights report for 2004 describes, security forces in Pakistan 'held prisoners incommunicado and refused to provide information on their whereabouts, particularly in terrorism and national security cases.' What the report does not say is that the Pakistani authorities carried out these abuses with the full knowledge and participation of American intelligence agents. Indeed, the degree of US control may have been so great, in some cases, that it constituted a form of proxy detention." Human Rights Watch, *Ghost Prisoner: Two Years in Secret CIA Detention*, February 2007, p. 2. http://hrw.org/reports/2007/us0207/us0207web.pdf

[20] *See* Amnesty International, "Pakistan: Human Rights Ignored in the 'War on Terror,'" (Sept. 29, 2006), http://web.amnesty.org/library/Index/ENGASA330362006.

[21] See http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf

Germany, Turkey, Spain and Cyprus for serving as staging points for flights involving the unlawful transfer of detainees.

- Likewise, the Country Report on Canada is notably deficient with regard to the notorious extraordinary rendition case involving Maher Arar. The Report omits any mention that the case arose in the anti-terrorism context. Although the Report refers to the findings of the Canadian Commission of Inquiry convened to investigate Arar's case, the Report does not mention the Commission's conclusions: (1) that Arar was very likely detained and rendered to Syria by the United States because of incorrect intelligence suggesting that he posed a terrorism threat due to his suspected links and sympathies with extremist Islamic organizations;[22] (2) that Arar's account of his torture in Syria was "completely credible;"[23] (3) that no evidence existed that Arar poses any kind of national security threat; and (4) that U.S. officials misled Canadian officials about their treatment of Arar and very likely bear much of the blame for Arar's ordeal.[24] The Report also fails to mention that the "United States . . . declined [the Commission's] invitation to give evidence or otherwise participate in the hearings."[25] The Report nowhere mentions that after the Commission's findings were announced, the Prime Minister issued a formal apology to Arar and his family; that the Government of Canada compensated Arar with a multi-million dollar payment; or that the former police (RCMP) Commissioner resigned the day after testifying before a House of Commons committee about in the Arar affair. The Report also downplays the scope of the Commission's suggestion to create an entirely new agency for reviewing the RCMP's national security activities, to ensure that similar travesties do not occur in the future.

- In discussing Turkmenistan, called one of the "world's most repressive and closed countries" by Human Rights Watch,[26] the Introduction to the Report focuses solely on press freedoms, not on the multitude of other serious human rights violations committed there.

- The Morocco Report severely downplays abuses in Western Sahara. Nor does the report chronicle several well-documented cases in which individuals arrested in Pakistan were rendered to Morocco and detained and allegedly tortured.[27]

---

[22] *See* Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* 13-14 (2006).
[23] *Id.* at 9.
[24] *Id.* at 361.
[25] *Id.* at 11.
[26] *See, e.g.*, Human Rights Watch, *World Report 2007* 430 (2007).
[27] German citizen Mohammad Zammar was arrested without formal charge on December 8, 2001 at Casablanca airport and apparently detained and tortured in Morocco and Syria. *Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners*, January 26, 2007, available at http://www.europarl.europa.eu/comparl/tempcom/tdip/pe382246.pdf. Italian citizen Abou Elkassim Britel, arrested in Pakistan in March 2002 by the Pakistani police and interrogated by U.S. and Pakistani officials, was subsequently rendered to the Morocco and imprisoned in the Temara detention facility, where he remains detained. *Id.* According to Human Rights First, Binyam Muhammad was arrested in Karachi, Pakistan in April 2002, charged with conspiring with Jose Padilla, hung from the

More fundamentally, the reports tell a story of repeated failure of U.S. human rights policy. They attest to our striking ineffectiveness in curbing abuses in four categories of countries: (1) in the face of genocide in Darfur, Sudan; (2) as committed by our major allies, especially those in the War on Terror; (3) in the so-called "Axis of Evil" countries --North Korea, Iran, and Iraq—as well as in Afghanistan, notwithstanding costly military interventions; and (4) in such traditional geopolitical rivals as China, Russia, and Cuba:

1. **Sudan:** The Sudan report is admirably thorough and unflinching in its condemnation of Khartoum. It appropriately refers to events in Darfur as "genocide," attributes primary responsibility to the government militia, and accurately portrays the escalating violence toward the end of last year. Sadly, however, this reporting only raises more sharply the question: what is the United States now doing to stop what we called "genocide" some years ago?

2. **Allies:** As noted above, the Reports persistently underreport, selectively report, or simply omit description of human rights violations committed by our perceived allies in the War on Terror. Even where the reports do accurately report human rights abuses, the dismal record only attests to our reduced or ineffective efforts at human rights advocacy in those countries. In perhaps the starkest example, Pakistan, President Pervez Musharraf continues to rule with an iron fist despite his broken promises to put Pakistan on the road to democratic reform. Despite the passage of the Women's Protection Bill, gender-based violence, including honor killings, recurred frequently during the past year, forced disappearances increased substantially, arbitrary arrest and lengthy pretrial detention are pervasive, and an increasing number of journalists are being targeted for harassment, intimidation, and arrests.

The Saudi Arabia report accurately calls the human rights situation in that country "poor," but pulls its punches by omitting several accounts of abuse in prisons that can be found in the Human Rights Watch 2007 Report.[28] Significantly, the Report acknowledges that press accounts claimed that Saudi Arabia "did not imprison persons on political grounds, but because they were terrorists or collaborators with terrorists …." The Report also underplays significant oppression by the Saudi government of human rights

---

ceiling of his cell with leather straps and whipped by his Pakistani jailers, and flown to Morocco where he spent 14 weeks and underwent torture by means of a razor being used to make incisions on his chest and his genitals. He was then transferred to what he believes was a CIA-run prison in Afghanistan, before his subsequent transfer to Guantanamo. "The Case of Binyam Ahmed Muhammad," available at: http://www.humanrightsfirst.org/us_law/detainees/cases/ahmed-muhammad.htm; and "Jose Padilla's Motion to Suppress Physical Evidence and Issue Writs ad Testificandum," available at: http://jurist.law.pitt.edu/ControvertWarrantSuppressEvidenceMotion.pdf

[28] *See* Human Rights Watch, *World Report: Saudia Arabia* (2007), *available at* http://hrw.org/englishwr2k7/docs/2007/01/11/saudia14717.htm.

defenders (ten of whom were arrested in February 2007),[29] and the persistent government denial of access to prisons for human rights monitors, a continuing, major barrier to accurate human rights monitoring and reporting in Saudi Arabia.

Nor does systematic underreporting of violations appear limited to the security context and U.S. allies in the War on Terror. For example, in 2005 the International Labor Organization (ILO) published three reports documenting the widespread existence of forced labor in Peru, Bolivia, and Paraguay.[30] In Peru and Bolivia—where this problem is most acute—the ILO estimated that tens of thousands of individuals were subjected to debt bondage. While levels of forced labor are comparable in Peru and Bolivia, the U.S. State Department's reporting of these findings on Bolivia are expounded at length, while the Peruvian case is relegated to a single sentence in the Peru report, perhaps because of the Administration's desire to secure prompt passage of the Peru-US Trade Promotion Agreement (TPA), which currently contains weak labor provisions, and whose fate may be decided in the next few days.[31]

3. **The "Axis of Evil" (Iraq, Iran, North Korea) plus Afghanistan:** Despite the Administration's aggressive rhetoric -- and in some cases, even military intervention--in these four countries, their human rights record seems to be deteriorating.

- According to the Afghanistan report, for example, the security situation there has deteriorated and basic human rights are not guaranteed despite the fact that it has been more than five years since the fall of the Taliban. Weak central institutions and a deadly insurgency contributed to the ineffectiveness of the government to secure basic rights. The Taliban, Al-Qaeda, and other extremist groups stepped up attacks against government, aid personnel, and unarmed civilians; and the number of suicide bombings rose dramatically during the year. According to the report, the U.S.-supported government also committed its own share of human rights abuses, including arbitrary arrests and detention, extrajudicial killings, torture, and poor prison conditions plagued the country. It remains unclear how much the United States Government is meaningfully doing to reverse this trend.

- As the daily headlines chronicle, the human rights situation in Iraq gets worse by the day. As the Iraq Study Group reported, the internal situation is descending into chaos, as the insurgency has wreaked havoc on the ability of the government to ensure the people of Iraq can enjoy even basic rights. There was a marked increase in extrajudicial killings, and terrorist groups and death squads killed thousands of Iraqis in Baghdad alone.[32] Given the precarious security situation,

---

[29] *See* International Commission of Jurists, "Saudi Arabia: ICJ Calls on Saudi Arabia to Cease Harassement [sic] of Human Rights Lawyers and Defenders," Feb. 10, 2007, *available at* http://www.icj.org//news.php3?id_article=4122{=en.

[30] *See* http://www.ilo.org/dyn/declaris/DECLARATIONWEB.WORKINGPAPERS?var_language=EN.

[31] *See* Doug Palmer, "March 31 looms large on U.S. Trade Agenda," *Reuters*, 26 March 2007, available at http://www.reuters.com/article/reutersEdge/idUSN2643248220070326.

[32] The Iraq report notes the following human rights problems: "Pervasive climate of violence; misappropriation of official authority by sectarian, criminal, terrorist, and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment;

human rights issues have moved to the backburner in Iraq, and will be increasingly at risk (especially in the area of detainee treatment) as we ask the Iraqis to assume a greater role in security operations.

- The human rights situation in Iran is increasingly disturbing.[33] Although a great percentage of the Iranian people support democratic reform, the country remains in the hands of the conservative clerics, who closely monitor and restrict the opposition and the press, punish human rights defenders, and impose a strict form of Sharia law that denies women and minorities basic rights. This year, Iranian government shut down two independent newspapers and blocked access to many media internet sites. Yet the U.S. saber-rattling approach has blunted its ability to gain human rights leverage. In criticizing Iran for its "severe restriction of the right of citizens to change their government peacefully," the report uses stronger language than is found in the reports for Syria and Saudi Arabia, which have arguably similar levels of restrictions on the right to change the government. Moreover, our criticism of Iranian "Security forces [who] monitored the social activities of citizens, entered homes and offices, monitored telephone conversations, and opened mail without court authorization," is blunted by their ability to point to our own National Security Agency's (NSA's) sustained program of secret, unreviewed, warrantless electronic surveillance of American citizens and residents.[34] Nor are we on strong footing attacking Iran for "illegal detentions" when similar charges can be and have been lodged against our own government. [35]

---

impunity; poor conditions in pretrial detention facilities; arbitrary arrest and detention; denial of fair public trial; an immature judicial system lacking capacity; limitations on freedoms of speech, press, assembly, and association due to terrorist and militia violence; restrictions on religious freedom; large numbers of internally displaced persons (IDPs); lack of transparency and widespread corruption at all levels of government; constraints on nongovernmental organizations (NGOs); discrimination against women, ethnic, and religious minorities; and limited exercise of labor rights."

[33] As the Iran Report notes: "Human rights problems included severe restriction of the right of citizens to change their government peacefully unjust executions after reportedly unfair trials; disappearances; torture and severe officially sanctioned punishments such as death by stoning; flogging; excessive use of force against demonstrators; violence by vigilante groups with ties to the government; poor prison conditions; arbitrary arrest and detention; lack of judicial independence; lack of fair public trials; political prisoners and detainees; severe restrictions on civil liberties including speech, press, assembly, association, movement, and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; incitement to anti-Semitism."

[34] In prior testimony, I joined the many lawyers who have challenged the legal basis for the NSA surveillance program. See generally Statement of Harold Hongju Koh before the Senate Committee on the Judiciary regarding Wartime Executive Power and the National Security Agency's Surveillance Authority, Feb. 28, 2006, available at www.law.yale.edu/documents/pdf/HHKNSAtestfinal.pdf. Ironically, the report on Venezuela accuses the Chavez government of "illegal wiretapping" in its list of human rights violations.

[35] The Iran Report notes: "in recent years authorities have severely abused and tortured prisoners in a series of 'unofficial' secret prisons and detention centers outside the national prison system. Common methods included prolonged solitary confinement with sensory deprivation, beatings, long confinement in contorted positions, kicking detainees with military boots, hanging detainees by the arms and legs, threats of execution if individuals refused to confess, burning with cigarettes, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet."

- Nowhere is the picture more depressing than North Korea, which I visited as a State Department official in the fall of 2000. As the report chronicles, no human rights progress has been made there despite our aggressive rhetoric. The country remains one of the most repressed, closed and isolated countries in the world. The regime tightly controls the lives of its citizens, denying them freedom of speech, press, assembly, and association, and restricting freedom of movement and worker rights. An estimated 150,000 to 200,000 people, including political prisoners and returned refugees from China, were detained by the North Korean government, many of whom suffered from torture, starvation, disease, and exposure. Forced abortions of pregnant female prisoners were reported, as were cases in which babies were killed upon birth in prisons.

4. **Traditional geopolitical rivals**

A. China: Happily, the China Report continues to be frank and detailed. The report forthrightly reports the Chinese government's tight grip on the press and civil society, its controls on NGOs and the media, its suppression of political dissent, and its continuing harassment, detention, and imprisonment of political and religious activists, journalists, writers, and lawyers. The Report also notes that long-promised legal reforms were continually stalled; that executions often took place the day after appeals; that China has continued its illegal repatriation of North Korean refugees, and its severe cultural and religious repression of minorities in Tibet as well as Uighur Muslims.

Yet it is clear that China has exploited the Bush Administration human rights record to charge that the United States has no standing to criticize China's human rights performance. "As in previous years, the State Department pointed the finger at human rights conditions in more than 190 countries and regions, including China, but avoided touching on the human rights situation in the United States," the government said in a report recently issued by Premier Wen Jiabao's office. "We urge the U.S. government to acknowledge its own human rights problems and stop interfering in other countries' internal affairs under the pretext of human rights."[36] Nor has China hesitated to charge democracy activists with terrorism, as it did in the case of the founder of the democracy magazine *China Spring*, Wang Bingzhang, who was sentenced to life imprisonment for "organizing and leading a terrorist group."

The Report enumerates limitations on internet freedom imposed by the Chinese government. It also lists the names of several individuals were detained or imprisoned for their Internet writing during the year. Unfortunately it does not highlight enough the role of private multinational corporations in supplying the Chinese government with equipment and technology that can be used to block sites.[37] Nor does it fully call to account foreign content providers such as Yahoo, AOL, Google and Skype, who abide

---

[36] China Issues Human Rights Record of the United States, *People's Daily Online*, March 8, 2007, *available at* http://english.people.com.cn/200703/08/eng20070308_355469.html.

[37] *See generally* Eric Harwit and Duncan Clark, "Shaping the Internet in China: Evolution of Political Control Over Network Infrastructure and Content," *Asian Survey*, 41:3, May-June 2001, pp. 337-408.

by PRC government wishes, including having internal content monitors, in order to be able to operate within mainland China.[38] As a number of human rights and media NGOs have noted, these content-provider companies have in many respects taken on the government's role as censor to stifle access to information. The United States government must do more both to press the Chinese government to relax its restrictions and to persuade companies to stop contributing to the Chinese authorities' censorship efforts.

B. Russia: The Russia Report makes clear that President Putin has further consolidated power in the executive branch, cracking down on opposition groups and the media. Putin has shrewdly exploited the U.S. antiterrorist rhetoric, declaring as early as September 12, 2001 that the US and Russia "have a common foe" because Osama Bin Laden's people were connected to events in Chechnya.[39] Within months the US government had added three Chechen groups to its list of foreign terrorist organizations.

Disturbingly, human rights defender Anna Politikovskaya, known for her criticisms on Chechnya, was murdered at point blank range and it remains unclear who ordered her death. And Russian government forces continue to commit serious human rights violations in Chechnya and other areas of the North Caucasus, including unlawful killings, arbitrary detention and arrest, and torture. Yet the report on Russia downplays incidences of torture committed by Russian forces in Chechnya, which Human Rights Watch describes as "systematic" and "widespread." The Second Operational Investigative Bureau (ORB-2), which is responsible for some of the worst torture in the Chechen region, is not mentioned by name and only receives one sentence consideration. Human rights abuses committed by Chechen Prime Minister Ramzan Kadyrov' forces are misleadingly blamed on individual soldiers rather than upon systemic causes.[40]

C. Cuba: The report on Cuba correctly notes that Castro "continued to violate virtually all the rights of its citizens." As the Committee knows, I have long been concerned about the human rights of Cuban citizens. Along with former Congressman Sam Gejdenson, a one-time chair of this Committee, I recently visited Havana, with all appropriate U.S. governmental licenses, where I visited the leading Cuban dissident, Oswaldo Paya and his family. As Mr. Paya noted in a recent Washington Post op-ed piece, just last week marked the fourth anniversary of "Cuban Spring" -- March 18 to 20, 2003 – when Castro's state security fanned out across Cuba and arrested 75 independent journalists, librarians, labor unionists, human rights activists and other dissidents, many of whom were tried on charges of "anti-state" activities, sentenced to lengthy prison

---

[38] Worldwide, government approval of internet service providers is increasingly becoming a means to control internet freedom. I am informed that in the Central African Republic (CAR), for example, internet freedom has recently declined, because the government's requirement that users use a single approved internet service provider now makes it impossible to use Skype or other Voice over Internet Protocol (VOIP) programs.

[39] Susan B. Glasser and Peter Baker, "Putin, Bush Weigh New Unity Against a Common Foe," *Washington Post*, Sept. 13, 2001: A25.

