

**CITY ON THE HILL OR JUST ANOTHER COUNTRY?  
THE UNITED STATES AND THE PROMOTION OF  
HUMAN RIGHTS AND DEMOCRACY**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL  
ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT  
OF THE  
COMMITTEE ON FOREIGN AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
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# **CITY ON THE HILL OR JUST ANOTHER COUNTRY? THE UNITED STATES AND THE PROMOTION OF HUMAN RIGHTS AND DEMOCRACY**

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**THURSDAY, MAY 22, 2008**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,  
HUMAN RIGHTS, AND OVERSIGHT,  
COMMITTEE ON FOREIGN AFFAIRS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:08 p.m., in room 2172, Rayburn House Office Building, Hon. William D. Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. The hearing will come to order.

Or rather the committee will come to order. Today's hearing is entitled, "City on the Hill or Just Another Country?" If the title sounds somewhat provocative, it was intended to be, because I think it is important to call attention to what I see as a profound challenge to our Nation. And that is the decline of our image, how we are perceived in the world today. And how that translates into how we are regarded in terms of the promotion of human rights and democracy.

And I want to be very clear, I do believe that the United States is still the city on the hill. And if one has been observing the hearings conducted by this subcommittee and by other committees here in Congress, I think that it has become clear that not only are we aware of those issues, but we are intent on restoring our claim to moral authority. And, as an aside, it should be noted that the term "shining city on the hill" is coined by a native of Massachusetts, John Winthrop, who I think the Ambassador knew in his youth. But I do believe that we can and should serve as an example to the world on how democracy and respect for human rights does make a better life for all.

This theme of a city on the hill is echoed most recently by President George W. Bush in his second inaugural address. And I will quote:

"From the day of our founding, we have proclaimed that every man and woman on this earth has rights and dignity and matchless value. Across the generations, we have proclaimed the imperative self-government, because no one is fit to be a master and no one deserves to be a slave. Advancing these ideals is the mission that created our Nation. Now is the ur-

gent requirement of our Nation's security in the calling of our time."

And on this particular occasion, I know this might come as a surprise to my friend and colleague from California, but I do agree with President Bush on this one occasion. Advancing democracy and human rights around the world is good for America. It is not just simply about our values, but it is in our base national interest to promote human rights and democracy.

But we also have to recognize the facts. We have held a series of hearings last year that confirm that among both our adversaries and our allies, the United States is viewed as hypocritical in our rhetoric about human rights and democracy because we are seen to be selective in their application. That image is not simply the result of propaganda or media bias. It is that we don't necessarily practice what we preach. It is a result of specific actions by our Government, from torture at Abu Ghraib, to extraordinary rendition, to turning a blind eye to the abuses of rulers in Ethiopia when they do our bidding in Somalia and to ignore the repression of the Chinese Government because it benefits our commercial interest, to Vice President Cheney praising political developments under Kazakhstan's regime, and to providing with the authoritarian Government of Egypt some \$2 billion annually in American assistance.

Just this spring in remarks introducing the State Department Human Rights Country Reports, then Assistant Secretary of State for Democracy, Human Rights and Labor, Secretary Farrar singled out North Korea, Burma, Syria, Zimbabwe, Cuba, Belarus, Uzbekistan, Eritrea, and Sudan for criticism.

But he didn't mention Egypt, Ethiopia, Vietnam, Equatorial Guinea, Kazakhstan or other countries whose governments are apparently allied with the United States. This lack of credibility has had numerous unfortunate results, whether it has given the Government of China the excuse to put out an annual report on United States human rights or the refusal by foreign intelligence services to cooperate with American counterterrorism efforts.

A frequently quoted GAO report that was issued back in April 2005, and again let me quote: "Increased foreign public support for terrorism directed at Americans, and this is a consequence of the decline of how we are viewed in this world. It impacts the cost and effectiveness of military operations, weakens the United States' ability to align with other nations in pursuit of common policy objectives and dampens foreign publics' enthusiasm for American businesses and services." So the fact is that while Americans may still see ourselves as the city on the hill, much of the world just sees us as another, just another country cloaking our interests in empty rhetoric. Or even worse, we are seen as a threat to peace and security, even by some of our allies.

I would note that one particular poll indicated that the people of Turkey see us, if there were to be a dispute between our countries, ready to invade Turkey. I don't think there is anyone in the U.S. Congress that envisions that happening. That is beyond any reality, but it ought to be a lesson and disturbing to us.

So today's hearing will review more of the inconsistencies between what we say and what we do and will explore ways to re-

store our image. I believe that one course we can pursue is to begin holding ourselves accountable to the same standards that we hold other countries.

And to that end, I have introduced legislation which Ambassador Shattuck has had considerable input into. Just like we do for every other country in the world with the State Department's Human Rights Report, it would be a bicameral, bipartisan congressional commission with a significant staff that would systematically study whether the United States is fulfilling our commitments under a variety of international human rights treaties. And it would report annually to the United States Congress of its findings.

I think that is a positive step to let the rest of the world know that we are not afraid of self-criticism, where appropriate, or acknowledging mistakes and addressing them. That I would suggest is what historically has set us apart among the family of nations.

So I look forward to any comments that our witnesses may have on this particular initiative or any suggestions or actions that they might propose so that the world will once more be assured that the United States of America is the city on a hill and not just any other country.

So before introducing our witnesses, now let me turn to my friend and colleague and ranking member of the subcommittee, Dana Rohrabacher of California.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

I thought, as you started about the shining city on the hill, that you might have been talking about Ronald Reagan,

but I was disappointed when you went back further than that. Because it was Ronald Reagan who resurrected that concept.

Mr. DELAHUNT. From John Fitzgerald Kennedy, I might add.

Mr. ROHRABACHER. Do you know what? Now, you are——

Mr. DELAHUNT. Now I am refreshing your memory.

Mr. ROHRABACHER. There you go. So thank you very much.

Let me note that I agree with the chairman's assessment of this administration in terms of human rights. And that is saying a lot, because he just unloaded on President Bush in terms of how we have been prioritizing the human rights issue in these last 7 years. And I think he is correct in his assessment. And I think this administration has a lot of talk about human rights and a lot of sound and noise and clanging, symbols, things like that, but the actions speak much louder than the words. And unfortunately, I think there has not been the type of commitment to human rights that would engender the excitement and the imagination of young idealists throughout the world who should be looking to the United States instead of to forces like radical Islam as a means of expressing their idealism and creating a better world.

But, Mr. Chairman, I put what is going on today and the failures of this administration in perspective. And I lived through the Clinton administration and realize what was handed this administration. Secretary Albright promoted our ties with the Taliban. It was official policy of this administration not to support anyone who was opposing the Taliban during the Clinton years. In fact, it is clear to me, as someone who studied what was going on in Afghanistan, that the creation of the Taliban, who obviously personified the worst possible human rights abuses in the Muslim world, that the

last administration actually was part of the trio—the Clinton administration, the Saudis and the Pakistanis—which created the Taliban in Afghanistan.

Furthermore, once the Taliban were in power, the Clinton administration did nothing to respond to attacks on our Embassies, which we knew were traced back to al-Qaeda operating out of a Taliban-controlled Afghanistan or the USS Cole attack. In fact, the attacks on 9/11, I believe, fall right on the shoulders of the decisions and policies that were put in place by Bill Clinton and Madeleine Albright in the years prior to this President becoming chief executive.

I remember requesting time and again, as a senior member of the Foreign Affairs Committee, the documents relating to America's policy toward the Taliban. And they were kept from myself and from Chairman Gillman who was chairman of the committee at the time.

So we had an administration prior to this administration which helped create one of the world's worst human rights abusers. And it has, in fact, set the groundwork for some of the failures that you are talking about right now in terms of what this administration has been doing in Muslim countries.