[40] Human Rights Watch. "Widespread Torture in the Chechen Republic: Human Rights Watch Briefing Paper for the 37th Session UN Committee against Torture." (Nov. 13, 2006). *available at http://hrw.org/backgrounder/eca/chechnya1106/* (last accessed Mar. 25, 2007), 1, 9-10.

terms, and remain imprisoned today.[41] We must listen to the voices of Cuban democrats on the island, like Paya, and should stand behind their courageous efforts. But when I asked a Cuban citizen recently how effective the U.S. government has been in objecting to the continued detention of the Cuban Spring activists, he sighed and told me, "When they raise these issues, the Castro government can now rebut with just one word: 'Guantanamo.'"

III. Repairing the Damage

The sobering trends in this year's reports indicate a desperate need for this U.S. Administration and the next to recommit the United States to promoting and protecting human rights throughout the world. While space does not permit an exhaustive survey of necessary steps, we should begin, at a minimum, by (1) taking immediate action against genocide in Darfur; (2) taking further steps to tell and disseminate the truth; (3) reengaging with multilateral institutions, especially the U.N. Human Rights Council and the International Criminal Court; and (4) promoting democratic transitions and supporting democratic movements within authoritarian societies.

A. Preventing Genocide: This Committee has grappled repeatedly with the crisis in Darfur, and I will not rehearse again the various policy options available to us. Nevertheless, it remains an international disgrace that we have not led the way in preventing what Secretary of State Colin Powell forthrightly called "genocide" several years ago. It should go without saying that "Never again" should really mean "Never again," not "Never again, except in Africa." Congress should quickly enact legislation that: (1) targets new sanctions (such as travel bans and assets freezes) upon individuals named in the U.N. Commission of Inquiry and upon Sudanese companies owned by ruling party officials doing business abroad, (2) targets revenue flows from the "blood oil" sector: (3) imposes capital market sanctions on foreign firms who deal with Khartoum, (4) creates mechanisms for sharing information with the International Criminal Court to accelerate indictments against Khartoum officials, (5) ensures protection for Sudanese refugees and internally displaced persons, and (6) calls for immediate deployment of peacekeepers into Darfur—with a deadline for Khartoum's acceptance of such a force-- to help achieve an enforceable ceasefire that can lead to a sustainable political settlement.[42]

B. **Telling and disseminating the truth**: I have chronicled above a number of ways in which this year's Country Reports unfortunately shade or underreport the truth. In addition to correcting these defects, the State Department should ensure that these country reports are made widely available in the very countries whose human rights conduct is being described. In February 2006, Secretary Rice established the important Global Internet Freedom Task Force, which deserves credit for including new reporting

---

[41] Oswaldo José Payá Sardiñas, "Four Years in the Other Guantanamo," *Washington Post*, March 18, 2007: A15. *see also* Oswaldo José Payá Sardiñas, "The Unstoppable Cuban Spring," *Washington Post*, July 1, 2006; A25.

[42] For a summary of Darfur legislative proposals, see http://www.darfurscores.org/darfur-legislation.

in this year's reports on the means by which internet restrictions occur in each country. Unfortunately, the Department does not seem to be living up to its own mission by making translations of the country reports available in as many places and in the most visible ways possible, including by linking translated versions of the reports to the main State Department website, so that they are available to citizens in the countries themselves. Some governments, for example the Chinese, are believed to block these translated versions, although eventually, under pressure, they do generally allow them to be posted. I would urge this Committee to ensure that the State Department is not avoiding linking these translated reports to its main website to minimize friction with the governments it criticizes. The Country Reports are a massive undertaking, containing much valuable information, but they have little value unless they are widely disseminated, particularly in countries where—because of government repression-- much of the information remains unknown to the general public.

C. Reengaging with multilateral Human Rights Institutions: In the last six years, the United States has unwisely disengaged from various institutions that promote fundamental human rights, chief among them the International Criminal Court (ICC) and the newly-established Human Rights Council (Council). While the United States will not likely become a state-party to the ICC or a member of the Council in the near future, the Administration can show its good faith by reengaging with both institutions and establishing special envoys to represent U.S. interests at those institutions. In addition, the U.S. can and should articulate a policy that encourages the success of these institutions, even if the U.S. chooses not to seek full membership in them at this point.

Demonstrating U.S. support for these institutions is critical now, when those institutions are necessary to resolve major crises, such as the ongoing genocide in Darfur and the human rights crisis in Iraq, especially while these institutions are still defining their operating structures and policies. Many of our closest allies interpret current U.S. policies hostile to these institutions as signs that the U.S. government is determined to ensure that these institutions fail. It is essential that the U.S. government both support and be understood by others as supporting these important and necessary multilateral institutions.

1. United Nations Human Rights Council: On March 5, 2007, the same day that the Country Reports were released, the Administration indicated that it would refuse to run for a position on the United Nations Human Rights Council for the second time. This continued disengagement with a reformed human rights body that the United States initially favored severely hamstrings American efforts to promote human rights through multilateral processes. I agree with both Human Rights Watch and Freedom House that the United States should modify its stance by appointing a Special Envoy to the Council to engage in discussions about institutional design and to enable the Council to respond more effectively to human rights abuses worldwide. [43]

---

[43] *See* Kenneth Roth, Human Rights Watch, "Letter to Secretary Rice regarding the Appointment of a Special Envoy to the UN Human Rights Council," March 9, 2007, *available at* http://hrw.org/english/docs/2007/03/14/usint15486.htm;Freedom House, "The UN Human Rights Council

The State Department claims that the U.S. should remain an observer of the Council until it "expand[s] its focus and become[s] a more credible institution."[44] Yet that is hardly likely to happen without U.S. participation and leadership. Admittedly, the Council's first year was unsuccessful, focusing almost exclusively on scapegoating Israel and failing to address serious human rights problems in such countries as Sudan, Uzbekistan and Iran. Much of the Human Rights Council's lack of credibility can be traced to the lack of leadership within it on the part of countries that traditionally promote human rights, especially the United States. Thus far, the dominant voices within the Council have belonged to such countries such as Algeria, Saudi Arabia, and Azerbaijan, which currently lead the Eastern Europe, Asia and Africa regional groups. The hesitancy of Council members who have long promoted human rights to assume leadership, coupled with the U.S.'s own failure to engage, have hampered the Council's credibility.[45]

The U.S. should break this vicious cycle by engaging itself, and also encouraging likeminded human rights-friendly countries such as European Union members to seek stronger leadership roles or at least membership on the Council. Obviously the Council can only be as strong and as credible as its member states. Without United States engagement and additional leadership from other countries promoting human rights, the Council will not likely improve significantly upon its performance. Without engagement, our self-defeating claim that the Human Rights Council "doesn't work and is hostile to U.S. interests" will become a self-fulfilling prophecy.

2. **International Criminal Court:** As noted above, for all its harsh rhetoric, the United States government has already de facto shifted its policy stance toward the ICC by abstaining from Security Council referrals to the ICC regarding Darfur. I have elsewhere argued that the United States should shift its approach from counterproductive hostility to constructive engagement with that body.[46] The United States Government should continue in this direction to engage with the ICC in order: (1) to demonstrate the United States' commitment to multilateral human rights institutions; (2) to better utilize the ICC in response to human rights crises, including the ongoing genocide in Darfur and the looming crisis in Iraq; and (3) to influence future policy and practice of the ICC.

At the same time, Congress should move to demonstrate the United States' changed attitude toward the ICC by repealing provisions of American Service-members' Protection Act of 2002.[47] This Administration has wasted untold diplomatic capital with key allies whose support we desperately need on a range of global issues by implementing this counterproductive and ineffective law. The U.S. should repeal portions of this law, including the prohibitions on military assistance to countries that

---

at the Halfway Mark: A Report Card," Nov. 20, 2006, *available at* www.freedomhouse.org/uploads/special_report/47.pdf.

[44] Sean McCormack, State Department Daily Press Briefing, available at: http://www.state.gov/r/pa/prs/dpb/2007/mar/81471.htm.

[45] *See* Peggy Hicks, "How to Put UN Rights Council Back on Track," *The Forward*, November 3, 2006. Available at: http://hrw.org/english/docs/2006/11/03/global14503.htm.

[46] See Harold Hongju Koh, On American Exceptionalism, 55 Stanford L. Rev. 1479, 1503-09 (2003).

[47] American Service-members' Protection Act of 2002, 22 U.S.C. §§ 7421 et seq. (2002).

have ratified the Rome Statute and on U.S. cooperation with the ICC, establishing instead procedures for sharing intelligence with the ICC under certain circumstances.[48]

D. **Supporting the Democratic Opposition and Promoting Democratic Transitions:** Finally, the United States needs to make clear again, wherever possible, its support for genuine democratic oppositions and potential democratic transitions. Nowhere is this more necessary than in Cuba, where the human rights record has remained dismal for half a century. As you know, on July 31, 2006, after undergoing surgery, Fidel Castro transferred his responsibilities to his younger brother Raúl Castro. Although proclaimed "temporary" by the Castro regime, many observers –including many I spoke to during my recent trip to Havana--believe that Castro's deteriorating health will likely mean a permanent transfer of power. This means that the Cuban people may soon likely have an historic window of opportunity to move towards democracy and whatever United States Administration is in office must be ready to support them.[49]

Broadly speaking, one could envision four possible scenarios for Cuban transition, only the last of which is desirable: (1) maintenance of the fifty-year status quo under Raul Castro; (2) unrest, violence, chaos, and possible military intervention; (3) a Chinese-style economic liberalization under Raul without political liberalization; or (4) a peaceful democratic transition driven by the nonviolent pro-democracy activists who are best poised to lead such a transition in Cuba.

The best known of these leaders is pro-democracy activist Oswaldo Payá, who I recently visited in Cuba, along with former Congressman Sam Gejdenson of this Committee. As the leader and founder of the Christian Liberation Movement, Payá has fought courageously for freedom of association, freedom of expression, freedom of the press, free elections, the right to operate private businesses, and amnesty for the political prisoners. In 2004, under a constitutional provision that puts any proposal to a national referendum if it receives over 10,000 signatures, Payá conceived the Varela Project, and presented over 11,000 signatures to the National Assembly, which ignored his request. Payá subsequently delivered 14,000 additional signatures for a total of more than 25,000. Although Payá remains free in Cuba, the government has severely restricted his freedom of movement. Many of his supporters remain held as political prisoners. As I can personally attest, he and his family are daily subjected to routine and cruel intimidation.

The Cuban people must be in charge of their own future, and the United States should stand in solidarity with them, as we have historically done with democratic movements in Eastern Europe, Burma, Korea, the Philippines, South Africa, and Latin America. The United States should reach out to Oswaldo Payá and other democratic

---

[48] The law currently prohibits U.S. cooperation with the ICC (including intelligence sharing) and military assistance to states that have ratified the ICC, authorizes the President to use military force to free American citizens held by the ICC, and restricts U.S. participation in peacekeeping missions where U.S. citizens might be subject to ICC jurisdiction. *See generally* Col. Tia Johnson, *The American Servicemembers' Protection Act: Protecting Whom?* 43 Va. J. Int'l L., 461-72 (2003).

[49] The United States has already approved $80 million for fostering democratic change in Cuba and has committed to supporting any government succeeding Castro that guarantees fair elections and puts an end to repression.

activists on the island and offer support. However, the transition must be designed and led by Cubans themselves. An historic change is coming soon in Cuba. Supporting democratic transitions by reference to the genuine will of the people should be a high priority in the United States' effort to rebuild its reputation as a human rights leader.

IV. Conclusion

Let me close by repeating a statement I made to this Committee four years ago, which I believe even more fervently today: "In its pursuit of the war against terrorism, the Administration has allowed some human rights concerns to fall by the wayside and has consciously sacrificed others. But democracy and human rights cannot be pursued in a selective or piecemeal fashion. Rather, the events of September 11th make clear that the United States must work to achieve its objectives within the framework of international law, holding ourselves to the same standards to which we hold others. We have the tools to make the world safer and more democratic, [but] if only we use them fairly."[50]

Thank you, Mr. Chairman and Members of the Committee. I now stand ready to answer any questions the Committee may have.

[50]Statement of the Honorable Harold Hongju Koh, "A survey and analysis of supporting human rights and democracy: the U.S. record 2002–2003." Hearing Before the House Committee on International Relations. July 9, 2003, *available at* http://commdocs.house.gov/committees/intlrel/hfa88166.000/hfa88166_0.HTM.

Appendix

Harold Hongju Koh is Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law at Yale Law School, where he has taught since 1985, and has served since July 2004 as the fifteenth Dean. From 1998 to 2001, he served as Assistant Secretary of State for Democracy, Human Rights and Labor. He teaches international law, the law of U.S. foreign relations, international human rights, international organizations and international regimes, international business transactions, international trade and civil procedure. A graduate of Harvard College 1975 (*summa cum laude* in Government), Magdalen College, Oxford 1977 (Marshall Scholar and First Class Honours in Philosophy, Politics and Economics), and Harvard Law School 1980 (Developments Editor, *Harvard Law Review*), Professor Koh went on to serve as law clerk to Judge Malcolm Richard Wilkey of the D.C. Circuit (1980-81), and Justice Harry A. Blackmun of the U.S. Supreme Court (1981-82). Before coming to Yale, he practiced law at the Washington D.C. law firm of Covington and Burling (1982-83) and at the Office of Legal Counsel at the U.S. Department of Justice (1983-85). He has written more than 90 articles and authored or co-authored eight books, including *Foundations of International Law and Politics* (2004 Foundation with O. Hathaway); *The Human Rights of Persons with Intellectual Disabilities: Different But Equal* (2003 Oxford with S. Herr & L. Gostin); *Transnational Business Problems* (2003 Foundation with D. Vagts and W. Dodge); *The Justice Harry A. Blackmun Supreme Court Oral History Project* (released 2004); *Deliberative Democracy and Human Rights* (1999 Yale with R. Slye), *International Business Transactions in United States Courts* (Hague Academy of International Law 1996); *Transnational Legal Problems* (2d ed. 1994 Foundation with H. Steiner & D. Vagts) and *The National Security Constitution* (Yale 1990), which won the American Political Science Association's award as best book on the American Presidency.

Dean Koh has been awarded nine honorary doctorates and three law school medals. He is a Fellow of the American Academy of Arts and Sciences, an Honorary Fellow of Magdalen College, Oxford (where he was 1997 Waynflete Lecturer), and has been a Visiting Fellow at All Souls College, Oxford. He is an Overseer of Harvard University and a member of the American Law Institute. He has served as an Editor of the *American Journal of International Law* and the Foundation Press Casebook Series. He has received Guggenheim and Century Foundation Fellowships, and has given several dozen named lectures. He sits on the boards of directors of the Brookings Institution, the National Democratic Institute, and Human Rights First and has received more than twenty awards for his human rights work. He recently received the 2005 Louis B. Sohn Award from the American Bar Association's Section on International Law and Practice and the 2003 Wolfgang Friedmann Award from Columbia Law School for lifetime achievements in International Law. He was named by *American Lawyer* magazine as one of America's 45 leading public sector lawyers under the age of 45, and by *A* Magazine as one of the 100 most influential Asian-Americans of the 1990s. He lives in New Haven with his wife, Mary-Christy Fisher, a legal services attorney, and their children Emily and William. For a fuller curriculum vitae, see http://www.law.yale.edu/outside/html/faculty/hkoh/profile.htm

Chairman LANTOS. Thank you, Dean Koh.

We now go to Ambassador Shattuck. The hearing will continue uninterruptedly. I suggest members go and cast ballots whenever they feel like it, but we will continue the hearing.

Ambassador Shattuck?

STATEMENT OF THE HONORABLE JOHN SHATTUCK, CHIEF EXECUTIVE OFFICER, THE JOHN F. KENNEDY LIBRARY FOUNDATION (FORMER ASSISTANT SECRETARY FOR DEMOCRACY, HUMAN RIGHTS AND LABOR AT THE DEPARTMENT OF STATE)

Ambassador SHATTUCK. Thank you very much, Mr. Chairman. It is indeed a privilege to appear before you again and other members of this committee whom I know well and respect enormously, and you in particular, Mr. Chairman, for your enormous leadership over many years on human rights.

I am grateful for the opportunity to describe and discuss an issue of huge importance to our country, to our national security and to the position of the United States in the world as a leader and that is the promotion of human rights in U.S. foreign policy.

In addition to the prepared statement that I have submitted, Mr. Chairman, I have also submitted for the record a number of articles that I have recently written on this subject, and I ask your permission to have them included.

Chairman LANTOS. Without objection.

Ambassador SHATTUCK. In an age of genocide and terror, the promotion of human rights within the rule of law must be a central feature of any realistic strategy for addressing the major threats to international security today. These threats, of course, include failed states, political repression, racial/ethnic/sectarian discrimination and violence, religious fanaticism and the many other breeding grounds of instability in our contemporary world.

To dismiss human rights or downplay them at a time like this is, frankly, to invite disaster in international relations and U.S. leadership in the world. Only through the effective promotion of human rights and foreign policy can we project our values as a nation and strengthen our leadership.

From our role, Mr. Chairman, as liberators in World War II, as you are so personally aware, to our role as freedom fighters in the civil rights movement, the United States has been a world leader, an indispensable nation in the global struggle for human rights.

What does it mean to be effective in the promotion of human rights. This is very difficult, and I don't propose to give you the perfect solution, but I believe there are three basic building blocks that we have to bear in mind as we set out to build a human rights policy and as we have done over the years.

Above all, we should practice what we preach. We lose our credibility as a nation when we charge others with committing human rights violations that we ourselves commit. We undermine our ability to lead when we act without the support of other nations or without international authority.

We should adhere to the rule of law. International human rights are defined, as we all know, in conventions and treaties that have been ratified and incorporated into domestic law. We must abide by

these legal obligations if we are to protect the U.S. and project it as a champion of human rights around the world.

We should participate in the major international institutions for promoting human rights. The U.S. should lead the way in reshaping existing institutions and creating new ones. That has been our role for more than 50 years, and we should not abandon it. We should not attack these institutions or act unilaterally or stand aside when we disagree with what they do, but we should shape them and form them to the way in which they should be.

With these basic rules in mind, Mr. Chairman, let me attempt to answer the questions the committee has put before us. First, it is my conclusion that the 2007 *Country Reports on Human Rights Practices* lack credibility because the U.S. Government unfortunately in recent years has engaged in some of the very practices it condemns in the reports.

Each country report, as we know, covers such practices as "torture and other cruel and inhuman or degrading treatment or punishment"—I am quoting from the reports—and we are all familiar with the statutory obligations that they comply with. "Detention without charge," "denial of fair and prompt public trial," "arbitrary interference with privacy, family, home or correspondence."

Sadly, it is now well documented that in recent years the U.S. itself has engaged in some of these practices. For example, detainees in United States custody were abused at Abu Ghraib and other prisons in Iraq and Afghanistan. Hundreds of prisoners have been held indefinitely without charges and without access to court review in Guantanamo.

The executive branch has asserted authority to arrest U.S. citizens without charges and deny them legal counsel on the assertion that they are enemy combatants, and a vast, warrantless electronic surveillance program has been conducted in apparent violation of a Federal statute.

In light of these actions, readers of the country reports are likely to conclude, wrongly in my view over a long period of time, but today perhaps correctly, that the U.S. does not practice what it preaches.

For example, the report on Egypt criticizes the fact that "Security forces detained hundreds of individuals without charge," and I quote, "Abuse of prisoners and detainees by police, security personnel and prison guards was persistent," and, I quote, "Egyptian emergency law empowers the government to place wiretaps without a judicial warrant." Unfortunately, these same criticisms could also be directed today at the U.S.

Second, although the recent U.S. record on human rights undermines the overall credibility of the reports, the reports do provide a candid assessment of several major human rights violators in my view.

It is refreshing to know that the reports do not shy away from criticizing countries where the U.S. might be expected to downplay human rights abuses. At the top of that list, although I agree with Dean Koh that there are some shortcomings in these reports, are Iraq, Pakistan and Afghanistan.

Despite the deep involvement of the U.S. with the governments of these countries, the reports do offer a number of tough criticisms

of each of them. Similarly, the assessment of the human rights situation in Sudan is particularly condemning, and the report does not hesitate to label the crisis in Darfur as genocide, despite efforts by the United States to secure cooperation by the Government of Sudan on counterterrorism issues.

I join, Mr. Chairman, with others human rights observers who have been quoted in the press in welcoming the candor of these reports in many respects, and I certainly salute my former colleagues in the Department of State and the Bureau of Democracy, Human Rights and Labor who put these reports together.

I was impressed by the statement of Assistant Secretary Lowenkron earlier this month candidly stating that we are issuing these reports at a time when our record and actions have been questioned, and we will continue to respond to the concerns of others. I only wish, Mr. Chairman, that Secretary Lowenkron had the authority to match the candor of his words by actions of the government which he serves.

Third, the current efforts of the U.S. Government to promote human rights are often ineffective because they are conducted outside the framework of international human rights law. As we all know, over the last half century the U.S. has scored major bipartisan victories for human rights under five presidencies, three Republican and two Democratic, by creating and working within a framework of international law.

President Gerald Ford, as we know, drafted the Helsinki Accords, or it was done in his administration, that brought the Soviet Union and its satellite countries within the reach of human rights diplomacy, enormously important international law.

Jimmy Carter mobilized democratic governments under international human rights law to press for the release of political prisoners held by repressive regimes. Ronald Reagan invoked the Helsinki Accords to champion the cause of dissidents in the Soviet Union.

George Bush, Sr. joined with Western European governments in the organization for security and cooperation in Europe to provide assistance to the new democracies of Central and Eastern Europe within a framework of international law, and Bill Clinton worked with NATO and the U.N. to implement the Genocide Convention, bringing an end to the human rights catastrophe in Bosnia and preventing genocide in Kosovo.

In recent years, Mr. Chairman, the U.S. Government has shown a disregard for these basic elements of international human rights law. These include the Geneva Conventions, the Convention against Torture and the International Covenant on Civil and Political Rights, among others.

The result, in my view, has been the creation of a law-free zone in which foreign detainees in U.S. custody overseas have sometimes been brutally abused, thousands of foreign citizens have been held as unlawful combatants indefinitely without being accorded the status of prisoners of war, and repressive regimes around the world have claimed they have a green light to crack down on political dissidents and religious and ethnic minorities in the name of fighting terrorism.

This has contributed to an increase in the number of people around the world who are convinced that America is their enemy and stepped up recruiting by terrorist groups throughout the Muslim world and beyond.

The breach of the framework of human rights law I think is exemplified by a 2002 memorandum prepared by then White House counsel Alberto Gonzales. The memorandum stated that terrorism renders obsolete the Geneva Conventions' strict limitations on the questioning of prisoners.

Until recently, no administration had ever questioned the basic rules of international humanitarian law in times of war, and this included Presidents Richard Nixon and Lyndon Johnson during the Vietnam War and George Bush, Sr. during the first Gulf War.

I think the reasons are clear. They were spelled out in 2002 by former Secretary of State Colin Powell, who warned that the White House interpretation of the Geneva Conventions would, and I quote, "reverse over a century of U.S. policy and practice, undermine the protections of the law for our troops and provoke negative international reaction with immediate adverse consequences for the conduct of our foreign policy."

Finally, Mr. Chairman, fourth, the U.S. decision to disengage from the U.N. human rights institutions undermines its position as a human rights leader. For more than 60 years the U.S. has been a world leader in building international institutions to promote human rights.

Today, unfortunately we seem to have renounced that leadership by withdrawing from the new U.N. Human Rights Council and by refusing to participate in efforts to shape the new International Criminal Court. In both cases, the U.S. now has no influence over the future of these two flawed institutions, at least for the moment.

In the case of the Human Rights Council, we have abandoned our support because we were unable to limit the council's membership to countries with good human rights records, and in the absence of U.S. leadership going forward the council has now slid back to the abysmal level of the dysfunctional Human Rights Commission which it replaced.

In the case of the International Criminal Court, many structural changes certainly need to be made in order for the U.S. to become a full participant. Nevertheless, in recent years we have lost all leverage over the court's development by withdrawing our signature from the treaty establishing it.

In addition, an active U.S. campaign to put pressure on governments not to join the court has engendered international ill-will and further undermined the capacity of the U.S. to exercise human rights leadership.

Mr. Chairman, in conclusion let me say that yesterday I was privileged to speak to our nation's civil rights memorial in Birmingham, Alabama. This is one of the major battlegrounds of the long struggle for racial justice and equality in our own country and around the world. In many ways it was the birthplace of the modern human rights movement. I was deeply moved as an American and deeply proud of my country's legacy of leadership both at the grassroots and at the top that is exemplified in that memorial.

On June 11, 1963, in response to the crisis in Birmingham, President Kennedy addressed the nation about America's commitment to solve our own human rights problems and be a beacon of freedom and justice in the world. I would just like to conclude with a very brief quote from President Kennedy's speech to the nation on June 11, 1963. He said:

> "We are confronted primarily with a moral issue. It is as old as the scriptures and as clear as the American Constitution. One hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet free from the bonds of injustice, and this nation, for all its hopes and all its boasts, will not be fully free until its citizens are free.
>
> "We preach freedom around the world and we mean it, and we cherish our freedom here at home, but we are here to say to the world, and much more importantly, that we have work to do at home."

Thank you, Mr. Chairman. I would be very pleased to answer any questions.

[The prepared statement of Ambassador Shattuck follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN SHATTUCK, CHIEF EXECUTIVE OFFICER, THE JOHN F. KENNEDY LIBRARY FOUNDATION (FORMER ASSISTANT SECRETARY FOR DEMOCRACY, HUMAN RIGHTS AND LABOR AT THE DEPARTMENT OF STATE)

Thank you, Mr. Chairman. I'm grateful for this opportunity to appear before you on an issue of enormous importance to our country, our national security, and the position of the United States in the world—the promotion of human rights in U.S. foreign policy. In addition to my prepared statement, I ask permission of the Committee to include for the record the attached articles I have recently written on this subject.

International "realists" from Bismarck to Rumsfeld have downplayed human rights in their choice of means by which to pursue their "realist" objectives. They are fundamentally wrong. In an age of genocide and terror, the promotion of human rights within the rule of law must be a central feature of any realist's strategy for addressing the major threats to international security today. These include failed states, political repression, racial, ethnic, sectarian discrimination and violence, religious fanaticism, and the many other breeding grounds of instability in our contemporary world. To dismiss human rights at a time like this is to invite disaster in international relations. Only through the effective promotion of human rights in foreign policy can the United States project its values as a nation and strengthen its leadership around the world.

What does it mean to be *effective* in the promotion of human rights? There are three basic building blocks for an effective human rights policy.

First, we should practice what we preach. We lose our credibility as a nation when we charge others with committing human rights violations that we are committing ourselves. We undermine our ability to lead when we act precipitously without the support of other nations, or without international authority.

Second, we should adhere to the rule of law. International human rights are defined in conventions and treaties that have been ratified and incorporated into our domestic law. We must abide by these legal obligations if we are to project the U.S. as a champion of human rights around the world.

Third, we should participate in the major international institutions for promoting human rights. The U.S. should lead the way in reshaping existing institutions and creating new ones, not attacking them, acting unilaterally, or standing aside when we disagree with what they do.

With these basic rules in mind, I will attempt to answer the questions the Committee has asked me to address.

1. The 2007 Country Reports on Human Rights Practices lack credibility because the U.S. government in recent years has engaged in some of the very practices that it condemns in its reports.

Each country report covers practices such as "torture and other cruel, inhuman or degrading treatment or punishment," "detention without charge," "denial of fair and prompt public trial," and "arbitrary interference with privacy, family, home, or correspondence." It is now well documented that in recent years the U.S. itself has engaged in some of these practices. For example, detainees in U.S. custody were brutally abused at Abu Ghraib and other prisons in Iraq and Afghanistan, hundreds of prisoners have been held indefinitely without charges and without access to court review in Guantanamo, the executive branch has asserted authority to arrest U.S. citizens without charges and deny them legal counsel on the assertion that they are enemy combatants, and a vast warrantless electronic surveillance program has been conducted in apparent violation of a federal statute. In light of these actions, readers of the Country Reports are likely to conclude that the U.S. does not practice what it preaches. For example, the report on Egypt criticizes the fact that "security forces detained hundreds of individuals without charge," that "abuse of prisoners and detainees by police, security personnel and prison guards was persistent," and that "the [Egyptian] Emergency Law empowers the government to place wiretaps without a judicial warrant." Unfortunately, the same criticisms could also be directed at the U.S.

2. Although the recent U.S. record on human rights undermines the overall credibility of the Country Reports, the reports provide candid assessments of several major human rights violators.

It is refreshing to note that the reports do not shy away from criticizing countries where the U.S. might be expected to downplay human rights abuses. At the top of that list are Iraq, Pakistan and Afghanistan. Despite the deep involvement of the U.S. with the governments of these countries, the reports offer tough criticisms of each of them. Similarly, the assessment of the human rights situation in Sudan is particularly condemning, and the report does not hesitate to label the crisis in Darfur as genocide, despite efforts by the U.S. to secure cooperation by the government of Sudan on counterterrorism issues.

I join with other human rights observers in welcoming the candor of these reports. I was especially impressed by the statement of Assistant Secretary Barry Lowenkron earlier this month that "we are issuing these reports at a time when our record and actions have been questioned, and we will continue to respond to the concerns of others." I only wish Secretary Lowenkron had the authority to match the candor of the reports and his own words with actions by the government in which he serves.

3. The current efforts of the U.S. government to promote human rights are often ineffective because they are conducted outside the framework of international human rights law.

Over the last half century, the United States has scored major bipartisan victories for human rights under five presidencies—three Republican and two Democratic—by creating and working within a framework of international law.

President Gerald Ford drafted the Helsinki Accords that brought the Soviet Union and its satellite countries within the reach of human rights diplomacy. Jimmy Carter mobilized democratic governments under international human rights law to press for the release of political prisoners held by repressive regimes. Ronald Reagan invoked the Helsinki Accords to champion the cause of dissidents in the Soviet Union. George Bush Senior joined with western European governments in the Organization for Security and Cooperation in Europe to provide assistance to the new democracies of central and eastern Europe. And Bill Clinton worked with NATO and the U.N. to implement the Genocide Convention, bringing an end to the human rights catastrophe in Bosnia, and preventing genocide in Kosovo.

In recent years the U.S. government has shown a disregard for several basic elements of international human rights law. These include the Geneva Conventions, the Convention Against Torture, and the International Covenant on Civil and Political Rights, among others. The result has been the creation of a "law-free zone" in which foreign detainees in U.S. custody overseas have been brutally abused, thousands of foreign citizens have been held as "unlawful combatants" indefinitely without being accorded the status of prisoners of war, and repressive regimes around the world have claimed they have a green light to crack down on political dissidents and religious and ethnic minorities in the name of fighting terrorism. This has contributed to an increase in the number of people around the world who are convinced

that America is their enemy, and stepped-up recruiting by terrorist groups throughout the Muslim world and beyond.

This breach of the framework of human rights law is exemplified by a 2002 memorandum prepared by then-White House Counsel Alberto Gonzales. The memorandum stated that "terrorism renders obsolete [the Geneva Conventions'] strict limitations on the questioning of prisoners." Until recently, no administration had ever questioned the basic rules of international humanitarian law in times of war. This included Presidents Richard Nixon and Lyndon Johnson during the Vietnam War, and George Bush Senior during the first Gulf War. The reasons are clear. They were spelled out in 2002 by former Secretary of State Colin Powell, who warned that the White House interpretation of the Geneva Conventions would "reverse over a century of U.S. policy and practice, undermine the protections of the law for our troops, and provoke negative international reaction, with immediate adverse consequences for the conduct of our foreign policy."

4. The U.S. decision to disengage from U.N. human rights institutions undermines its position as a human rights leader.

For more than sixty years the U.S. has been a world leader in building international institutions to promote human rights. Today, unfortunately, we seem to have renounced that leadership by withdrawing from the new U.N. Human Rights Council and by refusing to participate in efforts to shape the new International Criminal Court. In both cases the U.S. now has no influence over the future of these two flawed institutions. In the case of the Human Rights Council, the U.S. abandoned its support when it was unable to limit the Council's membership to countries with good human rights records, despite the fact that the Council membership requirements adopted in the recent U.N. reforms are an improvement over those of the dysfunctional Human Rights Commission which it replaced. In the case of the International Criminal Court, many structural changes need to be made in order for the U.S. to become a full participant. Nevertheless, in recent years the U.S. has lost all leverage over the Court's development by withdrawing its signature from the treaty establishing it. In addition, an active U.S. campaign to put pressure on governments not to join the Court has engendered international ill will and further undermined the capacity of the U.S. to exercise human rights leadership.

People engaged in the struggle for freedom around the world depend on the United States not only for our military and economic power, but above all for our commitment to human rights. Their message is simple: the U.S. must practice what it preaches by supporting the struggle for human rights and civil society as the alternative to repression and terror. Theirs is a message of hope, but it is also a warning: if we continue to allow the sacrifice of human rights in the name of fighting terror, in the long run we will only have more terror.

Thank you for the opportunity to testify this morning.

Mr. BERMAN [presiding]. Well, thank both of you. By the way, it is a pleasure to be at a hearing where both of you are testifying.

You of course, having done this a number of times before, are familiar with the problem of a vote coming. We have sort of rotated. My colleagues will be back, but the chairman asked me to start off since I voted early on this particular vote.

The issue of the pushback. First, go from the human rights issue to the democracy promotion issue and what extent you view those as separate and discrete issues or sort of one particular issue.

We are in a funny situation here. Dean Koh, you have made essentially a compelling, but scathing, attack on the fact that everything we want on a bipartisan, executive and congressional basis to focus on in the human rights area is undermined by the existence of conduct by the United States that allows people very easily and with great public support to simply say who are you to talk.

Another issue has also come up in the context particularly in the Middle East of trying to deal with very complicated issues, visions that this President expressed very strongly with respect to part of why we got into the mess we are now in in the Middle East and the need for democratic participation.

That has also changed recently, and I don't know to what extent you consider that part of the human rights agenda, but I think of Egypt in particular, and I don't mean to select them out as the worst abuser or anything, but the focus even a couple of years ago on elections, on freedom of candidates and opposition candidates to participate in the political process, on the arrest of political opponents to the present. That was high on this administration's agenda, and all of a sudden that has disappeared.

I would love either of you to talk for a moment on the human rights issue and the democracy issue to the extent to which they are the same or discrete. Can one focus on human rights without also focusing on the promotion of democratic institutions?

Mr. KOH. Thank you, Congressman Berman. I think you are absolutely right. I use a medical analogy. My brother is a cancer specialist. At a certain point he told me he was tired of simply treating diseases. He wanted to create healthy bodies because if you have a healthy body it is less likely to exhibit signs of disease.

In my own field I began to realize the same thing. We can have a defensive agenda, which is fighting against symptoms of dictatorship and authoritarianism such as torture, absence of fair elections, absence of free trial, or we can try to get to the root cause through building of democracy.

Now, I would point out that the democracy agenda has been a bipartisan agenda in this body for years. It was in 1982 that President Reagan called for at the Houses of Parliament a democracy agenda, the creation of the National Endowment for Democracy, the National Democratic Institute, the International Republic Institute. In fact, the recent inaugural address, the second inaugural, of President Bush speaks to this agenda.