Let me also note that this administration, while I am just as upset with the chairman about what this administration's policies have been toward the dictatorship in Beijing, I will have to say that this started again much earlier. And we should note that, before Tiananmen Square, there was an evolution going on toward democracy that was very easily discernible. After Tiananmen Square, when they slaughtered the democracy movement, it has all been downhill in terms of human rights since then.

Before Tiananmen Square, there was an excuse to be working in cooperation with the Chinese communist dictatorship because it was becoming less of a dictatorship and it was becoming more open politically as well as economically. That is not the case since Tiananmen Square.

And during the Clinton administration, over and over again, we saw that instead of trying to demand a reversal of the authoritarian trend in China, we had a government under President Clinton that just, "let's make a deal" was the name of the game. And it wasn't a deal with the people who believe in democracy.

In fact, I remember very well that President Clinton, when running for election, criticized his predecessor for not doing more after Tiananmen Square for human rights in China. And then President Clinton, once in power, actually when we were out of session—I remember this incident—when we were out of session, took it upon himself to announce that he was providing permanent Most Favored Nation status.

Up until that moment, we had to vote every year to give China Most Favored Nation status, and we had to review the human rights records. Well, under President Clinton, it became permanent Most Favored Nation status. This was a betrayal of campaign pledges, but also it had a horrible impact, not just politically but economically. All of a sudden, we threw all of these billions and more working people in China into a competitive world labor market with the working people of the United States. And it has had

a tremendously horrible economic impact as well as the fact that we have seen that not having a human-rights-oriented policy has of course ended any of the movement toward democracy that we might have had in China.

So with that said, there is plenty of room for criticism of this administration. And I join my chairman in suggesting that this President has not done his job in trying to maintain the ideals that were set down by our Founding Fathers in terms of human rights, liberty and justice. I would say that his Democratic predecessor left him with a very bad situation. It is not an excuse for what he is doing, but it certainly should be acknowledged that the failure of this administration is nothing but building on the failures of the last administration.

So with that said, I am looking forward to working with the chairman in trying to shed light on this lack of commitment by our executive branch of our Government and those ideals that we should share as Americans and that will serve us well when dealing with the rest of the world if we would only hold true to those principles.

So thank you very much, Mr. Chairman.

Mr. DELAHUNT. Thank you Dana. Now let me introduce our witnesses.

First John Shattuck, Ambassador Shattuck is the chief executive officer of the Kennedy Library Foundation, and the senior fellow and lecturer at the College of Citizenship and Public Service at Tufts University, which is in Medford, Massachusetts. His career spans more than three decades of leadership on higher education, international diplomacy, foreign policy and human rights. Most notably, he has served as the U.S. Ambassador to Prague, in the Czech Republic, and as Assistant Secretary of State for Democracy, Human Rights and Labor. He went to Yale and got his magna cum laude and Phi Beta Kappa and a master's with first class honors in international law from Cambridge University. What a resume.

And our next witness is Ken Roth, who is executive director of Human Rights Watch, a post that he has held since 1993. Human Rights Watch investigates, reports on and seeks to curb human rights abuses in some 70 countries. From 1987 to 1993, he was deputy director of that organization. And before that, he served as a Federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. He is also a graduate of Yale Law School and of Brown University. And he was drawn to the human rights cause in part by his father's experience fleeing Nazi Germany in 1938. He began working on human rights after the declaration of martial law in Poland in 1981, and soon also became deeply engaged in fighting military repression in Haiti. In his 13 years as executive director of Human Rights Watch, the organization has greatly expanded its geographic reach and has added significant programs.

Welcome to both of you. It is an honor to have you here. I understand Ambassador Shattuck is under a bit of time pressure, so I will ask him to go first.

And Ambassador, if you feel the need to depart early, we understand, and we are just grateful that you are here.

Ambassador Shattuck.



**STATEMENT OF THE HONORABLE JOHN SHATTUCK, CHIEF EXECUTIVE OFFICER, JOHN F. KENNEDY LIBRARY FOUNDATION (FORMER U.S. ASSISTANT SECRETARY OF STATE FOR DEMOCRACY, HUMAN RIGHTS, AND LABOR AND FORMER U.S. AMBASSADOR TO THE CZECH REPUBLIC)**

Ambassador SHATTUCK. Thank you very much.

Thank you Mr. Chairman.

And, Mr. Rohrabacher, thank you as well.

It is always a privilege to be here. And particularly using John Winthrop as the backdrop for this hearing and evincing, as you just have, this wonderful bipartisan claim to the city on the hill; I think it is the right way to look at it.

Mr. DELAHUNT. It is not always this nice, I can assure you.

Ambassador SHATTUCK. This is the Hill, isn't it?

But you know as I will say in a moment in my remarks, I do think there is a great deal of bipartisan achievement that we can return to in the human rights field.

I am very grateful to appear before you today. This is an extremely important issue, far-reaching issue. It has to do not only with our foreign policy and human rights but very broadly with our national security. And I think this is really as much of a national security topic as anything else.

I also want to, with your permission, I am sure you would agree, I want to dedicate what I say this morning to my mentor, in many respects, and friend and leader, Senator Edward Kennedy, whose career has been monumental in so many directions and continues to be, but particularly for me in the field of human rights, civil rights, civil liberties over many years. And it is an honor to be able to speak in a way that I want to dedicate to him.

Mr. DELAHUNT. That is duly noted, Ambassador. And I think you know that I share in a most significantly personal and profound way that same sentiment.

Ambassador SHATTUCK. Thank you.

Mr. DELAHUNT. As I am sure my friend and colleague, Mr. Rohrabacher, also embraces.

Ambassador SHATTUCK. I would like to begin by pointing to what is really I think a paradox in our foreign policy today. We have economic and military assets that are really unparalleled. But our influence and standing in the world are really at rock bottom, I think, at this point.

And one of the reasons for this is that the U.S. is seen by many people in many parts of the world to be a violator, not a defender, of human rights. And we know this through a great deal of polling data that has been assembled. And I cite some of it in my testimony, in the article that is appended to the testimony.

For example, a poll conducted last year by the BBC in 18 countries on all continents showed that 67 percent disapproved of U.S. detention practices in Guantanamo and Abu Ghraib. Another poll conducted in Germany, Great Britain, Poland and India found that majorities or pluralities believe that the United States is engaged in torture and violated international treaties. A third poll conducted by the Chicago Council on Foreign Relations showed that majorities in 13 countries, most of which are traditional allies, be-

lieve that the U.S. cannot be trusted to act responsibly in the world.

So there is really a global perception, I think, of a gap between our values and the way we have acted on human rights and on the rule of law. And I think this has severely eroded our influence and power in the world.

There is a celebrated book by Joseph Nye, who teaches at Harvard. It is called, "Soft Power: The Means to Success in World Politics." And it really analyzes a nation's ability to get what it wants through attraction rather than coercion. And that is really the essence, in many ways, of our human rights appeal, the city on the hill, over many years.

Two fundamental principles govern the exercise of power through attraction rather than coercion in the area of human rights. The first, very simply, is obeying the law. Human rights are defined and protected by our Constitution and by the international treaties that have been ratified and incorporated into our domestic law. And if we are to project ourselves as championing human rights internationally, we must at the very least adhere to the Bill of Rights and the human rights treaties we ratify. Whenever we flaunt those basic requirements of international and domestic law, not just what we want to do but what we are obligated to do, such as the Geneva Conventions, the Convention Against Torture, the International Covenant on Civil and Political Rights, the Foreign Intelligence Surveillance Act, which in some way implements the Fourth Amendment to our Constitution, the Government, our Government in the name, in recent years, of fighting terrorism has created what are in effect a series of law-free zones. And it is in these zones that detainees have been abused, thousands of foreigners have been held indefinitely without being accorded the status that the Geneva Convention should give them or hearings to determine that status, and repressive regimes around the world have implicitly been given a green light to crack down on political dissidence and religious ethnic minorities in their own countries. So that is one guideline.

And a second basic guideline, in addition to obeying the law for exercising the power of attraction by promoting human rights, is simply to practice what we preach to try to bring in line our principles and our actions in a very basic sense. And I think the U.S. loses credibility when we charge other countries with human rights violations that we have committed ourselves.

But it is now well documented that in recent years, as you pointed out, Mr. Chairman, the U.S. has engaged in some of the very practices that it has criticized in its annual State Department Country Reports on Human Rights Practices. For example, detainees in United States custody have been brutally abused in Abu Ghraib and other prisons in Iraq and Afghanistan. Hundreds of prisoners have been held without charges and without access to court review in Guantanamo and a vast warrantless electronic surveillance program has been conducted in apparent violation of Federal law. And each of these practices is similar to human rights violations that are condemned by the State Department in its country reports and have been for some time.

Now, fortunately, history, I think, shows that U.S. standing and influence in the world can be restored when our values and our policies are generally brought into alignment. Over the last four decades, the United States has exercised significant powers of attraction in our foreign policy by undertaking a series of major bipartisan human rights initiatives during five separate presidencies, three of whom happen to be Republican and two Democratic, which I think shows the breadth of this potential bipartisan agreement. President Ford signed the Helsinki Accords. And that led to international recognition of the cause of human rights dissidence inside the Soviet bloc. President Carter mobilized democratic governments to press for the release of political prisoners held by repressive regimes. President Reagan signed the Convention Against Torture and persuaded the Senate to ratify it. President George H. W. Bush joined with other governments in the Organization for Security and Cooperation in Europe to nurture the new democracies of the Post-Cold War world. And President Clinton worked with NATO and the U.N. to implement the Genocide Convention and bring to an end the human rights catastrophe in the Balkans.

So I think it is pretty clear that we can do it when we bring ourselves to the will to do it. And I think the Congress and the next President should follow in the tradition of these major bipartisan achievements on human rights.

And I have six areas very briefly that I believe we can and should act right away to restore the international credibility of the United States on these issues. First, we should signal to the world that we stand for the rule of law and that we adhere to our own laws. This is a very conservative recommendation. Over the last 60 years, the United States has ratified and adopted as part of our domestic law some 19 international human rights treaties and conventions. And in many cases, such as the Geneva Convention, the International Covenant on Civil and Political Rights and the Convention Against Torture, the United States was deeply involved in drafting and promoting these treaties. So we have a special obligation to see that they are enforced.

And for this reason, I strongly endorse the bill, Mr. Chairman, that you introduced last week, H.R. 6054, that would create a bipartisan United States human rights commission to monitor compliance by the U.S. with all the international human rights treaties to which we are a party. This commission would respond to the need for effective implementation and enforcement of human rights law by the U.S. And it would be patterned, I think appropriately so, after the congressional Helsinki Commission, which has made far-reaching contributions to human rights during and after the Cold War by monitoring international compliance with the Helsinki Accords which gave legitimacy to the political and civil rights movement inside the countries of the former Soviet bloc.

The one suggestion I would make on the bill is that I think it would be important to mandate that the reports that are required to be prepared, be done jointly by the Secretary of State and the Attorney General, who after all is responsible for enforcing all our international treaty obligations domestically.

My second recommendation is that the new President should take specific and immediate steps to rebuild U.S. international

credibility by doing the following: The President should announce that the U.S. will close the detention center at Guantanamo and transfer all detainees to the U.S. or their home countries for trial. Restoring the policy of providing individualized status hearings, which we have done in the past, to detainees would demonstrate compliance with international norms without restricting the government's capacity to conduct lawful interrogations. And fully complying with the Geneva Convention also would not preclude the United States from trying detainees in military commissions with full due process of law.

My third recommendation may be a little bit controversial, but I believe the President should announce that the U.S. will take the lead in working with other countries to draft a comprehensive treaty defining and condemning acts of terrorism within the framework of international human rights law. I think working toward a consensus with our allies on the global issue of terrorism would counter the claim that is often made, which I think is a false claim, that differences in cultural values, religious beliefs, political philosophies or different alleged justifiable ends make it impossible to define acts of terrorism as crimes against humanity. They are crimes against humanity when committed on a broad scale, and they should be defined as such. A terrorism treaty would also reinforce, I believe, the protection given to political speech under existing human rights law and I think would put the U.S. in the lead, where it belongs to be, in the effort to counter terrorism within the framework of the rule of law.

My fourth recommendation Mr. Chairman is that the President and the Congress should make clear that the U.S. is prepared to strengthen the system of international human rights law it has helped create over the last six decades. Important treaties, such as the Convention to End Discrimination Against Women, have lingered for years in the Senate and I think should now be ratified, and doing so will help restore U.S. leadership on human rights.

Fifth, I think the U.S. should support those seeking to promote the rule of law, democracy and human rights in their own countries. Democracy and human rights activists are at the front lines of the international struggle against terrorism, against genocide and even against nuclear proliferation. But democracy and human rights can never be delivered through the barrel of a gun. Assistance to those who are working to build their own democratic societies must be carefully planned; delivered within an international framework, not just unilaterally; sustained over time; and based on an understanding of the unique circumstances and profound differences among cultures, religions and societies.

Finally, the U.S. should join with other countries, alliances and international organizations to reassert America's role in working to prevent or stop genocide and crimes against humanity. Extensive diplomatic and economic tools can be used to head off an impending genocide, but international intervention under the U.N. Security Council's doctrine of "the responsibility to protect" should be invoked in situations, like Darfur, when all other approaches have been exhausted.

So, Mr. Chairman, I am submitting for the record an article that sets forth my views on these issues in greater detail.

And let me say in conclusion that by recommitting the U.S. to a foreign policy conducted within the framework of human rights and the rule of law, I believe the President, the Congress and the American people can restore U.S. moral leadership in the world and, by doing so, significantly strengthen our national security.

Thank you.

[The prepared statement of Mr. Shattuck follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN SHATTUCK, CHIEF EXECUTIVE OFFICER, JOHN F. KENNEDY LIBRARY FOUNDATION (FORMER U.S. ASSISTANT SECRETARY OF STATE FOR DEMOCRACY, HUMAN RIGHTS, AND LABOR AND FORMER U.S. AMBASSADOR TO THE CZECH REPUBLIC)

I'm grateful for the opportunity to testify here this afternoon on an issue of profound importance to our country, our national security, and the position of the United States in the world—the promotion of human rights and democracy in our foreign policy. Mr. Chairman, I want to dedicate my testimony to a great American leader, Senator Edward Kennedy, who has dedicated so much of his own extraordinary career to the cause of human rights in the United States and around the world, and who has had a great influence over the years on my own work on these issues.

I'd like to begin by pointing to a disturbing paradox that exists in our foreign policy today. The U.S. today has economic and military assets unparalleled in history, but our influence and standing in the world have hit rock bottom.

One of the reasons for this is that the U.S. today is seen by people in many parts of the world to be a violator, not a defender, of human rights. A poll conducted last year by the BBC in 18 countries on all continents showed that 67 percent disapproved of U.S. detention practices in Guantanamo and Abu Ghraib. Another poll conducted in Germany, Great Britain, Poland and India found that majorities or pluralities believed that the U.S. has engaged in torture and violated international treaties. A third poll by the Chicago Council on Foreign Relations showed that majorities in 13 countries, most of which are traditional allies, believe that "the U.S. cannot be trusted to act responsibly in the world."

The global perception of a gap between the values the U.S. professes and the way it acts—particularly on human rights and the rule of law—has severely eroded U.S. power and influence.

In a celebrated book entitled, *Soft Power: The Means to Success in World Politics*, Joseph Nye analyzes a nation's "ability to get what [it] wants through attraction rather than coercion." Two fundamental principles govern the exercise of power through attraction rather than coercion in the area of human rights.