I think it is very clear that if we relax our democracy promotion efforts we cannot achieve the long-time success in human rights that we want, but I think the Egypt case which you bring forward is a profoundly important one about my point about the pushback.

It cannot be that we criticize antidemocratic behavior by countries that we oppose like China, North Korea, Cuba, but then when our allies engage in the exact same antidemocratic behavior we stand silent.

Egypt is a grotesque example. Yesterday what happened, as you may know, is that President Mubarak pushed for the extension of the emergency law. Those changes and amendments are now elevated to a constitutional level. The *New York Times* reports that those changes were done through vote rigging.

They claim that there was a 27 percent turnout in which 76 percent of the people voted in favor. This is essentially to entrench permanently into the constitution power in the President to deal with everyone under the control of the emergency law.

So what was the response of the administration? That it was disappointing. It is more than disappointing. It is an affront to the democracy agenda, as Mr. Shattuck said, of the last six administrations. We should push back against the pushback.

Now, if they push and try to do these antidemocratic things and we remain silent then the net result will be that we will be tolerating in certain countries a set of behaviors that are the same as

in countries we oppose, and if we can't then criticize our allies, how can we criticize those who are gross violators?

Mr. BERMAN. Your point in your testimony about the country report on Iran and the country report on Saudi Arabia is similar.

Mr. KOH. Exactly.

Mr. BERMAN. And Syria's problems, very different treatment.

Ambassador Shattuck?

Ambassador SHATTUCK. Well, as Dean Koh has said, there is no question that there is an integral relationship between our own history of promoting human rights and promoting democracy. This goes back over a number of administrations, but I think it was particularly strong in the administration that both of us served.

The reason is that civil society and the institutions for the promotion of democracy that are the essential building blocks for any society that is going to have the ability to protect human rights; those are the predicates for ultimately having a human rights capacity.

This is particularly true today I think when we look at the breeding grounds for difficulties in societies where there is a repression of the civil society. This is true in Egypt, the case that you cite, Mr. Berman. Where we are silent on the subject of that repression we become in essence a partner in the repressive activity.

Now, I am enough of a realist to know that there is a range of different kinds of responses that we can make to the kind of repressive action that has occurred to push back civil society in a country like Egypt, but the bedrock principle is that our human rights reports and our ability to publicly announce when there is something that is pushing back must always remain as true and direct as they possibly can be.

This does not mean necessarily that we are going to take specific further diplomatic actions, be it sanctions or other kinds of efforts to confront a country with which we are seeking to achieve other objectives in the Middle East in particular, but the human rights reports are and should be the gold standard for honesty, truth and directness about democracy, civil society, as well as the specific human rights practices that we look at in those reports.

Chairman LANTOS [presiding]. Thank you very much.

Sometime back I know both of you were familiar with an earlier version of the Advanced Democracy Act. We just acted on it in this body, and I wonder if either of you have any comments about the appropriateness of moving such legislation in the current climate.

Dean Koh?

Mr. KOH. We applaud you for doing it, Congressman. It has been something that we have been urging for a long time. I think a number of the former Assistant Secretaries of Democracies, Human Rights and Labor on a bipartisan basis have sent letters urging that this act be supported, and we are glad that this session of the committee is taking action and moving it to the Floor.

Chairman LANTOS. Thank you very much.

Ambassador Shattuck?

Ambassador SHATTUCK. Yes. I would agree with that, Mr. Chairman. Beyond that, I think as both of us point out in our testimony, working with democratic allies in the promotion of human rights

and democracy worldwide is what should be at the core of our strategy.

I think this act really advances that cause to bring the U.S. into a position where it more formally engages with its democratic allies in the promotion of democracy and human rights.

Chairman LANTOS. May I just raise one other issue with both of you?

As you know, I have visited North Korea on a number of occasions, and the continuing persecution of refugees by China from North Korea is an appalling spectacle. North Korean refugees who reach China are automatically granted South Korean citizenship.

All China would have to do would be to allow them to proceed to Seoul where this wealthy and prosperous and successful democracy would be able to absorb these very courageous people who leave behind North Korea.

The Chinese are, as all of you know, arresting them, returning them to North Korea where they face severe punishment, occasionally death. Heroic individuals who facilitate their escape from North Korea are imprisoned and persecuted by the Chinese authorities.

In view of the upcoming Olympics, is there any suggestions you would have for those of us who care about North Korean refugees to give them pragmatic help once they reach China?

Dean Koh?

Mr. KOH. Yes. As you know, I am a South Korean immigrant, and I visited North Korea with Secretary Albright in the fall of 2000.

I think you signal a need to work the human rights issue both into our dialogue with China and into our emerging dialogue with North Korea, which up until now has been at some points broken off and at some points limited to security or nuclear issues.

I do think that it is very clear that the conduct of the Chinese Government is a flat-out violation of the 1951 Refugee Convention which says no contracting state shall expel or return people to conditions of persecution to which they are fleeing. That is the principle of non-refoulement, and that is being violated.

Now, on whether this ought to be raised explicitly with regard to the upcoming Olympic games I think it should not just by our Government, but also by the major U.S. companies who will be participating in that effort.

I would point you to an op-ed piece that appeared yesterday in the *Wall Street Journal* by one of our students, Ronan Farrell, discussing this issue with regard not just to China's activities and human rights violations elsewhere, but particularly with regard to Sudan.

I think that you could, Mr. Chairman, encourage these corporations to create a kind of code of conduct analogous to the Sullivan Principles which they used in South Africa and also similar to the principles they used in Ireland, Northern Ireland, as a way of essentially stating to the Chinese Government certain conditions for letting their names be associated with the Chinese practices.

This also goes to the internet freedom issue. The Chinese Government has used clever strategies of enlisting private companies in their human rights abuses and making them partners, and I

think that Congress should make clear that that is inconsistent with our human rights principles, it is in violation of international law and should put as much moral suasion and pressure on these companies to adopt a different strategy to bring the pressure to bear on China itself.

Chairman LANTOS. As you know, some of my colleagues and I have been advocating precisely that.

Ambassador Shattuck?

Ambassador SHATTUCK. Mr. Chairman, I don't have the wonderful resources of Dean Koh, including a student who only yesterday had an op-ed in the *Wall Street Journal*, but I do associate myself very much with what he has said.

Let me just add one brief comment regarding the upcoming Olympics and China. Mr. Smith will remember, Mr. Chairman, and you will certainly remember, the ways in which the issue of whether China would get the Olympics two rounds ago was very much on the human rights agenda of this committee and of my bureau in the State Department, and the efforts to try to use the leverage of China's interest in the Olympics as a way of finding new avenues of communication with China about human rights.

I do think that this upcoming set of Olympics presents that very much as well, and the two issues that I believe should be focused on, in addition perhaps to the internet issue, which was cited by Dean Koh, are the issue of Darfur and the issue of North Korea and the China refugees and China's treatment of the refugees.

The refugee issue is certainly one that implicates international humanitarian law and the principles of non-refoulement that Dean Koh has mentioned. The issue of Darfur is certainly more complicated, but in many respects equally urgent because I think all the analysis that is being brought to bear now on what can be done to try to address the ongoing genocide in Darfur points in many respects to China and China's interests, particularly oil interests and economic interests that are huge in Sudan and that part of Africa in general.

There is no easy solution, but again in some ways it gets back to the question of these human rights reports, and candidly getting into a discussion with China about its role on the world stage as it emerges as a great power, which I think it certainly aspires to be and we would agree it is becoming.

This is a moment where I think China with the spotlight on the Olympics, the world attention that it is going to receive and the opportunities that that presents to raise human rights issues and China's leverage to try to end this horrific set of abuses amounting to a genocide in Darfur, I think all of that really is something that ought to be urged on our Government as one of its principal human rights areas of focus right now.

Chairman LANTOS. Thank you very much. It is all the more disappointing that recently a many member cabinet level delegation went to China and never touched any of these issues and came back as if the human rights agenda would be nonexistent for the United States.

Mr. Smith?

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

Let me just say it is great to see my old friends. We worked together on a number of human rights issues. As a matter of fact, I remember Dean Koh sat on the Helsinki Commission and often took his place on this side of the dais in order to ask questions and to make commentary at our commission hearings, so it is great to see you, Harold, and you, John, as well.

Let me just ask a couple of questions. First, I think it is important for clarity's sake and accuracy's sake to remind members that there has been a legacy particularly as it relates to China that when Bush I was in the White House I thought he fumbled the ball badly when it came to human rights.

Clinton was correct to accuse him of coddling dictators, and in the first year of the Clinton administration I and many others—I remember David Bonior and Dick Gephardt and others—held press conferences applauding the administration's efforts vis-a-vis the PRC and human rights.

That all came to a halt, a screaming halt, when the administration ripped up its executive order with regard to MFN and the linkage to human rights and then for the next 7 years embarked on a different policy.

Call it whatever you might, but, unfortunately, I believe and I believe it passionately because I made several trips there, that enabled human rights abuse because they took the measure of the United States, came to the conclusion that when it came to human rights they were not only subordinate; they were an asterisk, that profits and money trumped all else.

Regrettably, that baton was passed to Bush II, and that policy has continued notwithstanding statements made by Bush I, Clinton and President George W. Bush about their concerns for human rights. So I believe there has been a seamlessness when it has come to human rights. Frankly, I don't give a whit who is in the White House. When abuses are being committed, we need to speak out.

I know that Mr. Lantos and I were very critical of the Clinton administration and Bush I and are now critical of the current Bush administration because we do unfortunately have this naive belief that if we just trade, trade, trade somehow they will matriculate into a human rights country.

We have learned, I think sadly, that nothing could be further from the truth. They have deteriorated and done so significantly. I would hope that for the purpose of the press and everyone else, there has been a seamlessness there.

The same goes with Russia. I remember so well. I chaired three hearings on Chechnya. We had Elena Bonner sit right where you are sitting taking the previous administration to task, and I raised it in all of my bilaterals with the Russians. Unfortunately, that has dropped off of the map as well. I remember Al Gore—it was with Chernomyrdin in Moscow—compared Chechnya, the first war, to a civil war not unlike the United States Civil War in the 1860s.

On Darfur, and I would appreciate some thoughts on this, we have passed several pieces of legislation. The Sudan Peace Act went through my committee when I was chairman of the Human Rights Committee, and we wanted capital market sanctions. The

Clinton administration opposed those, namely the Treasury Department.

In like manner in this past Congress, many of us wanted it again. We were opposed, however, by the current administration. Again, there has been a seamlessness when it comes to an economic sanction that would have affected PetroChina and Talisman and many others that we all could have made a better effort for.

Having said that, let me ask you on Darfur, especially Dean Koh. We have passed a number of bills that have become law. The Darfur Peace and Accountability Act signed into law last year does exactly what you have asked us to do, and that is to hold accountable those individuals responsible for crimes.

I have visited Darfur. I have been in the camps, Cama Camp, Mukjar. I have met face-to-face with Bashir. The man is a tyrant. We know that. He is responsible for untold death in the south.

Again for the sake of clarity, it was the Special Envoy, Senator Danforth, who I think made all the difference in the world in bringing together disparate factions and effectuating a peace for Southern Sudan, and in like manner I believe Andrew Natsios is a man very capable and up to the job of trying to forge a peace where one does not exist in Darfur.

The Soviets in the 1980s always threw back at us that we had a homeless problem, that we had human rights problems. They all harkened back to the civil rights issues and the fact that we had a very checkered—beyond checkered; a very poor record when it came to blacks in this country, so we know that they will always throw something back in our face. The Chinese do it as well.

Again, for the sake of clarify, there have been mistakes made throughout these many years. You two gentlemen walk point. I considered you friends all of those years even when we had a difference like we did, Ambassador Shattuck, on the International Religious Freedom Act, but eventually I think we came to a very good final conclusion.

All of us need to push harder on human rights. I think that is why the bipartisanship we have here is so essential. There are a whole group out there on the Democrat and the Republican side, regardless of who is in the White House or who occupies the House and the Senate, who just want to trade and look askance when it comes to human rights.

That is why I said about us looking in the mirror. You know, the fault lies here as well. I don't mean you, Chairman Lantos, but I mean among our current members, so if you want to respond to any of that.

One final point on Vietnam. If you could maybe make some comment or mention on this very rapid deterioration that we have seen in Vietnam? I met with 60 dissidents on a trip about 18 months ago in Hue, Ho Chi Minh City and in Hanoi. Every one of them was looking over his/her shoulder waiting for that knock on the door from the Secret Police. I say move trade, but make sure it stays linked to human rights. They now have WTO. They are reverting right back to form, predictably, but sadly.

I met with a man by the name of Dai in Hanoi who is a human rights lawyer, a great, heroic man. He now has been arrested

awaiting his kangaroo trial just like Father Ly tomorrow, so some comments on that if you would.

Mr. KOH. On the three points, I will say we agree that human rights ought to be a bipartisan agenda and that it has to be inserted into every dialogue because there are many for whom the absence of human rights is a critical focal point of their concern.

One reason that the Russians and the Chinese have benefitted so much from the last period is that not only have we been otherwise occupied and not focused on human rights, but in fact our own human rights misconduct has become an Achilles' heel, and therefore we don't want to lead with that Achilles' heel.

I think that Congressman Lantos was exactly right that if we shifted to a strategy of inside/outside engagement on human rights with China. The core idea is that they should play by global rules if they want to be part of the global system. Those rules include not just the global trade rules, but the global human rights rules.

We should not let the Chinese or the Russians pick and choose the rules they want to follow and pick and choose the rules that they want to ignore.

Now, I think that with regard to Darfur I think Congress has been the leading voice here. I yield to no one in my admiration of Ambassador Senator Danforth, who I will point out is a graduate of Yale Law School, because blood is thicker, of course, than water.

I think though the integrated strategy that is emerging or needs to emerge is clear. An excellent report was recently issued by the International Crisis Group which calls it the four Ps: A real peace process, real peacekeepers, real focus on punishing perpetrators, both through international criminal prosecution and targeted sanctions against those who are benefiting, and protecting innocent people, refugee protection and protection for the internally displaced.

I think that the various bills that you have been behind, Congressman Smith, have recognize that those pieces of the puzzle all need to be addressed, not just picking and choosing from one or the other.

Finally, on Vietnam I think that I couldn't agree more that the human rights dialogue which I participated in succeeding Secretary Shattuck is a key forum in which we conduct inside/outside engagement with them, by which I mean pushing from the outside, but pressing human rights through direct contact, demanding the status of particular political prisoners and that there has to be a need to couple the economic relationship with Vietnam with greater attention to these human rights concerns.

I notice that the designation of Vietnam as a country of particular concern on the religious freedom side has been debated. It certainly is of concern to me, and that is another avenue that Congress can press on to make sure that the human rights concerns of Vietnam are taken into account.

Ambassador SHATTUCK. Mr. Smith, I do treasure our relationship over the years, and it has been one where I think I would hope we would say that we exchange not just freely and frankly, but honestly, and actually I think there was a lot that was accomplished over those years, particularly on the religious freedom front, and I salute you for your leadership as well as that of the chairman.

Incidentally, I will submit for the record an article that I recently published in the *Harvard Human Rights Law Review* about the International Religious Freedom Act and what I believe was ultimately a good piece of legislation because after its introduction through the kind of dialogue that we had there were some changes that were made that I believe made it a stronger bill and made it less likely to be making religious issues a kind of hierarchical aspect of the human rights world.

In any event, if I could submit that for the record I would appreciate it.

Chairman LANTOS. Without objection.

Ambassador SHATTUCK. Thank you.

There are a couple of comments, one on China and one on Darfur.

China and the promotion of human rights, as you rightly say, has been one of the most complicated topics that all the administrations from Bush, Sr. to today have had to address.

I am frankly particularly proud of the fact that during the time that I was Assistant Secretary and even in the shift of policy that the Clinton administration made two things worth noting.

First, we did an honest assessment of China's human rights record, and it was that very honest assessment that led us up to the brink of having to contemplate actually withdrawing China's MFN status.

Of course, that battle was fought within the administration and those who were opposed to the withdrawal of the MFN status for a whole variety of reasons prevailed, but it was because the assessment was so honest that we actually had to contemplate that possible sanction.

I do believe personally, and I write about this in a book that I published a couple of years ago, that MFN is a far too blunt instrument ultimately to use to link human rights and trade in the ultimate sense of does a country receive MFN or not with respect to its human rights record.

I think there are other less drastic means that can be used because once you use that means you are pitting all of the various interests that we have against each other, and that is what happened inside the U.S. Government, and obviously the economic interests prevailed, as you rightly have observed.

I think that there remained an honest and hard hitting assessment on human rights throughout that period, whatever one may believe in terms of the use of a particular sanction with respect to China.

Second, on Darfur let me say that I am perhaps in the minority on this among human rights leaders or observers, but I still believe that the principal issue is the use of international force. That is not to say that I am in favor of a Chapter 7 forcible entry by an international force. Not at all, because I think that could probably create even more damage inside the country.

However, I think that unless we look at a strategy for getting a much larger U.N.—not African Union, but U.N.—peacekeeping force into the country the security situation is going to continue to be as horrific as it has been, and obviously that all stems from the

way in which the government in Khartoum is operating through various paramilitary and other forces.

To make a further point on China and Darfur, as we were saying earlier, I think it is important that China play a key role at this moment on Darfur, and that is why the Olympics spotlight is so helpful.

Several years ago I was an observer of a peacekeeping mission in the Democratic Republic of the Congo, and I wrote a report for the Ford Foundation on that mission. The surprise to me was the participation of China in that peacekeeping mission.