The first is obeying the law. Human rights are defined and protected by the U.S. Constitution and the international treaties that have been ratified and incorporated into our domestic law. If we are to project ourselves as championing human rights internationally, we must at the very least adhere to the Bill of Rights and the human rights treaties we have ratified. But by flaunting basic requirements of international and domestic law—such as the Geneva Conventions, the Convention Against Torture, the International Covenant on Civil and Political Rights, and the Foreign Intelligence Surveillance Act—the U.S. government, in the name of fighting terrorism, has created what are in effect a series of "law-free zones." It is in these "law-free zones" that detainees have been abused, thousands of foreigners have been held indefinitely without being accorded the status of prisoner of war, and repressive regimes around the world have implicitly been given a green light to crack down on political dissidents and religious and ethnic minorities in their own countries.

A second basic guideline for exercising the power of attraction by promoting human rights is to practice what we preach. The U.S. loses credibility when we charge other countries with human rights violations we have committed ourselves. But it is now well documented that in recent years the U.S. has engaged in some of the very practices it has criticized as human rights violations in other countries in the annual State Department Country Reports on Human Rights Practices. For example, detainees in U.S. custody have been brutally abused at Abu Ghraib and other prisons in Iraq and Afghanistan, hundreds of prisoners have been held without charges and without access to court review in Guantanamo, and a vast warrantless electronic surveillance program has been conducted in apparent violation of federal law. Each of these practices is similar to human rights violations condemned by the State Department in its Country Reports.

Fortunately, history shows that U.S. standing and influence in the world can be restored when our values and our policies on human rights are brought back into alignment. Over the last four decades, the United States has exercised significant powers of attraction in our foreign policy by undertaking a series of major bipartisan human rights initiatives during five separate presidencies—three Republican and two Democratic. President Ford signed the Helsinki Accords, which led to international recognition of the cause of human rights dissidents inside the Soviet bloc. President Carter mobilized democratic governments to press for the release of political prisoners held by repressive regimes. President Reagan signed the Convention Against Torture and persuaded the Senate to ratify it. President George H.W. Bush joined with other governments in the Organization for Security and Cooperation in Europe to nurture the new democracies of the post-Cold War world. And President Clinton worked with NATO and the U.N. to implement the Genocide Convention and bring to an end the human rights catastrophe in the Balkans.

The Congress and the next president should follow in the tradition of these major bipartisan achievements on human rights. Let me outline briefly six areas where I believe we can and should act to restore the international credibility of the United States on these issues.

First, we should signal to the world that we stand for the rule of law and that we adhere to our own laws. Over the last sixty years the United States has ratified and adopted as part of our domestic law nineteen international human rights treaties and conventions. In many cases, such as the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention Against Torture, the United States was deeply involved in drafting and promoting these treaties, and we have a special obligation to see that they are enforced.

For this reason I strongly endorse the Chairman's bill, introduced last week as H.R. 6054, to create a bipartisan United States Human Rights Commission that would monitor compliance by the U.S. with all international human rights treaties to which the U.S. is a party. This Commission would respond to the need for effective implementation and enforcement of human rights law by the U.S. It would be patterned after the Congressional Helsinki Commission, which has made far-reaching contributions to human rights during and after the Cold War by monitoring international compliance with the Helsinki Accords that gave legitimacy to the political and civil rights movement inside the countries of the former Soviet bloc. The one suggestion I would make to improve this important bill is to require that the annual report it mandates be prepared jointly by the Secretary of State and the Attorney General, who is, after all, the nation's chief law enforcement official, responsible for enforcing all our international treaty obligations domestically.

Second, the new President should take several specific and immediate steps to rebuild U.S. international credibility on human rights. The President should announce that the U.S. will close the detention center at Guantanamo and transfer all detainees to the U.S. or their home countries for trial. Restoring the policy of providing individualized status hearings to detainees would demonstrate compliance with international norms without restricting the government's capacity to conduct lawful interrogations. Fully complying with the Geneva Conventions also would not preclude the U.S. from trying detainees in military commissions with full due process of law.

Third, the President should announce that the U.S. will take the lead in working with other countries to draft a comprehensive treaty defining and condemning terrorism within the framework of international human rights law. Working toward a consensus on the global issue of terrorism would counter the claim that differences in cultural values, religious beliefs, political philosophies, or justifiable ends make it impossible to define terrorism as a crime against humanity. A terrorism treaty would also reinforce the protection given to political speech under existing human rights law.

Fourth, the President and the Congress should make clear that the U.S. is prepared to strengthen the system of international human rights law it has helped create over the last six decades. Important treaties such as the Convention to End Discrimination Against Women have lingered for years in the Senate and should now be ratified. Doing so will help restore U.S. leadership on human rights.

Fifth, the U.S. should support those seeking to promote the rule of law, democracy and human rights in their own countries. Democracy and human-rights activists are at the front lines of the international struggle against terrorism, genocide, and nuclear proliferation. But democracy and human rights can never be delivered through the barrel of a gun. Assistance to those who are working to build their own democratic societies must be carefully planned; delivered within an international framework, not unilaterally; sustained over time; and based on an understanding of the

unique circumstances and profound differences among cultures, religions, and societies.

Finally, the U.S. should join with other countries, alliances, and international organizations to reassert America's role in working to prevent or stop genocide and crimes against humanity. Extensive diplomatic and economic tools can be used to head off an impending genocide, but international intervention under the U.N. Security Council's doctrine of "the responsibility to protect" should be invoked in situations like Darfur when all other approaches have been exhausted.

Mr. Chairman, I'm submitting for the record an article that sets forth my views on these issues in greater detail. In conclusion, let me say that by recommitting the U.S. to a foreign policy conducted within the framework of human rights and the rule of law, I believe the President, the Congress and the American people can restore U.S. moral leadership in the world—and by doing so, significantly strengthen our national security.

Mr. DELAHUNT. Thank you Ambassador Shattuck.

As I indicated, I know you have a time constraint here, so if you want to sneak out, you have our blessing.

Kenneth, Mr. Roth.

#### **STATEMENT OF KENNETH ROTH, ESQ., EXECUTIVE DIRECTOR, HUMAN RIGHTS WATCH**

Mr. ROTH. Thank you very much, Mr. Chairman, Mr. Rohrabacher, for holding this important hearing.

This is clearly an opportune moment to examine some of the things that have gone wrong and some of the reasons why the United States is no longer regarded as the city on a hill and what we would need to do to restore that proper place for the United States.

The comments I am going to give this morning, or this afternoon, are based on the work of Human Rights Watch researchers. You mentioned, Mr. Chairman, that we operate in about 70 countries around the world. And we have people on the ground in essentially every country where there is a dictatorship or an abuse of war. And so that gives me the privilege of being able to report firsthand on developments in many of the trouble spots, really most of the trouble spots around the world.

And what I would like to talk about today is the degradation of the concept of democracy, a very marked trend that we have seen in recent years. And I highlight this because democracy is such an important, really a defining value of the United States, and one that I believe is key to American security and therefore should be of concern to all of us if we see it being cheapened, which we do.

The good news behind all of this is that everybody wants to be a democracy. Calling oneself a democracy is really the key to legitimacy today. The bad news is that dictators around the world are getting away with calling themselves democrats on the cheap. And I suppose the disappointing news is that the established democracies, the West, including the United States, are making it easy for them to get away with this downgrading of democracy, this pseudo-democracy that many of them put forward as the real thing.

I could just run through several examples from recent years which highlight the disturbing trend. I suppose, most recently, Robert Mugabe in Zimbabwe, who claims to be presiding over democracy as he uses blatant fraud and widespread violence to avoid recognizing the reality that he lost the most recent election and that the runoff is not even necessary.

We have U.S. ally Pervez Musharraf, who detained a good part of the opposition in the hope that he might prevail in the parliamentary election and, to this day, refuses to bow to the democratic desires of the Pakistani people to restore an independent judiciary.

Hosni Mubarak in Egypt, who has used detention, widespread torture and the refusal to register opposition political parties all as a way of trying to constrain the scope of democracy that doesn't pose a threat to his persistent rule.

United States ally Meles Zenawi, the Prime Minister of Ethiopia, who has gone so far to use murder, large-scale murder, as a way to maintain his grip on power, as well as detaining thousands of people who protested and blatant fraud in the most recent parliamentary elections in 2005.

We saw just a year ago Umaru Yar'Adua, the President from Nigeria, who used blatant fraud and violence to essentially steal the election in Nigeria.

The other side of the continent there, just this past year Mwai Kibaki, I suppose still the President of Kenya who, seeing that Yar'Adua had gotten away with massive fraud in Nigeria figured he would do the same thing in Kenya and proceeded to trigger large-scale ethnic and political violence from which Kenya is now just recovering.

We see today Senior General Than Shwe, who had the audacity to hold a staged referendum on a new constitution that would entrench military rule in Burma at the same moment when hundreds of thousands of his citizens were at risk of death through starvation and exposure due to the cyclone. It was more important for him to have this charade that pretended to legitimize his rule rather than go to the rescue of the Burmese people.

Of course, there is Vladimir Putin, who has very successfully shut down civil society, constrained the press, silenced the Duma and then gradually diminished every competing center of influence so that he could proceed to designate his successor without offering any kind of genuine debate or choice to the Russian people.

So this is the trend. And I can, unfortunately, go on for some time with other examples as well, but I won't.

The question is, Why is this happening? On the one hand, everybody wants to be a democracy, but why are they getting away with these cheap versions of democracy that they succeed in passing off on the rest of the world? And I have to say that, although the established democracies of the West do sometimes protest, and certainly the reaction to Zimbabwe or Burma are examples where the West has been quite vigilant; other times the West is much too likely to acquiesce in these kinds of charades.

And what I highlighted in my written testimony and will run through briefly now in my oral comments are a few of the reasons that I feel or have seen has led the established democracies to accept these lesser versions of democracy as the real thing.

First, there has been a tendency, and this is particularly pronounced in the United States, to speak in terms of democracy as a substitute for the international human rights standards that make democracy meaningful. I don't have to tell you that there is no such thing as an international convention on democracy. Democ-



racy is still a fairly flexible concept. And what gives democracy its meaning is the respect for the basic human rights standards—free speech, freedom of the press, the right to due process, the right to periodic elections. These are all set forth in a treaty like the International Covenant on Civil and Political Rights.

But the United States is disinclined to talk about human rights. The preferred term is to just promote democracy. And the reason for that is pretty obvious. The United States can promote democracy without being called a hypocrite. Nobody is going to question that the United States is a vigorous democracy. But when the United States Government promotes human rights, the hypocrisy flags go up very high. That brings up, you know, embarrassing associations with Guantanamo, water boarding, secret CIA detention facilities, rendition, military commissions and the like.

I recall a meeting I had a couple of years ago with the Egyptian Prime Minister. I was meeting with him to protest the arrest and torture of a large number of terror suspects. And when I brought up torture, he looked at me and, without skipping a beat, said, “that is what Bush does,” as if that was an answer.

Now, we all realize that that is a cheap answer, but it is also a very effective way of deflecting pressure. And since so much of promoting human rights is building pressure on abusive governments to change, if they have that kind of cheap rhetorical flourish, it makes our job much more difficult.

I want to see the United States to be able to speak proudly as a promoter of human rights. I don’t want it to have to shy away from human rights because it brings up all sorts of embarrassing associations. And the failure to talk about human rights and instead to use the softer, fuzzier concept of democracy standing alone has made it easier for these dictators to pass themselves off as democrats.

Another factor behind the weak Western response to this degradation of democracy has been a false dichotomy that a number of dictators have very cleverly established. They like to pretend that, if not them, the deluge; if not them, you know, the Islamists will take over or some feared dictator will take over.

I think the one who has been most skilled at setting up this false dichotomy has been President Hosni Mubarak of Egypt where he likes to pretend that, if it is not him, it will be the Muslim Brotherhood. Musharraf did this as well in Pakistan. If it is not him, the Islamists will take over.

Now, this is a false dichotomy because it is very much a product of the limited political choices that the dictators themselves have made available to their people. I do think we have to recognize that the most recent parliamentary elections where the Muslim Brotherhood chose to contest intended to win. And I think that it is fair to say that, if we held a free election today in Egypt, the Muslim Brotherhood would win. But that doesn’t necessarily reflect the will of the Egyptian people had they been presented with a range of political choices. Mubarak has very cleverly shut down or refused to register a broad range of secular political parties. And so if you happen to not like the Egyptian dictatorship, the only real option is the Muslim Brotherhood. We would be much better off if the Egyptian people had a range of vehicles to express their discontent.

My experience has been that when people are given an array of political options, they tend to vote toward the moderate center. And the best example of that is Pakistan, where Musharraf, you know, for many years, deliberately sidelined the parties of Benazir Bhutto and Nawaz Sharif in the hope that it was going to then be perceived as either him or the Islamists. And in that circumstance, the Islamists obviously grew in stature.

But when the Pakistani people were given a choice, the Islamists barely registered in the poll and the PPP and the Pakistan Muslim League of Nawaz Sharif overwhelmingly won the election.

It shows that when people are given a range of political choices, they will tend toward the moderate center. We should not accept this false dichotomy that dictators put forward as the only way to hold off the extremists.

Another factor is the tendency of this Government to bank on the so-called democrat rather than on democratic principles. I suppose the most notorious example of this was when President Bush looked into the soul of Vladimir Putin and saw somebody he could work with. Obviously, not a very accurate reading of Mr. Putin's soul. And that certainly made it easier for Putin for many years to gradually shut down competing centers of influence in Russia. And then, belatedly, the U.S. Government began to protest that trend, but Putin had a head start of a good 3 years before anybody said anything of significance.

It is very important to stick with principles, not with a particular person who pretends to be upholding those principles but is not. And frankly, the person today who I think is today's version of Vladimir Putin is Pervez Musharraf. The U.S. Government to this day is backing Musharraf. It is fighting the PPP's efforts to restore an independent judiciary, and it is forcing the PPP in Pakistan to stay allied with Musharraf and, in the process, discrediting a political party that is certainly by inclination a friend of the United States, a friend of the West, a friend of human rights standards. But by driving it into Musharraf's arms, it is discrediting the PPP in the eyes of the Pakistani people and doing, I think, a great disservice to America's long-term interest in Pakistan.

The final factor that I would highlight that is I think behind this disturbing degradation of democracy around the world is the one, Mr. Chairman, that you alluded to in your opening remarks. And that is simply the inconsistency of the U.S. promotion of human rights standards. It is very easy to talk about the lack of human rights in Syria, but what about Egypt? It is easy to talk about the problem of the Islamic courts in Somalia, but what about the Ethiopians, who are indiscriminately bombing in Mogadishu? It is easy to attack the Ayatollahs in Iran, but what about Saudi Arabia?

The world is not blind to this kind of double standard. When they see the United States promoting human rights, not as a matter of principle but as a matter of convenience, it saps these principles of much of their force, and it makes the United States a much less powerful moral force on behalf of the values that this Nation stands for.

So, what are the policy changes that I would recommend as we look forward? This is certainly a moment to reassess. We will have a new administration and a new Congress very soon. So I do think

it is apt that we should be looking at what we can do better to reverse this disturbing trend.

Let me briefly outline 5 things that I think could be done. First, and here I very much echo John Shattuck's remarks, the United States has to change its conduct at home so that it can speak about human rights while holding its head high. If human rights is a topic that engenders shame and embarrassment, the United States is never going to be an effective promoter of human rights.