There were 2,000 Chinese troops who were stationed in the eastern part of the Democratic Republic of Congo, and they played a very important role during a very difficult period where there were major attacks that were being unleashed in the period long before the elections that have recently taken place in that country.

So there is a precedent for China playing a peacekeeping role within the United Nations framework, and we should now be pushing the administration to work with China to get it to recognize that peacekeeping in Darfur is in its own interest, as well as the world interest, and so I would recommend that strategy in particular.

Chairman LANTOS. Before turning to Mr. Sires of New Jersey, Mr. Smith has a follow-up question.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

Ambassador Shattuck, just on the issue of the blunt instrument, that is where there was a major disagreement. Sure, the reporting was good, and even Dean Koh says happily the China report continues to be frank and detailed.

I mean, it is good to chronicle the abuse, but the problem was we had in hand an executive order that made it very clear that if significant progress was not achieved there would be an end to MFN.

I traveled, as you know, because you also traveled over as well, as did our Secretary of State, Warren Christopher, to make the point to the Chinese that we mean business. They went in the opposite direction. There was significant deterioration on virtually every front according to all the human rights organizations. We had several meetings with them during the course of that.

The bottom line again was they got worse. In my opinion, that is where the Chinese leadership said human rights don't matter to the United States, and I say that with deep regret. We haven't gotten it back yet.

Chairman LANTOS. Mr. Sires of New Jersey?

Mr. SIRES. Thank you, Mr. Chairman, and again a great hearing. Thank you for being here. Thank you very much.

I want to get back a little bit to the Western Hemisphere. I am always very curious. We have situations in Chile with Pinochet, brutal, missing people. Then we have a situation in Cuba with Castro, brutal, missing people over so many years.

I guess my question would be why does it seem to me anyway that there is less compassion for what the people in Cuba are going through than what the people in Chile or Pinochet went through when he was such a brutal dictator?

I guess I am trying to just pick your brains and see. It just seems like the dictator of Cuba is lumped upon us, you know, a man with a beard who liberated Cuba, but yet over the years human rights have been so trumped, and now it is getting worse.

I mean, you can't even speak now without gangs of people around beating up the dissidents. Dissidents will be put in jail. There is a crackdown. Ever since the war in Iraq, the crackdown is even worse.

Can you comment on that?

Mr. KOH. Well, Congressman, I not only represented Cuban refugees from 1994 to 1995, but only 6 weeks ago I was in Havana with former Congressman Gejdenson to visit with democracy activist Oswaldo Paya. I know Congressman Delahunt had been there just earlier, and my former deputy at the State Department, Michael Parmly, is now the head of the Interest Section.

I think we would all share your view of the outrageous human rights situation there and more so for the fact that it has been in place for 10 different presidencies. I think that different groups care about Cuba more than others, but I do think everyone would agree that the human rights situation there is appalling.

What I think is important now though is that A) the Cuba policy not distort our entire Latin American policy, and, B) that we actually start to prepare for a transition which is upon us. Castro may have nine lives, but at the end of the day we are in a post Castro planning period.

As I said in my testimony, there are four options, and only one of them is one we want. One is that Raul Castro continues the status quo; a second is that there is unrest, violence and possibly military intervention of some kind; a third is that Raul Castro attempts to liberalize economically, but not politically; and finally, and the one that we really should be working with, is supporting a democratic transition by supporting the legitimate democratic opposition who have been trying to change through the system.

That is where Oswaldo Paya, the Varela Project, has come in. Thousands of people really want change, so they would like the United States to stand with them in letting the Cubans make their own transition. I think it is incredibly important that the United States be seen as a positive voice and not as a country which is perpetrating its own human rights violations on another part of the Cuban island.

Mr. SIRES. These groups are part of growing up, the 50 years of Castro in Cuba, so they basically are a product of the regime, all their schooling, and yet they still want human rights. They still want democracy.

Mr. KOH. Well, most of them are part of a Christian liberation movement that certainly has not been controlled by the Communist government.

I think the remarkable thing that I felt when I was in Havana talking to ordinary people is they recognize that the Castro administration has failed. The young people recognize it the most clearly. They know that there are things that American youth have that they do not have and that whatever accomplishments Castro may be able to tout in terms of health care or education, the fact of the

matter is his government, the dictatorship, has not delivered to them.

They would like democracy because they think democracy can deliver, and I think that our view has to be we support the democracy, but that democracy has to be generated by the indigenous Cubans because although many have fled, many have stayed behind. There is a palpable desire.

What Oswaldo Paya convened, a program for all Cubans, involved dialogue among many different Cuban people, including party members, et cetera. This to me has a very strong resonance to what went on in Eastern Europe during the time of the Helsinki process. We supported that on a bipartisan basis and it made a big difference, and we should do the same here.

Chairman LANTOS. Thank you very much.

Mr. Rohrabacher?

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Let me note that my first year in Congress I got to know Tom Lantos, and he gave me a picture of Raoul Wallenberg to remind me that if we are true to our principles as individuals we can accomplish wonderful things in this world and together those of us who hold those values should be able to change this world in a better way, so it is my honor to work with him now on those human rights issues that we have been talking about and have worked so hard on for so long.

A couple things. Let me join in with the chorus saying that the Olympics in China offer a tremendous opportunity for us to promote democratic and pro freedom ideals in China, and let us hope that the people of China who are struggling for democracy, and they are our greatest ally for peace in the world today I believe, are the people of China who live under this repressive government.

We have to reach out to them and let them know that we are their friends. Unfortunately, the business community is after a fast buck, and they are leaving the impression that Americans only care about making money and don't really care about freedom of religion and freedom of press or freedom of speech at all, so let us reassure the people of China that as we move forward to these Olympics that we are with the people of China, and let us use this opportunity to try to bring about a change in China in a positive direction.

One thing that has concerned me is the return by China of North Korean refugees which was touched upon. How many of these refugees are there, and how many are being returned to North Korea?

Mr. KOH. We know a number, several thousand. Those are only those who have been counted by the U.N. High Commissioner for Refugees.

Obviously since the first line is where they come across, the Chinese obviously have a better count. Depending on at what point they turn them back, it could be a much larger number, but we know it is several thousand a year.

Mr. ROHRABACHER. Okay. The South Korean Government, I visited there about a year ago. Is this the case the South Korean Government is not willing to take a significant number of these North Korea refugees back into South Korea?

Mr. KOH. I have relatives who live in South Korea who I know would have enormous compassion for this group of people. Many of them still consider North Korea to have been part of the same country.

Mr. ROHRABACHER. Right.

Mr. KOH. Many of them had homes there which they fled. I do think that where the South Korean Government has been playing this consistently with its broader geopolitical goals toward China, I think there is a strong humanitarian sentiment within South Korea itself which ought to be picked up on.

Mr. ROHRABACHER. But the government itself is not opening its doors to all of those North Koreans who escaped to China, are they? There are some actually being returned who could find refuge in South Korea if the South Korean Government would open its doors.

Mr. KOH. I do think the South Korean Government should be more flexible on this.

Mr. ROHRABACHER. Okay. Let me just for the record state that it is outrageous that the South Korean Government would let fellow Koreans be deported back to North Korea and live under tyranny and perhaps suffer the consequences of actually trying to leave that horrible regime.

It is outrageous that the South Koreans are not willing just to open their door to all Koreans, and it is a slap in the face to—my father fought in Korea. He risked his life. Many Americans—50,000 Americans—died to help Korea remain democratic. It is a slap in their face, Americans who sacrificed so much, that the South Koreans aren't willing to even open their door to these refugees who have escaped.

I know that some of those North Korean refugees, for example, are being sold. The women are being sold into sexual slavery, being kidnapped once they try to cross the border. This is a horrible human rights abuse that deserves our attention, but deserves especially a higher level of commitment from the South Korean Government itself.

Ethiopia. I have been very concerned—I have friends in California who are Ethiopian—that Ethiopia has been devolving into dictatorship again. Is that your assessment as well?

Mr. KOH. I think the entire situation there since the extended war has been troubling on both sides of the aisle, Eritrea and Ethiopia. There has been an extensive human rights process in place, but I do think there are great concerns about the human rights conditions, the political freedom in Ethiopia.

Mr. ROHRABACHER. One last question, Mr. Chairman, or one last statement, and that is for the record I would like to make sure that the people—I will be visiting the Balkans over the break. I will be visiting Belgrade and Kosovo. I appreciate the support that I have had from the chairman on my request to go there to talk about the issue.

I am very concerned, and Mr. Lantos has also of course weighed in on this, that there are 14 Albanian Montenegrans who are in prison there. I think two of them are American citizens.

The Government of Montenegro should understand that we are watching this situation, and we would expect them to let these po-

litical prisoners go and to cease the repression of the Albanian minority in Montenegro.

Thank you very much, Mr. Chairman.

Chairman LANTOS. Thank you very much.

I know, Dean Koh, you will have to leave, but I know my colleague from Massachusetts is anxious to raise a point with you, so I will call on Mr. Delahunt.

Mr. DELAHUNT. It is good to see you, Professor Koh.

Mr. KOH. Good to see you.

Mr. DELAHUNT. Ambassador Shattuck.

Let me just share and echo the sentiments that have been expressed by others regarding other countries, whether it be Cuba, whether it be China, Korea, Equatorial Guinea, Saudi Arabia, Egypt. The list goes on and on.

I think the most salient part of both of your testimonies, I think you referred to it, Professor Koh, as double standards, and you, Ambassador Shattuck, talked about practice what you preach.

I would submit that the effectiveness and the credibility of the reports are minimal until we restore our credibility and we develop some sort of a mechanism. I would look to you for some advice and counsel.

I currently chair the subcommittee that has jurisdiction on the subject of human rights, and I will reach out to both of you for ideas. I will make every effort to utilize you as a resource. Maybe that young student that drafted that op-ed piece in the *Wall Street Journal* can help us in this endeavor.

Mr. KOH. I have two more sitting behind me who will help you also.

Mr. DELAHUNT. This is good. They are on board now.

Ambassador SHATTUCK. We never had support like that in the State Department, I can tell you.

Mr. DELAHUNT. I understand that, John.

I forget which one of you said China, you have no standing. We have a long list of violations, which we don't want to talk about. We don't talk about them in this Congress. We try to avoid them. Guantanamo, secret renditions, Abu Ghraib.

We just refuse to look at them, presumably because it is embarrassing. I suggest we have to look at them so that we breathe credibility into these reports and do not become the object of derision by others.

Again, the other point you make, I think both of you make it, is we tend to have selective emphasis, if you will, on criticism. We can criticize Egypt and we can criticize Saudi Arabia, but it just sits there. We never heard about it. We don't have any hearings on those issues, but we will have hearings on Cuba.

And that is correct; we should have hearings on Cuba, but it is time that this committee and that this Congress for consistency purposes so we can reject the accusations of hypocrisy begins to examine our allies, as well as our adversaries.

The ranking member on the committee is Mr. Rohrabacher. We have been conducting a series of hearings on the foreign opinion of the United States. We are at an all-time low, and it is dangerous to our national interest. Put aside altruism and human rights concerns, but it is affecting our commercial interests. It is impacting

our efforts against terrorism. It is impacting our military operations.

Until we have a more balanced approach, these reports are just going to sit there. They are going to be the subject of a conversation here in this particular chamber. The chairman consistently has talked about Egypt, $2 billion to Egypt, his amendment. We pass it out of here.

I had an amendment a year and a half ago on the Floor of the House that would have denied some millions of dollars of military assistance to Uzbekistan. We secured 89 votes. Eighty-nine votes. Isaam Kareem ranks up there with anybody on the planet in terms of tyranny and despotism.

In terms of a question, how can we develop a mechanism that would say to the world we can look at ourselves objectively? We don't need the Chinese to issue a report about human rights abuses in the United States.

How can we do it in a way and in a fashion that has credibility? We can come here and pick on those that we don't like and stop being quiet about those whom meet our current needs, but whom later on, after a thorough review, we are embarrassed by.

I can think, and I was listening to my friend from New Jersey. He is correct about Pinochet and Castro, but what about that genocide that occurred in Guatemala where 200,000 indigenous people were slaughtered? President Clinton, and I give him credit for this, went to Guatemala City and apologized on behalf of the American people for that atrocity.

If we don't become more balanced, these reports can sit there and we can pass all the laws that we want, and we hurt ourselves.

Mr. KOH. Well, I agree strongly with you sentiments, Congressman Delahunt, and I do have a proposal for you.

The United States does report on human rights practices thanks to our ratification of two treaties, the International Covenant on Civil and Political Rights and the Convention against Torture. As a result, the U.S. Government presents to Geneva, a group of experts in Geneva, our record in those areas.

I think it would be easy for this body to simply call them up and have them defend those statements that they are making to the outside world to Congress because I do think that there are three major black eyes here: Guantanamo torture and now the stripping of habeas corpus, which you as a prosecutor are well aware of. Those will be flagged very highly in those reports.

I understand the Armed Services Committee today is having a hearing on Guantanamo, and obviously that had been deemed a clear failure. Secretary Gates, as was reported in the press, has pushed for the closing of Guantanamo.

I would urge this committee to revisit the Military Commissions Act, particularly the provisions on torture and habeas stripping, which have been a major black eye. I think it was a misreading of the Supreme Court's decision in the Hamdan case.

The United States should not be known as a country that tolerates torture, and the United States should not be known as a country that does not permit detainees access to the courts because if they deserve to be detained they will not succeed on habeas.

Ambassador SHATTUCK. Mr. Delahunt, I am very much in agreement with what Harold has said and the thrust of your questions. Let me add a few points.

As I said when a number of members, including the chairman, had to vote when I was making my opening statement, yesterday I was at the civil rights memorial in Birmingham where I was giving a speech. It was a very moving occasion where I suddenly was confronted, as we all are when we think about the history of our country in the area of civil rights, but I was really confronted with the power of the grassroots leadership for civil rights that came out of the movement.

I was also reminded of the leadership of our country at the highest level. In this case it was President Kennedy and then of course President Johnson following on that in addressing the human rights crisis in America.

One of the most compelling aspects of the exhibit that I saw and the discussions that I had was the foreign relations aspect of what was going on in 1962–1963 where the spotlight of the world was on those police dogs unleashed by Bull Connor and other horrific abuses that were being committed in this case in Birmingham, but of course the crisis was really throughout our country.

President Kennedy, on June 11, 1963, went on national television and addressed the nation as this crisis unfolded, and he said we are in the midst of a moral crisis. He used those very words. It is a moral crisis.

We project our values. In fact, if you would allow me I quoted President Kennedy earlier. I will just very quickly quote him again:

> "We are confronted primarily with a moral issue. It is as old as the scriptures and as clear as the American Constitution. We preach freedom around the world and we mean it, and we cherish our freedom here at home, but we are here to say and to the world that there is much more work to be done at home."

I think there is a real opportunity at this moment to take this kind of approach and address the moral crisis and the human rights crisis that we are in today. I agree with the specific proposal that Harold has suggested.

When I was Assistant Secretary of State I presented, and I believe he also did the same, the report of the United States on its compliance with the International Covenant on Civil and Political Rights to the United Nations. Frankly and in all honesty, I did not feel as much support from within my own government as I would have liked to have felt.

For example, I did not feel particularly supported by the Congress because the issue of the United States in essence going to the United Nations and indicating that there were some flaws in its human rights record was not something that some Members of Congress were particularly enthusiastic about, and I heard from a number of them; not members of this committee to be sure.

I think we have a Helsinki Commission. Why not have a human rights law commission which would be a commission comparable to the bipartisan, bicameral commission that we have for the Helsinki process that looks at United States' compliance with basic issues

of international human rights law that we have ratified and adopted as part of our own law, not those issues that remain controversial.

I think a lot could be done with that, and I would be very pleased to offer my own support for doing anything along those lines.

Mr. DELAHUNT. That is a very interesting concept. I thank the gentleman.

Chairman LANTOS. I want to thank both of our witnesses because we are running over time.

Mr. Payne of New Jersey?

Mr. PAYNE. Thank you.

This issue of course is extremely important, and I couldn't agree more with what has been said. I do think that we ought to use our leverage. For example, we asked Mubarek to speak to Bashir of Sudan 2 days ago. He said he would not, but yet still we send him $2 billion every year. These are things that we need to take a look at.

We need to look at proliferation, the treaties that we won't agree to. We won't agree to the proliferation of small arms. We won't even go to the convention. That is wrong. Twenty billion dollars' worth of small arms are sent around that fuel conflicts in Africa and other Third World countries, and we will not even participate in the discussion. We boycotted it and said no one should tell us about proliferation of small weapons. That is wrong.

We won't ratify the children soldiers saying that people under 18 should not be in combat. The Defense Department says no. We say that there should be a treaty on land mines. Our Government says no. How can we be the moral authority when we won't agree to simple, basic plans?

Kyotoists threw it in the basket. At least the Clinton people said well, let us look at it. Maybe we could tweak it. The Bush administration says we don't even want to look at it, and now we are in a situation that is continuing to worsen on global warming.

I think that we have to do more. We have to actually behave better when we are trying to tell other countries. Also, we need to stop looking the other way. We see Eritrea that gets written up more than Ethiopia, and Ethiopia has more people in prison than Eritrea.

I mean, the elections in Addis, the mayor elect was just put in prison and all the rest of them. Professor Messman is an 80-year-old professor. He has been in prison for 6 years. When I went to visit him 3 or 4 months ago in prison he can hardly walk now. He is going to die. But we give Ethiopia all of the rights that they need to go into so-called keeping the horn safe. We can't continually have these dual standards. It is wrong.