What that means in essence is applying the Army's interrogation rules to the CIA, as I know the Congress tried to do but was then not able to override the President's veto.

It means shutting down Guantanamo and moving prisoners, either repatriating them or prosecuting them in regular courts or regular courts-martial in the United States; not substituting a regime of preventive detention that would just simply move Guantanamo itself on shore in effect.

It means shutting down the substandard military commissions and using courts that provide due process, not courts that have been established to admit into evidence the product of coercion.

And finally, it means ending rendition to countries that torture and not pretending that the diplomatic promises of decent treatment are going to be abided by when these same governments routinely ignore their legal obligations not to torture.

Second, I think it would be very useful for the United States Government to dramatically signal its commitment to human rights. John outlined a number of treaties that I would certainly endorse be ratified. But let me highlight two things in particular that I think would send that kind of clear signal to the rest of the world.

One is to resign and then ratify the treaty for the International Criminal Court. This is a treaty that the United States has nothing to be afraid of if indeed we prosecute our own torturers, our own war criminals. Obviously, if we authorize torture and then do nothing about it, that is a different matter. But to signal that it is no longer what the U.S. Government stands for, I think ratifying the ICC treaty would be the way to go.

Similarly, I think we need a 9/11 style commission, that is a professionally staffed commission, looking at what went wrong with Bush counterterrorism policy and how we can avoid ever again descending to the depths of human rights abuse that has so scarred that policy over the last several years.

Third, I want to see the U.S. Government speak about democracy and human rights, not democracy as a substitute for human rights. I want to see it promoting democracy in the fullest meaning of the term, not a cheapened version that reduces to constrained elections without the rights that make democracy meaningful.

Fourth, Mr. Chairman, as you pointed out, I want to see a consistent application of human rights and democratic standards. There should not be a way out from U.S. human rights enforcement or promotion just because somebody happens to be an important ally of the United States.

And, finally, I think it is important that the United States build a long-term perspective on what democracy promotion is about. It is not about snap elections. It is not about constrained choices. It

is about building a vigorous civil society, a range of political parties, the genuine rule of law, so that the people of a country, when they do finally go to the polling stations, have a choice and are in a position to express their will in a meaningful way. That is the kind of democracy that I think is likely to be in the best interest of the United States. That is not the kind of democracy where, with constrained choices, we are just as likely to elect enemies as we are to elect friends.

I think if these policy changes were enacted, we would be well on the way toward putting the United States back where it should be, which is the city on the hill and one that through its soft power, through its example, through practicing what it preaches, it is a powerful force for human rights and democracy around the world.

Thank you very much.

[The prepared statement of Mr. Roth follows:]



Testimony of Kenneth Roth  
Executive Director of Human Rights Watch

**City on the Hill or Just Another Country? The United States and the Promotion  
of Human Rights and Democracy**

House Committee on Foreign Affairs, Subcommittee on International  
Organizations, Human Rights, and Oversight

*May 22, 2008*

Mr. Chairman, members of the Committee, thank you for holding this hearing and inviting me to testify on the important topic of America's damaged reputation as a global defender of human rights. The hearing is timely because we are facing a global crisis in our efforts to promote democracy and human rights. The good news is that governments around the world want to be called democracies. The bad news is that many of them are trying to do so on the cheap, and the United States and its allies are letting them get away with it.

Today, democracy has become the key to legitimacy. Few governments want to be seen as undemocratic. Yet the credentials of the claimants have not kept pace with democracy's growing popularity. These days, even overt dictators aspire to the status conferred by the democracy label. Determined not to let mere facts stand in the way, these rulers have mastered the art of democratic rhetoric that bears little relationship to their practice of governing.

Why else would as ruthless a leader as Uzbekistan's President Islam Karimov choose to stage elections? Why bother? Karimov heads a government that has imprisoned some 7,000 people for political and religious reasons, routinely tortures detainees, and as recently as 2005 massacred hundreds of protesters in Andijan. He is hardly a democrat, and he faced no real opponents in December 2007 elections because no one dared mount a serious challenge to his rule. Even a constitutional prohibition against a third seven-year presidential term did not stand in his way. Yet this brutal president finds utility in holding electoral charades to legitimize his reign. So, recently, have Robert Mugabe of Zimbabwe, Pervez Musharraf of Pakistan, Hosni Mubarak of Egypt, Meles Zenawi of Ethiopia, Mwai Kibaki of Kenya, Than Shwe of Burma, and Vladimir Putin of Russia.

Even China has gotten into the game. In an October 2007 speech to the Communist Party Congress, President Hu Jintao used the word "democracy" more than 60 times in calling for more of it within the party. Yet that has not stopped him from barring independent political parties, blocking legal efforts to uphold basic rights, and shutting down countless civil society organizations, media outlets, and websites. And there are no national elections. So

what did he have in mind? The party allowed 221 candidates to contest 204 seats for its Central Committee.

The techniques used by such autocrats to tame the nettlesome unpredictability of democracy are nothing if not creative. The challenge they face is to appear to embrace democratic principles while avoiding any risk of succumbing to popular preferences. Electoral fraud, political violence, press censorship, repression of civil society, even military rule have all been used to curtail the prospect that the proclaimed process of democratization might actually lead to a popular say in government.

Part of the reason that dictators can hope to get away with such subterfuge is that, unlike human rights, “democracy” has no legally established definition. The concept of democracy reflects the powerful vision that the best way to select a government and guide its course is to entrust ultimate authority to those who are subject to its rule. It is far from a perfect political system, with its risk of majoritarian indifference to minorities and its susceptibility to excessive influence by powerful elements, but as famously the “least bad” form of government, in the words of Winston Churchill, it is an important part of the human rights ideal. Yet there is no International Convention on Democracy, no widely ratified treaty affirming how a government must behave to earn the democracy label. The meaning of democracy lies too much in the eye of the beholder.

By contrast, international human rights law grants all citizens the right to “take part in the conduct of public affairs, directly or through freely chosen representatives” and to “vote” in “genuine periodic elections” with “universal and equal suffrage” and “secret ballot” so as to “guarantee the free expression of the will of the electors.” It also grants a range of related rights that should be seen as essential to democracy in any robust and meaningful form, including rights protecting a diverse and vigorous civil society and a free and vibrant press, rights defending the interests of minorities, and rights ensuring that government officials are subject to the rule of law. The specificity and legally binding nature of human rights are their great strength. But when autocrats manage to deflect criticism for violating these rights by pretending to be democrats, when they can enjoy the benefits of admission to the club of democracies without paying the admission fee of respect for basic rights, the global defense of human rights is put in jeopardy. Why bother complying with so intrusive a set of rules as international human rights law when, with a bit of maneuvering, any tyrant can pass himself off as a “democrat”?

The misuse of the democratic name is not entirely new. The one-time German Democratic Republic (the name of the now-defunct one-party Communist state in East Germany) or today’s Democratic People’s Republic of Korea (the improbable, official name of North Korea) are prime examples. But few gave any credence to these Orwellian claims. The sad new development is how easy it has become for today’s autocrats to get away with mounting a democratic facade.

It is not that pseudo-democratic leaders gain much legitimacy at home. The local population knows all too bitterly what a farce the elections really are. At best, these leaders gain the benefit of feigned compliance with local laws requiring elections. Rather, a good part of the motivation today behind this democratic veneer stems from the international legitimacy that an electoral exercise, however empty, can win for even the most hardened dictator. Because of other interests—energy, commerce, counterterrorism—the world’s more established democracies too often find it convenient to appear credulous of these sham democrats.

I am sorry to report that one of the leading offenders has been the United States under President George W. Bush. In a troubling parallel to abusive governments around the world, the US government has embraced democracy promotion as a softer and fuzzier alternative to defending human rights. Democracy is a metric by which the United States still measures up well, but human rights are a standard by which the record of the Bush administration is deeply troubling. Talk of human rights leads to Guantanamo, secret CIA prisons, waterboarding, rendition, military commissions, and the suspension of habeas corpus. Discussion of democracy takes place on a more comfortable terrain.

How can the United States urge countries to refrain from torture, “disappearances,” or detention without trial when the Bush administration has committed all of these abuses in the name of fighting terrorism? Indeed, when it comes to these abuses, the United States now provides a negative example. I recall meeting with the Egyptian Prime Minister Ahmed Nazif to complain about Egypt’s use of torture against terrorism suspects. Without skipping a beat, he said, “But that’s what Bush does.” That is obviously a cheap excuse, but it nonetheless can be effective in deflecting pressure to respect basic rights. And the possibility of such a retort—the hypocrisy factor—makes the Bush administration reluctant to speak in terms of promoting human rights rather than the vaguer concept of democracy.

Such divorcing of democracy from the international standards that give it meaning helps to convince autocrats that mere elections, regardless of the circumstances, are sufficient to warrant the democrat label. President Bush’s response to then-General Musharraf’s November 2007 declaration of “emergency rule” illustrates the problem. Even after General Musharraf’s effective coup and his detention of thousands of political opponents, President Bush said that Musharraf had somehow not “crossed the line.” The president could hardly trumpet Musharraf’s human rights record, so he declared that Musharraf is “somebody who believes in democracy” and that Pakistan was “on the road to democracy.” But if, unlike human rights law, “the road to democracy” permits locking up political opponents, dismissing independent judges, and silencing the independent press, it is easy to see why tyrants the world over are tempted to believe that they, too, might be eligible. As such unworthy claimants as the leaders of Egypt, Ethiopia, Kazakhstan, and Nigeria wrap themselves in the democracy mantle with scant international objection, the concept of democracy gets cheapened, its human rights component cast aside.

The United States is not alone in its willingness to accept a shallow version of democracy. Other governments, too, have treated empty elections as an excuse to re-start business as usual with dictatorships that merit denunciation, not partnership. A prime example is the treatment of Kazakhstan by the Organization for Security and Cooperation in Europe (OSCE), a body that comprises 56 governments from Europe and Central Asia as well as the United States and Canada. In August 2007, Kazakh President Nursultan Nazarbaev staged parliamentary elections in which the OSCE found vote-counting flaws in 40 percent of the polling stations it visited. The predictable result: Nazarbaev's party won all the seats in the lower house of parliament with a declared 88 percent of the vote, and no opposition party was said to have surpassed the seven percent threshold needed for parliamentary representation. This fraud occurred against a backdrop of continuing, widespread human rights violations: government loyalists dominate the broadcast media, independent journalists are threatened and harassed for criticizing the president or the government, libel continues to be used as a criminal offense, and opposition activists risk imprisonment, such as Alibek Zhumbaev, currently serving a five-year prison term for insulting Nazarbaev.

But the OSCE, in evidence-be-damned fashion, claimed that the elections had "moved Kazakhstan forward in its evolution towards a democratic country." This wishful thinking was apparently designed to avoid keeping Kazakhstan from its long-sought goal of becoming the first former Soviet republic to chair the OSCE. Preoccupied by energy concerns, Germany joined Russia in supporting this inappropriate candidacy. Although the US and British governments led the opposition, they, too, ultimately wavered. In November 2007, OSCE states by consensus granted Kazakhstan the chairmanship in 2010. Kazakhstan, rather than having to demonstrate respect in fact for the democracy and human rights standards that are at the heart of the OSCE, had only to pledge to undertake media and electoral reform and to stop trying to undermine the OSCE's human rights mandate. Dumbing down democracy in this form, with little protest from the governments that are best placed to serve as its guardians, has made it easier for authoritarian leaders like Nazarbaev to masquerade as democrats and deflect pressure for more meaningful human rights reform.

To avoid this shell game, to prevent the appeal of "democracy" from being abused as a poor surrogate for more exacting rights standards, there is an urgent need to reclaim the full meaning of the democratic ideal. That does not mean advocating a narrowly defined form of governance. Democracy legitimately comes in many varieties, including systems based on proportional representation and first-past-the-post models, those featuring a strong president and those centered on a powerful prime minister, those that entrust authority primarily to the executive branch and those that prefer a stronger legislature. But all democracies worthy of the name have certain common characteristics, including periodic competitive elections that are freely held as well as transparently and accurately tabulated, a meaningful array of political parties, independent media outlets, civil society organizations that give citizens—including minorities—a broad range of opportunities to band together with others to make their voices heard, and a legal system that ensures that no one—and especially no government official—is above the law.



Despite this proper definition, many dictators are eager to legitimize themselves on the cheap. If they can get away with a sham election, they will. Their ability to do so depends in large part on the vigilance of established democracies in insisting on democracy in all its dimensions, including respect for a broad array of human rights and the rule of law. A principled commitment to democracy is not easy. It may mean putting pressure on dictatorial friends or promoting rights that even some established democracies would prefer not to highlight. But a principled commitment is needed if the promotion of democracy is to serve as a source of real pressure to respect human rights rather than a new tool to bypass international standards in favor of a feel-good, empty alternative.

#### **Examples of the Subversion of Democracy**

To recapture the powerful ideal of democracy, so central to the human rights cause yet so at risk of being manipulated as a false but beguiling substitute, requires heightened attention to the clever subterfuges of its detractors. Here are some recent examples of governments violating human rights to subvert democracy or trumpeting democracy to avoid discussion of human rights.

##### *Rhetorical games*

Authoritarian leaders' evasive use of democracy often begins with word games and rhetorical sleights of hand suggesting that restrictions undermining democracy are really necessary to save it. In Pakistan, for example, General Musharraf imposed "emergency rule" to prevent the then-independent Supreme Court from finding illegal his election as president while he remained the head of the military. Despite this very personal motivation, he claimed the coup was necessary to preserve "genuine democracy," explaining: "We want democracy, we want human rights, we want civil liberties but we will do it our own way."

Other repressive leaders have also tried to redefine democracy by introducing a devastating qualifier or an antithetical adjective. President Vladimir Putin, as he cripples democracy by shutting down all competing centers of influence in Russia, has become a proponent of "sovereign democracy," meaning in effect that democracy is whatever the sovereign wants it to mean. As the Burmese junta rounded up protesting monks and violently suppressed dissent, it spoke of the need for "disciplined democracy." China has long promoted "socialist democracy," by which it means a top-down centralism that eliminates minority views.

Libya's Mu`ammar al-Qadhafi uses the term "participatory democracy" to justify abolishing independent political parties on the grounds that the population does not need them as intermediaries because it participates directly in governance through government-staged assemblies. In the Cuban version of the same concept, candidates must be pre-approved by mass organizations controlled by the government, and the constitution severely limits any political organization other than the Communist Party.

*Electoral fraud*

Ordinary electoral fraud is one of the most common strategies to circumvent the uncertainties of democracy. In addition to the case of Kazakhstan, cited above, Nigeria, Kenya, and Zimbabwe are recent examples.

In Nigeria, facing the first transfer of power from one civilian leader to another since the country's independence in 1960, the ruling People's Democratic Party resorted to massive fraud to ensure that its candidate, Umaru Yar'Adua, succeeded Olusegun Obasanjo as president in April 2007 elections. In an effort to redeem some legitimacy, Yar'Adua, to his credit, has launched an electoral reform process, has allowed the courts to overturn several of his party's fraudulent state-level victories, and continues to face judicial review of his own tainted election. But no one has been prosecuted for the blatant ballot-stuffing, vote-buying, and political intimidation that were central to his "election," so the Nigerian people are losing confidence that he will translate his reformist rhetoric into a new democratic reality.