China with the Olympics. I am going to try to boycott products that are supporting the Olympics. We ought to do something to let China know they can't continue to support in Sudan what is happening, the genocide, and let our top TV stations have their products advertised for the Olympics. Let us boycott the products, and maybe China will get the message. Is China worth more than their whole image in the world of where they are going in the future? These are some decisions that we are going to have to have people to make.

I have a lot of questions, but time is running out. I appreciate what you all do though. Ambassador Shattuck, it is always a pleasure to meet you. This is the first opportunity I have had to meet you, Dean, but I look forward to hearing more from you. Thank you very much.

Thank you, Mr. Chairman.

Chairman LANTOS. Thank you, Mr. Payne.

Ms. Sheila Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, thank you for this hearing, and thank you for your indulgence. Let me try to build on I think the eloquent statement made by my colleagues and subcommittee chairman Payne.

Let me welcome both of the witnesses. We are not only on the Floor debating a budget, but we are in a markup, I am in another committee, so I thank you for your indulgence.

This is the conflictedness that really strikes at all of us, and maybe I can get an answer, what is a vigorous human rights policy on behalf of the United States, because the tension is let us stay in line with our allies after 9/11, and those allies include many who many of us advocate for from Egypt to Pakistan to Ethiopia to sometimes places beyond South Asia such as China.

Many of us both befriend but chastise, and I think there is a need for taking up the moral cry frankly. What is the value of the continuing genocide and violence in Sudan and the loss of the lives of children, which I think are probably one of the more abused populations as it relates to human rights around the world? As much as we accomplish we lose, if you will.

One of the unfortunate experiences that I had was participating in the U.N. convention, if you will, the International Convention of Children, and having to be a country that did not sign the convention. I almost felt like a pariah only because my label was America.

My question is how do we overcome those deficiencies in our foreign policy? What vigorously should Congress be doing in challenging the administration on the value of human rights and being consistent?

Mr. KOH. You make a large point and a specific point. The large question is what is a vigorous human rights policy?

In my testimony I tried to suggest it has five elements. First, telling the truth; second, following universal standards, not double standards; third, pressing to stop ongoing abuses; fourth, accountability for past abuses; and, fifth, doing steps for prevention of future abuses by democracy building or others.

The reports only go to the question of whether we tell the truth and, as I said, while they have done I think a credible job, there are oversights and alterations that ought to be repaired.

I think that both Congressman Delahunt, Congressman Payne and you point to the second issue, universal standards. What I think is a great tragedy is there are a number of areas where we actually are not just obeying standards. We have among the best practices.

But, for example, as I point in my testimony we did not go to the Convention on Disabilities this year. We didn't sign the Convention on Disappearances, and on children, Congressmen, as you well

known except for Somalia we are the only country in the world that hasn't ratified the Convention on the Rights of the Child.

Their excuse is they have no organized government. Unfortunately, we don't have that excuse.

Ms. JACKSON LEE. That is an outrage. I am sorry for the outburst, but it is an outrage.

Mr. KOH. That is an outrage. Not only that, but it is extremely shortsighted when in those areas we are not actually pursuing a different standard. We are actually pursuing in some respects a higher standard of treatment of children than other countries, but we are unwilling to bind ourselves as a matter of law to do what we think we have to do anyway. I think that that has been a great tragedy.

Ambassador SHATTUCK. Let me repeat, Congresswoman, a brief set of points that I made before you were able to be at the hearing regarding the effectiveness of human rights policy. It is a hard one, but I think there are very basic principles, and they are very similar or the same that Dean Koh has suggested.

First, we need to practice what we preach. I mean, that is so basic in my view. That is as basic as telling the truth. We need to certainly tell the truth, but we can't go lecturing another country for a practice that we might be engaged in ourselves.

Second, we need to operate within our own framework of law; that is, the laws that we have ratified internationally or laws that we have passed domestically or our own Constitution to be sure. All of our human rights advocacy has to be done within that framework.

And then third, we need to participate in the new international institutions of human rights that are being developed and have been developed with our leadership for many years.

I would just repeat what both of us were saying moments ago with respect to the United States' record recently, which has been outside in many respects of the framework of law that we should be committed to.

I think we need a congressional initiative to address this issue comparable to the Helsinki Commission. It should be bipartisan and bicameral. This is not a partisan issue. This has to do with whether the United States is operating within the framework of law as it addresses the most basic values of human rights around the world.

Chairman LANTOS. Dean Koh?

Mr. KOH. Congressman, I did want to give a specific answer to Congressman Jackson Lee, which is what can Congress do.

The fact of the matter is that the framers in their wisdom did not give the House a role in the ratification of treaties. However, as you know, Congress does have the power to define and punish offenses against the law of nations, and Congress does have the power to embed these universal standards into our own legislation and internalize them into our own practices.

There is nothing that prevents the House from putting into legislation compliance with these international treaty standards as part of U.S. domestic law and say that we have to obey these standards as American law. If we do that as a matter of American law, what

could be the possible danger to us and then later ratifying the treaty?

So in some way I think that Members of the House often wait for the Senate to ratify, which of course takes two-thirds. If Congress drives the action by embedding those standards into legislation then the Senate can follow in due course as it did with the Genocide Act and other things.

Ms. JACKSON LEE. Thank you.

Chairman LANTOS. I think I speak for all of my colleagues and indeed for the whole of the Congress in expressing our deep gratitude to Dean Koh and Ambassador Shattuck for extraordinarily valuable testimony.

This hearing is adjourned.

[Whereupon, at 12:30 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, over the past three decades, we have seen a steady increase in the quality, candor, and scope of the annual Country Reports on Human Rights Practices. In fighting the plague of human rights abuse, sunlight is often the best disinfectant. On the whole, the Country Reports shine brightly into some very dark corners. We owe a debt of gratitude to the men and women of the Department of State who work so hard to compile them.

Although we do not claim to be perfect and are ourselves subject to the universal ideals we espouse, the United States continues to be the world's most prominent champion of fundamental human rights.

This Congress, I have re-introduced the Global Online Freedom Act of 2007 which seeks to promote and defend human rights related to this increasingly influential communication medium. I am pleased to note that the State Department has already implemented one of the action items of this proposed legislation by including important additional information in the Country Reports, such as the domestic legal authority for internet restrictions and penalties imposed for the exercise of free speech via the internet. This information is critical to efforts to address internet repression in countries like Vietnam, China, Tunisia and Belarus, and to convince governments that free speech restrictions are contrary to their national interests.

It is worth noting that most of the major human rights efforts undertaken by the United States Government in recent decades—including the Country Reports themselves—have been the result of Congressional mandates: The Jackson-Vanik Amendment; The International Religious Freedom Act; the Torture Victims Relief Act; the Lautenberg Amendment; the Trafficking Victims Protection Act; the North Korean Human Rights Act. These were Congressional initiatives undertaken in the face of skepticism—and sometimes outright opposition—by the Executive branch.

For example, I recall when Assistant Secretary Shattuck appeared before my subcommittee ten years ago to oppose the International Religious Freedom Act. He argued that he was "particularly concerned" that the bill would "harm the very people it seeks to help" because it would "legislate a hierarchy of human rights into our laws" that could "severely damage our efforts to ensure that all aspects of basic civil and political rights . . . are protected." Not surprisingly, this doomsday prophecy did not come to pass.

To the contrary, once such issues have been forced by legislation, the Executive branch eventually internalizes, and sometimes embraces, those human rights priorities. For example, religious freedom and trafficking are now mainstream policy priorities that receive far more international attention and action than they did before the laws were on the books. Other mandates are embraced more slowly, such as the refugee title of the North Korean Human Rights Act, which has not yet been adequately implemented.

I certainly do not wish to appear to downplay the seriousness of human rights violations in many countries of the world, including Zimbabwe with its recent horrific crackdown on the political opposition, North Korea, Eritrea, Belarus, Burma, Saudi Arabia, Cuba, Ethiopia and Iran. The Report provides disturbing details about how these countries in particular—though not exclusively—continue to thwart universal principles of respect for fundamental human rights. However, time limitations prevent me from examining each one, so I will focus the spotlight on three human rights violators in particular—China, Sudan and Vietnam.

This year's report repeats the assessment of prior years that the Chinese Government's human rights record "remained poor," but even when many of us thought

the situation could not get much worse, it adds that the Chinese record "in certain areas deteriorated." One of those areas often ignored or downplayed by the international community is the appalling lengths to which the government will go to enforce its one-child per couple limit.

The Chinese government has a long record of oppressing its people, especially women, through its population control program. Beijing does not deny levying huge fines against people who have children the State deems illegal. In fact, at a hearing that I chaired several years ago, Secretary Dewey testified that "couples who give birth to an unapproved child are likely to be assessed a social compensation fee, which can range from one-half the local average annual household income to as much as ten times that level." Indeed this is a horrific government that decides which children are legal and which are illegal—that is, which children will be allowed to live and which will not.

These acts are truly a crime against humanity executed in conjunction with the UNFPA. The UNFPA has funded, provided crucial technical support and, most importantly, provided cover for massive crimes against humanity of forced abortion and involuntary sterilization. Tens of millions of children have been slaughtered—their mothers robbed of their children by the State. This barbaric policy makes brothers and sisters illegal, and makes women the pawns of the population control cadres.

This barbaric policy has now given rise to a new problem for China. An article published in the Guardian several years ago, stated that China could find itself dealing with as many as 40 million single men by the year 2020 because of the one child policy. According to the article Li Weixiong, a population advisor to the Chinese government, said a cultural preference for boys was creating an artificial disparity between the number of boys and girls representing "a serious threat to building a well-off society." He also said that the lack of women in China will lead to a dramatic rise in prostitution and the trafficking of women. "This is by no means a sensational prediction," he stated.

On that point Mr. Li is right. In fact, the combined effect of the birth limitation policies and the traditional preference for male children resulted in the disproportionate abortion of female unborn children at a rate of 116.9 to 100 overall, and a shocking 151.9 to 100 for second pregnancies. As a direct result of these ongoing crimes against humanity, China today is missing millions of girls—girls who were murdered in the womb simply because they are girls. A couple of years ago, the State Department suggested that as many as 100 million girls of all ages are missing—that is to say, they should be alive and well and are not, a direct consequence of the government's one-child policy. This gendercide constitutes one of humanity's worst blights, and a far greater peril to peace and security than is being credited at this time.

The world is all too aware of the continuing genocide in Sudan, appropriately identified as such in the Country Reports. Current reports estimate that the conflicts in Darfur and in Southern Sudan have resulted in the deaths of close to 2.4 million people and left over 4 million others either internally displaced or as refugees. When confronted with such numbers, one must also take into account the attending human rights violations, including the abuse of children, extensive trafficking in persons, and the acts of torture and violence against women.

Just two weeks ago, on March 14th, I introduced a House resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release several political prisoners and prisoners of conscience who have been arrested in a recent wave of government oppression. One of those individuals specifically mentioned in the resolution is Father Nguyen Van Ly, who has already spent over 13 years in prison since 1983 for his advocacy of religious freedom and democracy in Vietnam. Tomorrow, Fr. Ly will be given a kangaroo trial for exercising his fundamental human rights, and he faces 20 years in prison in the likely event that he is convicted.

This is a case worthy of our particular attention as the Vietnamese Government audaciously resumed its past oppression of human rights after Congress agreed to Vietnam becoming an official member of the World Trade Organization in December 2006. A focus of this hearing is the promotion of human rights in U.S. foreign policy, and it is important to keep in mind that those of us in Congress play an important role in our country's foreign policy. While substantial criticism is likely to be leveled at the Administration during this hearing for its shortcomings in promoting and defending human rights, those of us in Congress should also look in the mirror and ask what priority we give to human rights, both individually and as an institution.

I yield back to you and I thank you, Mr. Chairman.

PREPARED STATEMENT OF THE HONORABLE DIANE E. WATSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you, Mr. Chairman. I am eager to hear the witnesses' testimony. But I would just like to make a brief point. I think we all want to see more people around the world living in democracies. We want to see more people enjoying the type of freedom and prosperity we have here in the U.S. But unfortunately, we have spent the last few years telling people that if they will just hold elections, freedom and prosperity will magically follow.

Obviously, any Iraqi can tell you that approach has some serious flaws. But that is why I think its so important to highlight one of our most influential but underappreciated foreign policy tools—the State Department Human Rights reports. These well-researched, objective reports allow our diplomats to play a stronger hand when pressing for greater freedoms around the globe.

Mr. Chairman, people in other countries will not choose democracy because we tell them how well it works for us. They will choose democracy once they understand how well it works for THEM. And these reports highlight what should be patently obvious—that elections do not deliver democracy if they do not deliver a job that feeds your family, or protect you from getting your skull cracked by the police simply for expressing your opinions.

Elections are an important element of democracy; but they are not sufficient. And I hope, Mr. Chairman, that we will change our approach to ensure that respect for human rights receives at least as much prominence in our dialogue with other countries as elections do. Thank you.

QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE DIANE E. WATSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, TO THE HONORABLE HAROLD HONGJU KOH AND THE HONORABLE JOHN SHATTUCK

Question:

Mr. Chairman, I have here a recent report by the Peace Education Fund, which compares the State Department's annual human rights reports with the President's FY 2008 budget request for military aid through the Foreign Military Financing (FMF) program. I ask unanimous consent to place this report into the record.

According to this report, twenty-one of the candidates for 2008 FMF funding are on the State Department's list of the world's worst human rights abusers. The most surprising finding is the request to send FMF funds to the Sudanese military, despite its involvement in the ongoing genocide in Darfur.

This is not IMET money, which goes towards training and it could be argued could improve human rights. This is FMF money-money to purchase weapons and equipment.

So I would like to ask our witnesses: What is your opinion of such a contradiction? Doesn't this undermine our efforts to promote respect for human rights? And also, what does this say about the interagency decision-making process in the Bush Administration that we can be contradicting our own policy aims like this?

Response:

There was no response received from either witness prior to printing.

Question:

Much of the dialogue about communal violence in Iraq focuses on the problems between Sunni and Shi'a. But this focus often neglects the fact that other Iraqis, such as Assyrians, Turkmen, Yezidis, and others, are often victims of violence. What do you feel are the implications of this seeming inability of the current Iraqi regime to protect it own citizens from ethnic and religious cleansing? Would you agree that this fact is in its own way as frightening as the continuing violence between Sunni and Shi'a? What more can and should the United States be doing to stop the violence against these less-numerous Iraq groups like the Assyrians?

Response:

There was no response received from either witness prior to printing.

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE JOHN SHATTUCK, CHIEF EXECUTIVE OFFICER, THE JOHN F. KENNEDY LIBRARY FOUNDATION (FORMER ASSISTANT SECRETARY FOR DEMOCRACY, HUMAN RIGHTS AND LABOR AT THE DEPARTMENT OF STATE)

from the May 16, 2005 edition - http://www.csmonitor.com/2005/0516/p09s02-coop.html

On Abu Ghraib: One sergeant's courage a model for US leaders

By John Shattuck

Major questions hang over the prosecution of low-level soldiers for their involvement in the Abu Ghraib prison scandal. How could such widespread criminal abuse result from the misconduct of a handful of rogues? What was the role of government policy on the interrogation of prisoners and the high-level officials who implemented it?

Abu Ghraib undermined American values and credibility around the world. The pictures of military personnel physically assaulting Iraqi prisoners and forcing them to perform indecent acts have been widely condemned as evidence of serious abuse, including torture, under both domestic and international standards for the treatment of prisoners.

How responsibility for this criminal conduct is ultimately assessed will determine the quality of our commitment as a nation to the rule of law. It will also have a practical impact. If the US fails to take a strong stand against torture, American soldiers have no case to make against others who would torture them.

The first step toward establishing accountability for the Abu Ghraib atrocities was taken on Jan. 13, 2004, by Sgt. Joseph M. Darby of the US Army's 372nd Military Police Company. Sergeant Darby had asked Specialist Charles A. Graner Jr. whether he could download onto his computer some of the digital pictures he knew Graner had shot while their unit was in Iraq. What he had expected was a travelogue.

What Darby found, he later testified, "[was] shocking. It violated everything that I personally believed in and everything that I had been taught about the rules of war."

Darby delivered the photos to military investigators. His action triggered a series of investigations and a worldwide outcry.

It took courage for Darby to stand up for justice. He must have known that it would make him a pariah with his colleagues, but he followed his conscience. Later, some of his neighbors back home in Maryland made it clear that they disapproved of Darby's actions. After hearing that he had been praised in Washington, one local veteran told the press, "They can call him what they want. I call him a rat." For his courage, Darby has received death threats, and the Army has had to provide him with special protection.

"To be courageous," wrote John F. Kennedy in his Pulitzer Prize-winning book, "Profiles in Courage," "requires no exceptional qualifications.... It is an opportunity that sooner or later is presented to us all."

When the opportunity was presented to Joseph Darby, he grasped it and rescued American values from further degradation.

Monday Darby will be given the Kennedy Library Foundation's Profile in Courage Award by Caroline Kennedy for "upholding the rule of law that we embrace as a nation."

But to fully honor Darby's courage, it is essential to determine how the values he and other American soldiers are defending came to be trampled on at Abu Ghraib. A number of military investigations have been completed and low-ranking soldiers prosecuted, but so far little attention has been paid to the linkage between what happened in the prison and the high-level policies adopted two years earlier that swept aside international standards for interrogating prisoners in the war on terrorism.

In January 2002, lawyers from the Pentagon, Justice Department and the White House, acting at the request of Secretary of Defense Donald Rumsfeld, drafted new rules narrowing the definition of torture and the circumstances under which the US would apply the protections of the Geneva Conventions. Reporting these changes, Alberto Gonzales - then White House counsel and now attorney general - wrote in a memorandum to President Bush that "terrorism renders obsolete [the Geneva Conventions'] strict limitations on the questioning of prisoners."

There were clear dangers in sweeping aside international law on the treatment of prisoners, and the Abu Ghraib scandal provides graphic evidence of what could happen.

The dangers were spelled out by Colin Powell. Responding to the Gonzales memo, Mr. Powell - then secretary of State - warned that the new policies would "undermine the protections of the law for our troops," provoke "negative international reaction, with immediate adverse consequences for our conduct of foreign policy," and "diminish public support among critical allies, making military cooperation more difficult to sustain." Brushed aside at the time, Powell's warning today sounds prophetic.

It's time to get to the bottom of the Abu Ghraib scandal. To do so requires going up the chain of command to determine how the new interrogation policies of 2002 were implemented, and why they left soldiers like the members of the 372nd Military Police Company with the stark choice between torturing prisoners or summoning the courage, as Joseph Darby did, to stand up for justice.

• *John Shattuck is CEO of the John F. Kennedy Library Foundation in Boston; former assistant secretary of State for democracy, human rights, and labor; and author of 'Freedom on Fire: Human Rights Wars and America's Response.'*

Full HTML version of this story which may include photos, graphics, and related links

---

5/14/06

The Boston Globe
Founded 1872

JOHN SHATTUCK

In search of political courage

IT TAKES a lot of courage these days for a government official to stand up for the rule of law.

On Dec. 17, 2002, Alberto Mora received information from the Naval Criminal Investigative Service that prisoners at the Guantanamo Naval Base were being abusively interrogated. Mora, a loyal conservative, had been appointed by President Bush in 2001 to serve as general counsel of the Navy. Since the Navy had no responsibility for Guantanamo interrogations, Mora could have referred the report to others in the Pentagon, or simply decided to ignore it. Instead, he chose to investigate. What he discovered was deeply disturbing.

As he wrote in a recently declassified memo to the Navy's inspector general, Mora learned that his boss, Secretary of Defense Donald Rumsfeld, had authorized interrogation techniques that "could rise to the level of torture." Mora told the Pentagon's general counsel, William Haynes, that Rumsfeld's memorandum "could have severe ramifications unless the policy was quickly reversed."

We need leaders today who dare to defend the rule of law.

He warned that the interrogation policy was "unlawful" and that its consequences could be "incalculably harmful to US foreign, military, and legal policies."

When nothing happened, Mora set out to change the policy. He knew he had to find allies in the Pentagon, and he began to recruit them by openly debating the Rumsfeld memorandum with other officials. A small bureaucratic victory came when the Department of Defense created a "Working Group" to develop new recommendations. But this process was overwhelmed by the Justice Department's Office of Legal Counsel, which weighed in with its own memo expanding the original Rumsfeld policy.

Mora challenged the Justice Department. He charged that the policy allowed "cruel, inhuman and degrading treatment of detainees," and expressed deep disagreement with its "extreme and virtually unlimited theory of the extent of the President's authority." Mora confronted the author of the memo, Office of Legal Counsel Deputy Director John Yoo, asking him "whether the president could order the application of torture." Mora wrote in his memo to the inspector general: "Yoo responded, 'Yes.'"

Mora was shocked. He worked hard to get the Pentagon to shelve what he called this "deeply flawed" policy that now had been hijacked by the Justice Department. For nearly a year Mora thought he had succeeded in persuading his superiors to block the policy, because the Rumsfeld and Legal Counsel memoranda were never finalized.

Then in April 2004 the Abu Ghraib prison scandal broke. Mora learned the bitter truth — the torture policy he and others inside the Pentagon had fought so courageously to stop had secretly been kept in place all along, and the horrors they had warned against had come to pass.

Mora did not prevail in his bureaucratic battle, but his defense of the law and the Constitution demonstrated great political courage. That's why the John F. Kennedy Library Foundation today will recognize Alberto Mora with its Profile in Courage Award, together with John Murtha, a senior member of Congress and Vietnam combat veteran who made a difficult decision of conscience last year when he reversed his support for the Iraq war and sparked a national debate by calling for the withdrawal of US troops from the conflict.

"To be courageous requires no exceptional qualifications," wrote then-Senator John F. Kennedy in his 1957 Pulitzer-Prize winning book, "Profiles in Courage." "It is an opportunity sooner or later presented to us all."

We need leaders today who dare to defend the rule of law and the role of debate in our government against those who would suppress or circumvent them.

At a time when the proscription against torture has been undermined, when a secret domestic spying program has been carried out in apparent violation of federal law, when the president has claimed the authority to disregard hundreds of other statutes passed by Congress, and when the country has been taken to war under an erroneous pretext, we should follow the example of those who stand up for democracy. That's the message of Alberto Mora and John Murtha.

John Shattuck, *CEO of the John F. Kennedy Library Foundation, is the author of "Freedom on Fire: Human Rights Wars and America's Response."*

62

erties was siding with the terrorists. As governor of Texas, Bush sent dozens of prisoners to their death with a speed that smacked of indifference.

The point is not a partisan one. A way to test it is to imagine that the late Edward Levi, President Ford's attorney general, had been attorney general these last three years. He would have been firm on terrorism—and firm in his defense of constitutional rights. Levi was a conservative who believed profoundly in the American system and its institution. Which is to say that he believed in law.

The Bush administration's resistance to the International Criminal Court, its callous treatment of aliens in this country, its ignoring of the Geneva Conventions, its double standard for the United States and others, its disdain for human rights—these things are not abstractions. They have consequences: the brutalization of human beings in America and in American prisons abroad. A broader consequence is to blunt America's constructive influence on human rights globally.

In our system, freedom depends on commitment to the supremacy of law. Without that commitment, government lawyers can write memoranda justifying torture. Abu Ghraib can happen. ■

ANTHONY LEWIS *is a former* New York Times *columnist.*

A Lawless State

How to restore America's global standing as a beacon of freedom—both internationally and with its own citizenry

BY JOHN SHATTUCK

THERE'S A PARADOX AT THE heart of U.S. foreign policy: As the Bush administration asserts unilateral global power, the influence and respect of the United States hits rock bottom, and as the United States professes its desire to expand democratic rights around the world, its actions undermine its stated goals. No issue in this political year is more urgent than addressing this disastrous contradiction. Restoring America's commitment to the rule of law would be a good way to start.

In the Bush war on terrorism, Washington has shown a reckless disregard for basic principles of international human-rights law like the Geneva Conventions, the Convention Against Torture, and the International Covenant on Civil and Political Rights. It has created a climate of lawlessness in which foreign detainees in U.S. custody overseas have been brutally abused, thousands of foreign citizens are held as "enemy combatants" indefinitely without being accorded the status of prisoners of war, and repressive regimes around the world get a green light to crack down on political dissidents and religious and ethnic minorities in the name of fighting terrorism. The result has been a drastic increase in the number of people convinced that America is their enemy and stepped-up recruiting by terrorist groups throughout the Muslim world and beyond.

As several articles in this collection demonstrate, the lawlessness in the administration's foreign policy is also reflected in disdain for civil liberties at home. Thousands of men with foreign backgrounds have been held secretly in U.S. prisons and detention centers without charges for months at a time. The Justice Department has claimed unprecedented authority to arrest U.S. citizens in the United States without charges and deny them legal counsel on the mere assertion that they are enemy combatants. On June 29, the U.S. Supreme Court invalidated this breathtaking assertion of executive power, with one of its most conservative members, Justice Antonin Scalia, reminding the administration that "[t]he very core of our liberty ... has been freedom from indefinite imprisonment at the will of the Executive." Longstanding principles of privacy that reflect colonial America's antipathy for the hated secret searches of King George III have been eroded by Congress' hasty enactment in 2001 of legislation drafted by the administration with the ironically Orwellian title USA PATRIOT Act.

THE UNITED STATES IS SQUANdering one of its greatest assets: its commitment to human rights and the rule of law. At the G8 summit in June 2004, President Bush called for the transformation of authoritarian regimes in the Middle East into open, democratic societies. The president's appeal met with disdain in Arab countries, not because there is a lack of appetite for reform in the region but because the Bush administration has undermined the moral authority of the United States by trying to impose democracy through the unilateral and preemptive use of force in Iraq. In the Middle East, local reformers on the ground report that they no longer dare use the words "democracy" and "human rights" in their own communities. On the Arab street, these terms are now synonymous with U.S. military occupation, high civilian casualties, and the abuse of prisoners.

All over the world today, people see little connection between their own aspirations for freedom and security and the rhetoric and actions emanating from Washington. Sweeping aside more than a half-century of international law (and the institutions and alliances within its framework created by bipartisan American leadership), the Bush administration has weakened our values and our capacity to project them.

In the past, the United States scored major diplomatic victories for human rights and freedoms by working, with allies, within a framework of international law. The drafting of the Universal Declaration of Human Rights by the fledgling United Nations under the prodding of Eleanor Roosevelt launched the modern era of human-rights advocacy. President Jimmy Carter mobilized

democratic governments to press for the release of political prisoners held by repressive regimes, Ronald Reagan invoked the Helsinki Accords to champion the cause of dissidents in the Soviet Union, and George Bush Senior joined with western European governments to provide assistance to the fledgling democracies of post–Cold War central and eastern Europe. During the administration of Bill Clinton, the United States worked with NATO to end the human-rights catastrophe in Bosnia and prevent genocide in Kosovo. Each of these successes was grounded in human-rights law.

The lawlessness in American foreign policy today emanates from the top. In a January 2002 memorandum reporting a decision by the president, White House Counsel Alberto Gonzales wrote that the war on "terrorism renders obsolete [the Geneva Conventions'] strict limitations on the questioning of prisoners." His only rationale for that sweeping assertion was that "terrorism is a new type of warfare not contemplated when the conventions were framed." But despite new 20th-century challenges such as guerrilla war and nuclear war, until George W. Bush, no American president had questioned the basic rules of international humanitarian law, including, notably, Presidents Lyndon Johnson and Richard Nixon during the Vietnam War and Bush Senior during the Gulf War.

The reasons for following humanitarian law are abundantly clear, and they were spelled out inside the Bush administration by Secretary of State Colin Powell. Responding to the Gonzales memo, Powell warned in his own memorandum to the president that "reversfing] over a century of U.S. policy and practice" would "undermine the protections of the law for our troops," provoke "negative international reaction, with immediate adverse consequences for our conduct of foreign policy," and diminish "public support among critical allies, making military cooperation more difficult to sustain." Brushed aside at the time like the law itself, Powell's memo today reads like a prophetic prediction.

Until George W. Bush, no American president had questioned the basic rules of international humanitarian law, including Presidents Johnson and Nixon.

TO REPAIR THE DAMAGE DONE OVER the last four years to American credibility around the world, we need to restore the rule of law to American foreign policy.

First, the president should announce that the United States will apply as a matter of policy and practice the Geneva and Torture conventions, the International Covenant on Civil and Political Rights, and all other international human-rights and humanitarian instruments that have been ratified and adopted as part of our domestic law. This would help rebuild American influence with potential allies and provide protection to American soldiers and civilians abroad.

Second, the United States should work to strengthen international law on terrorism. By leading an effort to stigmatize terrorism as a crime against humanity, the United States would enhance its ability to forge alliances to isolate terrorists as outlaws while strengthening international human-rights law.

Third, the United States should protect human rights at home to demonstrate to the world the values it stands for. The highest U.S. law-enforcement official, Attorney General John Ashcroft, denigrated these values by warning that "those who scare peace-loving people with phantoms of lost liberty ... only aid terrorists." But security depends on liberty. Citizens in an open society have the freedom to separate good policies from bad, and correct errors.

Fourth, the United States should resume its leadership in strengthening the system of international law that it helped create. It should rejoin international negotiations on such critical issues as climate change, nonproliferation of weapons of mass destruction, and international justice, and move to ratify human-rights treaties long pending before the Senate, most notably on rights of women and of children.

Fifth, the United States should actively support those seeking to promote the rule of law, democracy, and human rights in their own societies. Because repression breeds hate by closing off avenues for peaceful dissent, and because hate fuels terrorist movements, human-rights reformers are shock troops in the struggle against terrorism. But democracy cannot be delivered through the barrel of a gun. Assistance to those who are working to build their own democratic societies must be carefully targeted and planned, sustained over time, and based on an understanding of the unique circumstances and profound differences among countries, cultures, and religions.

Finally, the United States should work with other nations and the United Nations to reassert America's leadership role in preventing or stopping humanitarian catastrophes in failed states. During the 1990s, a doctrine of humanitarian intervention was developed under U.S. leadership and was invoked to stop the genocide in the former Yugoslavia. Because the Iraq intervention was unilateral, preemptive, and poorly planned, it has given humanitarian intervention a bad name and destroyed U.S. credibility on human rights. As a result, in Liberia, Haiti, Sudan, and other failed states, war criminals once again are terrorizing civilian populations while the United States and the international community stand idly by.

It's time to end America's lawless state and restore its role as a beacon of freedom and a builder of alliances within the rule of law. Otherwise, tyrants and terrorists will continue to flourish in a world of diminished American leadership. ■

JOHN SHATTUCK, *the assistant secretary of state for democracy, human rights, and labor from 1993 to 1998, is the author of* Freedom on Fire: Human Rights Wars and America's Response. *He is now CEO of the John F. Kennedy Library Foundation in Boston.*

STLtoday.com

[Print] [Close]

INTERNATIONAL JUSTICE: Stick with the rule of law

By JOHN SHATTUCK
Published: Tuesday, Jun. 22 2004

With it, we can fight injustice and restore our credibility in the eyes of other nations.

There's a paradox in American foreign policy today: As the Bush administration claims global leadership of the war on terrorism, respect for the United States around the world hits rock bottom.

America can reclaim its international credibility by restoring its respect for and commitment to the rule of law. These are values this administration has compromised with its disregard for the basic principles of the Geneva Conventions and the Convention Against Torture in the prosecution of its fight against terrorism.

To repair the damage to American credibility around the world, the president needs to make clear that this battle will be fought within the framework of the rule of law, not outside it.

First, the White House should announce that the United States accepts the application of the Geneva and torture conventions to all detainees, whatever their location. This would help restore American influence with potential allies and protect American soldiers and civilians abroad without restricting our authority to lawfully and effectively interrogate prisoners to obtain important intelligence.

Second, the United States should show respect for the rule of law at home - including the right to protest and dispute government polices and actions - and thus demonstrate to the world the values we are fighting for.

The nation's chief law-enforcement official, Attorney General John Ashcroft, has undermined these values by challenging the patriotism of those who speak out. "Those who scare peace-loving people with phantoms of lost liberty," he declared, "only aid terrorists." Our security depends on our liberty. Only in an open society can we separate good policies from bad and correct our errors.

Third, we should make clear that the United States is committed to working with other countries to strengthen the rule of law. For example, we should rejoin international negotiations on such critical issues as international justice, nonproliferation of weapons of mass destruction and global climate change.

Fourth, we should actively support those seeking to promote the rule of law, democracy and human rights in their own societies; they are the true shock troops in the war against terror. Repression breeds hate by closing off avenues for peaceful dissent, and hate fuels terrorist movements.

But change cannot be mandated by force. Assistance to those who are working to build their own democratic societies must be carefully targeted and planned. It must be sustained over time and based on an understanding of the unique circumstances and profound differences among different countries, cultures and religions.

Finally, we should work with other nations and the United Nations to reassert America's role in preventing or stopping humanitarian catastrophes in failed

states. Because the Iraq intervention was unilateral and preemptive, and because the occupation was so disastrously planned, we have given humanitarian intervention a bad name and drastically reduced the credibility of the United States as a defender of human rights.

By recommitting the United States to work within, not above, the rule of law, we can begin to restore America's moral leadership in the world.

John Shattuck, former assistant secretary of state for democracy, human rights and labor and a former ambassador to the Czech Republic in the Clinton administration, is the author of "Freedom on Fire: Human Rights Wars and America's Response." He is chief executive of the John F. Kennedy Library Foundation in Boston.

The Boston Globe

TUESDAY, APRIL 8, 2003

JOHN SHATTUCK

Humanitarian intervention?

AS THE WAR on Iraq advances, President Bush asserts that it is being fought to free the Iraqi people from the oppressive regime of Saddam Hussein.

Is the Iraq war, as it is now being pursued, a "humanitarian" intervention?

Whether it is justifiable to invade another country for humanitarian reasons depends on several factors. The most important is whether genocide or crimes against humanity are being committed with impunity. Iraq certainly falls into this category. In this respect it is similar to the situations in Haiti, Bosnia, Kosovo, East Timor, and, most recently, Afghanistan, where over the last decade a series of international military operations were carried out to rescue civilians from human rights crimes being committed against them by their own governments.

But even where terrible human rights crimes are being committed inside a country, a humanitarian intervention to stop them depends on the existence of three conditions.

Justification for action depends on the existence of three conditions.

First, there must be broad support in the region for a military operation aimed at changing the regime of a country in order to protect the human rights of its citizens. Without such support, the legitimacy of the intervention is severely undercut.

The countries bordering on the former Yugoslavia all supported NATO's military operations in Bosnia in 1995 and Kosovo in 1999 to stop genocide. The Organization of American States unanimously endorsed the multinational force that entered Haiti in 1994 to remove a brutal military junta and restore a democratically elected president. Southeast Asian countries all gave tacit approval to an Australian-led United Nations intervention in East Timor to protect civilians from Indonesian paramilitary forces who had slaughtered thousands of Timorese after an independence referendum. And the US campaign to free Afghanistan from the Taliban and Al Qaeda was endorsed and supported by Pakistan, Uzbekistan, and other neighboring Central Asian republics.

By contrast, the US-British intervention in Iraq is widely opposed not only by Arab states in the Middle East but by much of the international community as well. Although the UN Security Council adopted a resolution last fall calling on Iraq to disarm, it has not gone on record in support of regime change.

Furthermore, the Iraq military operation risks sending a signal that other countries considering their own unilateral interventions elsewhere (Turkey, India, Pakistan, China, for example) are free to carry them out.

A second condition is the likelihood that a human rights conflict can actually be ended by outside intervention. NATO intervened in Bosnia and Kosovo with the reasonable expectation that it could prevent the human rights wars in the former Yugoslavia from expanding throughout the Balkans. Achieving that expectation was one of the key results of NATO's military operations.

In Iraq, however, there is far less likelihood that an intervention that is widely opposed throughout the region will contain the human rights crisis and a considerable risk that it could trigger a broader conflict. Just as an outside intervention to stop the atrocities against civilians in Chechnya could have caused a wider war in Russia, US military operations in Iraq risk further inflaming the Middle East and exacerbating long-term conflicts in the region — for example, between the Kurds and Turkey in Northern Iraq and among competing religious and ethnic groups within Iraq and its neighbors. As the new occupying force, American and British troops will be caught in the middle.

Finally, military intervention to protect human rights should be as surgical as possible and not risk causing a greater loss of life than would have occurred had it not taken place at all. Certainly, the care with which US and British forces have sought to minimize civilian casualties in Iraq has been commendable. But the larger question is whether an intervention that has been condemned throughout the Arab and Islamic world and by much of the international community will create a new breeding ground for violence and terrorism that will erupt in the postwar period not only in Iraq but far beyond.

To guard against that possibility, it will be essential to bring the UN and its specialized agencies into the peacebuilding process that will follow the war and to invest American political capital in resolving the Arab-Israeli conflict. That is the way to promote international security through genuine humanitarian intervention.

John Shattuck *is the author of "Freedom on Fire: Human Rights Wars and America's Response," to be published later this year. He served as assistant secretary of state for democracy, human rights, and labor and later as US ambassador to the Czech Republic in the Clinton administration.*

THE BOSTON GLOBE WEDNESDAY, NOVEMBER 5, 2003 **Opinion**

JOHN SHATTUCK

In Iraq, US ignores human rights lessons

HUMAN RIGHTS hawks are glad that Saddam Hussein is no longer murdering his citizens. Why, then, are we upset over President Bush's Iraq policy? Because it ignores the lessons of earlier human rights wars, is failing to stabilize the country, and risks doing more harm than good.

Since the end of the Cold War, violent political, ethnic, and religious conflict, compounded by brutal repression and state failure, has created a climate of global insecurity. Over the past decade, human rights wars have engulfed the people of Somalia, Sudan, Rwanda, Congo, Liberia, Sierra Leone, Chechnya, Haiti, Bosnia, Kosovo, Afghanistan, Iraq, and other failed states, to say nothing of the Middle East, killing more than 6 million civilians and forcing more than 40 million more to become refugees. These wars are rooted in the same deadly environment in which terrorism thrives, as Al Qaeda and the Sept. 11 attackers showed by using Afghanistan and Sudan as training bases.

International security depends on containing these conflicts, and doing so requires clear rules about whether, when, and what type of "humanitarian intervention" may be justified to protect human rights. Here are four:

■ First, large-scale genocide or crimes against humanity are being committed.

■ Second, the conflict is creating major regional instability, which the neighboring countries want to contain by supporting a multilateral intervention sanctioned by the United Nations or a regional organization like NATO.

■ Third, intervention is not likely to lead to wider conflict — for example, by stimulating increased terrorism or provoking other countries to enter into the hostilities.

■ Fourth, the planned scale, duration, and intensity of the intervention are sufficient to achieve the objective of saving lives and rebuilding the country.

Bush's preemptive regime-change invasion of Iraq failed to meet these criteria. The military operation was conducted unilaterally by the United States and Britain and was strongly opposed by countries throughout the region, the Muslim world, and beyond. Despite Saddam Hussein's appalling history of human rights abuse, there was no evidence last spring that his regime was engaged in continuing genocide that required immediate military action. (Saddam's genocide against the Kurds and Shi'ite Muslims following the Gulf War should have been prevented by international forces in 1991.) In fact, Saddam's human rights record was used by Bush largely as an afterthought to make up for his administration's failure to produce evidence of weapons of mass destruction.

The unilateral US intervention has made it far more difficult to stabilize Iraq, stimulating ongoing attacks against the occupying forces, increasing the recruiting power of terrorist organizations, and shattering the international cooperation necessary for postintervention efforts to rebuild the country. These efforts must succeed if Iraq is ever to be stabilized (to say nothing of democratized), but American taxpayers are paying a staggering price for their president's dangerous preemptive unilateralism.

Bush's Iraq policy is one extreme of the US response to a human rights conflict. At the other extreme is doing nothing. But intervention may be necessary to save lives and prevent further escalation of violence and to preserve vital US interests.

As Bush's failing unilateralism demonstrates, a broad coalition of countries is the only effective instrument for humanitarian intervention. Coalitions sanctioned by the UN confer legitimacy, give political support, provide resources and expertise to the reconstruction effort, and reduce the risk that intervention will lead to greater conflict. Over the past decade, five separate international military actions led or supported by the United States were conducted to stop wars over human rights. Each case demonstrated the importance of sustained multilateral reconstruction in creating long-term stability.

In Haiti, the United States worked closely with the UN and the Organization of American States in 1994 to stop the escalating political killings by a military junta and restore the country's democratically elected president. The lesson of Haiti, however, is that premature exit of a multinational force can prove disastrous.

Two other US-led interventions involved NATO's use of air power — in 1995, to back US and European diplomacy aimed at ending the genocidal war in Bosnia, and in 1999, to force the Serbian government to stop killing Kosovar Albanians and open the way for nearly a million forcibly expelled refugees to return to their homes. A fourth humanitarian intervention was conducted by the UN in 1999, led by Australia with US support, to secure East Timor after the massive killings of Timorese by Indonesian paramilitaries. Finally, in response to the terrorist attacks of 2001, the United States led a UN-sanctioned intervention in Afghanistan to root out Al Qaeda terrorists, which also served belatedly to stop the escalating crimes against humanity being committed by the Taliban.

Humanitarian intervention is an essential tool for protecting international security. Until the Bush administration learns the lessons of earlier human rights wars and renounces its disastrous doctrine of unilateral preemptive war, however, the US operation in Iraq will give humanitarian intervention a bad name.

John Shattuck, *a former assistant secretary of state for democracy, human rights, and labor, is CEO of the John F. Kennedy Library Foundation and author of "Freedom on Fire: Human Rights Wars and America's Response."*

BOSTON SUNDAY GLOBE

SEPTEMBER 23, 2001

JOHN SHATTUCK

How do we defend an open society?

THE SAVAGE TERRORIST attacks on the World Trade Center and the Pentagon shattered our expectations of security and are now driving us to consider new security measures that would sharply reduce our freedom.

But as we begin to make decisions about how to defend our open society against terrorism, we should remind ourselves why freedom is worth defending. Indeed, the very freedom that makes us vulnerable to acts of terror is also our best weapon against terrorism because it binds us together as a people and can rally our defenders around the world.

What security measures can we adopt without destroying the character of our nation? At the heart of our freedom are four rights enshrined in the Constitution: the right to speak freely; the right to be free from discrimination because of one's race, religion or national origin; the right to privacy; and the right to due process of law.

Freedom of expression is what promotes the flow of information and ideas through an open society, fosters innovation, restrains government and provides space for the beliefs and practices of many different minorities. Freedom of expression should rarely be curtailed, but it is not unlimited. In order to balance it with other rights and public interests, freedom of expression in a public place can be subjected to reasonable limits on the time, place and manner of expression.

Some forms of expression are not protected, such as speech in direct furtherance of an act of terrorism, which can be investigated and prosecuted. Spending money is not a pure form of free expression, and the government's authority to trace and even block sources of funding for terrorist crimes could be strengthened without damaging core liberties.

The right to be free from discrimination on the basis of race, religion or national origin is what keeps our diverse immigrant society dynamic, and helps it avoid the ethnic and religious conflicts that plague the world today. As a wave of intolerance against Arab-Americans swept over the country last week, it became clear that no time is more important to hold the line against group discrimination than a time of national stress after a terrorist attack when the temptation is great to find scapegoats.

If screening systems are to be put into place to identify suspected terrorists, they must avoid the use of racial or ethnic profiling because that will only fuel the climate of discrimination and hate.

Not only is our freedom at stake in the way we deal with discrimination; our security will be further threatened if we appear to respond to terrorism by putting the blame on ethnic or religious groups such as Arabs or Muslims.

The right to privacy is what protects individuals against an overbearing government and preserves their freedom to live their lives as they choose. With the benefits of electronic communication, we have come to accept the costs that some information about us will become broadly available to others and that our lives will no longer be so private.

But there is a limit to how low we can allow our expectation of privacy to go if we are to preserve our most basic freedoms. It has been suggested that one way to stop terrorism would be to require all people to carry a "smart card" that tracked all their movements and contained their personal histories. This is clearly beyond the limit of our privacy expectation because it would move us toward being controlled automatons, just as broad new authority to conduct electronic surveillance (when adequate authority already exists) could turn us into talking records.

Due process of law is what distinguishes our society from authoritarianism and anarchy. It is the heart of the justice system in a democracy. To be sure, there is no single formula for what constitutes due process, and the Constitution would allow some aspects of the justice system to be expedited or briefly delayed in processing terrorism cases. But the right to be released unless charged with a crime, and to a fair trial when accused, cannot be compromised without sacrificing basic freedom.

In the end, the gravest threat to our open society is not the risk of terrorism, it is the risk that we will overreact to terrorism by unnecessarily restricting our own freedom. That, after all, is what the terrorists want us to do.

John Shattuck *is CEO of the John F. Kennedy Library Foundation. He is a former assistant secretary of state for human rights.*

THE NEW YORK TIMES **OP-ED** TUESDAY, DECEMBER 25, 2001

Human Rights at Home

By John Shattuck

BOSTON

Next month, the State Department will publish its annual report on the condition of human rights throughout the world. This assessment, never easy, will be harder to make than ever in 2002.

Throughout the 1990's, the report criticized the use of secret arrests and military tribunals in Peru, Egypt, Nigeria, Russia and many other countries. This year the terrorist attacks on the United States have caused Americans to consider using some of

The U.S. must give up its status as an 'exception.'

these same measures in this country.

We hear that the war against terrorism requires us to trim civil liberties at home. But secret military tribunals will not improve our safety. They will make us less secure by giving other countries the excuse to haul Americans before similar tribunals and by making it less likely that terrorists captured abroad will be extradited for trial in the United States.

Cutting back on principles of due process will also make it harder for us to take other countries to task for their human rights practices, even as promotion of human rights around the world becomes more important than ever to our national interest. The Sept. 11 terrorist crimes show that terrorism is bred most readily in places that abuse human rights. Al Qaeda thrived in Afghanistan because the Taliban were rulers who believed in total repression of civil society, brutal discrimination against women, religious intolerance, and the killing and torture of civilians.

Over the last decade Bosnia, Rwanda, Sierra Leone, Somalia, East Timor, Haiti, Chechnya and Kosovo, among other places, have witnessed similar human rights catastrophes. While genocide and other crimes

John Shattuck, chief executive of the John F. Kennedy Library Foundation, was assistant secretary of state for democracy, human rights and labor from 1993 to 1998.

THE NEW YORK TIMES **OP-ED** TUESDAY, DECEMBER 25, 2001

Op-Art

ROSS MacDONALD

against humanity have flourished in these environments, and cynical leaders similar to the Taliban and Al Qaeda have terrorized civilian populations, most Americans have felt insulated from these worlds. Sept. 11 ended that remove by making clear the connection between terrorism and the systematic abuse of human rights.

The success of the military campaign to liberate the people of Afghanistan from the Taliban is only the first step in our fight against terrorism. We will need to pursue the terrorists and bring them to justice. We will also need to create a secure environment for the delivery of humanitarian assistance, support international peacekeeping that can protect Afghans from military conflicts and become a leader in the "nation-building" efforts of the United Nations.

As President Bush has repeatedly emphasized, responding to terrorism requires a long-term commitment. The heart of that commitment should be the redoubling of our efforts to expand human rights to all nations.

Fifty-three years ago the human rights movement was launched when the Universal Declaration of Human Rights was signed at the United Nations. In order to live up to our role in helping to draft that historic document, and as part of our response to terrorism, President Bush should make human rights a central feature of American foreign policy.

This will require making commitments that are in our national security interest but that we were too often unwilling to make before Sept. 11.

The United States should work with other countries and the United Nations to intervene in human rights crises before genocide and terrorism occur. We knew about the brutality of the Taliban before the attacks, just as we knew about human rights abuses taking place in Rwanda and Bosnia before the slaughter began.

We need to stop considering ourselves "exceptional" when it comes to human rights, and we need to ratify international human rights treaties like the Convention on the Elimination of All Forms of Discrimination Against Women and support institutions to protect human rights, like the new International Criminal Court.

We need always to reassert our own commitment to civil liberties at home — even in this time of war — as the best way to project our values abroad. And we should significantly increase our spending on well-targeted assistance programs that can help people in other countries create and nurture democratic institutions that are the best bulwark against terrorism. The lesson of Afghanistan is that the obliteration of human rights, even at a distance, can threaten us all. □

NOVEMBER 24, 2002 **Opinion** D11 BOSTON SUNDAY GLOBE

JOHN SHATTUCK

Human rights in an age of terrorism

John Shattuck, CEO of the John F. Kennedy Library Foundation, is author of "Freedom on Fire: Human Rights Wars and America's Response," to be published in 2003. He delivered the following remarks last week at the University of Western Bohemia in the Czech Republic.

AS THE Czech Republic becomes the first former communist country to host a summit of NATO, let us remember that NATO was created to support the struggle for human rights.

In 1989, we had great hopes that this struggle would transform the world. A tidal wave of freedom was sweeping away the Cold War on the crest of a democratic revolution. The Berlin Wall fell. The Velvet Revolution came. Communism collapsed in Eastern Europe and then in the Soviet Union. Apartheid was brought down in South Africa. Democratic governments arose in Central and South America and parts of Asia. A new spirit of democracy seemed to be replacing totalitarianism.

But the euphoria ended quickly. In June 1989, just as the popular movement for democracy was gaining ground in Central Europe, the Chinese government smashed a similar democracy movement in Tiananmen Square. New threats to human rights soon arose.

By the mid-1990s, cynical rulers and warlords had created another tidal wave -- a wave of mass violence against civilians. Somalia, Yugoslavia, Rwanda, Haiti, Iraq, Sierra Leone, Liberia, Sudan, Afghanistan -- these were some of last decade's killing fields and the breeding grounds of this decade's terrorism.

Ethnic, religious, and political violence also swept through Chechnya, Kosovo, Indonesia, East Timor, and the Middle East. A new era of warfare was dawning, in which the targets were civilians, not soldiers. The clock was turned back on the long struggle to stop the massive crimes against humanity that had plagued much of the 20th century.

In an age of terror, we have a profound interest in defending human rights. Over the last decade, we have learned the hard way five important lessons about how to do so. Each calls for closer international cooperation. Each requires the strengthening of international institutions like the United Nations and the expansion of multinational alliances like NATO. Each shows that no country can safeguard the world by itself.

The first lesson is that we need a better system of early warning and better tools of prevention. The UN might have prevented the genocide in Rwanda if its peacekeepers had been allowed to act on warnings of impending violence by disarming extremist gronps. The genocide in Bosnia might have been prevented if European governments and the United States had made it clear to Milosevic and other Balkan leaders in 1991 that they would pay a heavy price if they continued their early ethnic cleansing campaigns.

When warnings fail, we need a better understanding of when and how the international community should intervene to stop a human rights war. Intervention should not be undertaken lightly, because it might cause a wider war, but it also should not be lightly avoided, because genocide must be stopped whenever possible. When NATO or another coalition of countries intervenes within a UN framework to prevent a genocide, it is serving the cause of peace and freedom.

Third, when unspeakable human rights crimes have been committed, there can be no peace without justice. Until the criminal leaders who instigated genocide are held accountable for what they did, the cycle of violence will continue. That is why the world needs new institutions of justice, like the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the new International Criminal Court, which the United States should join and work to improve.

Fourth, nations destroyed by human rights wars need help to rebuild. In Bosnia, Kosovo, and Afghanistan, the process of building peace will be long and hard, and it will only be successful if the coalitions that intervened to stop the violence remain committed. The Czech Republic knows all too well that democracy cannot be built overnight; it takes a sustained commitment by many participants from both inside and outside the country.

Finally, democratic countries have to find ways of helping people who are living under tyranny. This must be done carefully so that it doesn't cause repressive governments to crack down even more. But it has to be done, because repression breeds human rights abuse, and human rights abuse breeds terror. Authoritarian countries must be encouraged to reform, and reformers within those countries supported for what they are trying to do.

The danger today is that, as the NATO alliance joins with the United States in fighting the war on terrorism, it will ignore what the world should have learned since 1989 about the urgency of defending human rights. If in the name of fighting terror we abandon the struggle for human rights, we should certainly know by now that in the long run we are only likely to have more terror.

[NOTE: The chapter entitled "Diplomacy with a Cause: Human Rights in U.S. Foreign Policy" by John Shattuck is not reprinted here but is available in committee records.]

[NOTE: The report submitted for the record by the Honorable Diane E. Watson, a Representative in Congress from the State of California, entitled "U.S. Weapons Sales to Human Rights Abusing Governments" is not reprinted here but is available in committee records. Or go to: http://www.peaceeducationfund.org (March 29, 2007).]