Kenya's President Kibaki appears to have used massive electoral fraud to avert conceding defeat to his rival Raila Odinga in December 2007 elections. Even though Kibaki's party was trounced in parliamentary elections, suspicious manipulation in the final hours of the vote-counting was said to have yielded a razor-thin margin of victory for Kibaki in the parallel presidential election.

In Zimbabwe, Robert Mugabe's government held up announcement of the March voting for over a month before claiming that its rival, Morgan Tsvangirai, had narrowly missed the 50 percent margin required to avoid a runoff election, keeping Mugabe's hopes alive.

*Controlling the electoral machinery*

Fair elections depend on the independence of the people running them, so it should come as no surprise that one favorite way for rulers to manipulate elections is to stack electoral machinery with their supporters. In Azerbaijan, where electoral fraud has been a persistent problem, the ruling party of President Ilham Aliyev names the chairperson and maintains a majority on the election commission. In Zimbabwe, opposition parties are excluded from the Electoral Commission. In Thailand, the new military-sponsored constitution allows members of the National Election Commission to be selected by the Senate, which was once elected but is now appointed.

The case of Malaysia illustrates why governments seek control of the electoral machinery. Its government-dominated Election Commission rejected opposition efforts to remove alleged phantom voters from the electoral rolls, eliminate the widespread use of absentee ballots by government workers, and permit access to state-controlled media by all political parties. Similarly, Cambodia has made an art of holding elections staged by a National Election Commission controlled by the ruling Cambodian People's Party, which then simply ignores claims of violence, fraud, or intimidation by independent monitors or opposition parties.

Because of such failings, national electoral monitoring mechanisms are often supplemented by international institutions. But these, too, have been targeted by those seeking to manage elections. The Kremlin effectively prevented observers from the Office for Democratic Institutions and Human Rights, the main election monitoring body of the OSCE, from reviewing Russia's December 2007 parliamentary elections by delaying visas, limiting the number of international monitors to be admitted, and threatening to prevent the OSCE from offering its assessment until long after Russia's government-controlled media had shaped public perceptions of the balloting. Zimbabwe has refused access to most international election observers, as did Burma for the constitutional referendum held earlier this month.

*Blocking and discouraging opposition candidates*

One obvious way to fix an election is to prevent opposition candidates from running. Iran has perfected this method, with its Council of Guardians rejecting nearly two thousand candidates, mostly reformist, for parliamentary elections held in March 2008. Similarly, the Egyptian government arbitrarily arrested and detained more than 800 members of the Muslim Brotherhood, Egypt's largest opposition group, including at least 148 would-be candidates, in advance of April local elections.

In Cuba, the Communist Party-controlled National Assembly has the authority to reject any prospective candidate for public office. Tunisia refuses to legalize most genuine opposition parties. In Thailand, the military government's election commission adopted stringent new rules permitting disqualification of candidates for such trivial offenses as playing music at rallies or having posters not of an approved size—evidently with the goal of eliminating candidates of the People's Power Party, the successor to ousted Prime Minister Thaksin Shinawatra's Thai Rak Thai party, in advance of January's elections.

In several cases, more punitive measures were used. In 2005, just months before Uganda's first multiparty parliamentary and presidential elections in 26 years, the government jailed the leading opposition presidential challenger, Kizza Besigye, on politically motivated charges of treason and rape. He was later released, but the detention significantly impaired his ability to contest elections a few months later, which he lost to President Yoweri Museveni. In Zimbabwe, the government sent a similar message of discouragement to would-be challengers in March 2007 by dispatching police to severely beat opposition leader Morgan Tsvangirai and to arrest scores of other opposition members.

Turkmenistan had the chance to finally give its people a real choice after the December 2006 death of Saparmurat Niazov, the tyrant who ruled the country for 21 years and laid waste to its social welfare system. Instead, the chair of parliament, who was the constitutionally designated successor to Niazov as interim president, was imprisoned on charges of driving a relative to attempt suicide, paving the way for Gurbanguly Berdimukhamedov to take over. Five low-ranking "alternative" candidates, all representing the country's sole political party, ran unsuccessfully against Berdimukhamedov. No opposition leader was allowed to return from exile to stand as a candidate.

Sometimes, opposition candidates are permitted to run for office but then are punished for having done so, discouraging such challenges in the future. Under President Alexander Lukashenko of Belarus, the government detained both opposition candidates who challenged him in the March 2006 presidential election. One of them is serving a five-and-a-half-year prison term on “hooliganism” charges.

Similarly, in 2005, at a time when Egyptian President Mubarak was still facing pressure from the US government to democratize, he allowed other candidates to run against him. Ayman Nour, his most energetic and popular opponent, won an officially reported seven percent of the vote. But to ensure that Nour’s candidacy would not encourage more formidable future challengers, the Egyptian government convicted him after an unfair trial on politically motivated charges of forgery and sentenced him to five years in prison.

Again following the powerful showing in the 2005 parliamentary elections of the Muslim Brotherhood, the country’s largest opposition group, the Egyptian government detained more than a thousand of its members, holding some for up to eight months. The government has prohibited political activity with a religious basis, eliminating the possibility that the Muslim Brotherhood could become a legally recognized political party. The government has also discussed preventing candidates from running as independents, which is how Muslim Brotherhood members have managed so far to participate in elections.

Israel took this process to a new level by detaining candidates even after they had won an election. Dismayed that Hamas won parliamentary elections in 2006, Israel arrested Hamas legislators so that the party could not obtain a quorum in parliament.

#### *Political violence*

Violence is a tool commonly used to tame democracy. In Lebanon, unidentified assailants have assassinated a series of figures from the parliamentary majority, which has been engaged in an ongoing political struggle with Syria and its allies in Lebanon. In Chechnya, Ramzan Kadyrov—the president installed by the Kremlin—uses security forces known as the “Kadyrovtsy” to brutally enforce his rule. Cambodia’s Hun Sen, prime minister since 1985, has used violence in election after election to muffle dissent, including numerous assassinations of opposition party members, independent journalists, human rights defenders, and trade union leaders. Ethiopian authorities reacted to unexpected opposition wins in the 2005 elections by violently dispersing peaceful demonstrations and detaining most of the opposition leadership.

In Zimbabwe, the government has let loose youth militia and “war veterans” to beat, torture and rape opposition figures, and the police have used excessive force, sometimes lethal, to break up opposition demonstrations. In the Democratic Republic of Congo, soldiers and police used excessive force, killing more than 100 civilians in the course of crushing sometimes-violent protests against electoral corruption in January-February 2007. In Nigeria, the ruling party recruited gang-like “cults” to curb opposition in advance of April 2007 elections. In Egypt’s 2005 parliamentary elections, as return polls showed an

increasing number of candidates affiliated with the Muslim Brotherhood winning seats, the Egyptian security forces physically blocked voters from reaching polling stations in Muslim Brotherhood strongholds, and in the ensuing violence killed 11 people trying to vote.

#### *Silencing the media*

A meaningful election requires a free press—to highlight issues demanding governmental attention and to permit public scrutiny of candidates' competing political visions. The media is also essential for conveying popular concerns between elections—necessary input because a single vote cast every few years is a crude and insufficient method to make popular concerns known. It is thus no surprise that governments trying to control the democratic process seek to silence the press.

One of the first targets of Russian President Putin was the independent media. Today, all major television and radio stations and most major newspapers are in the hands of Kremlin loyalists. This controlled media landscape was one of Putin's most important tools for ensuring that the opposition had no chance to threaten his political dominance, whether in the parliamentary elections of December 2007 or the planned presidential elections of March 2008.

Venezuelan President Hugo Chávez, making arbitrary use of a regulatory process, refused to renew the license of RCTV, one of the country's four leading private television stations and the only one with national coverage that had dared to maintain an anti-Chávez editorial line. Under Zimbabwe's repressive media laws, the only independent daily newspaper, the Daily News, was shut down in 2003.

Egypt imprisoned journalists and bloggers for such offenses as criticizing Mubarak, "undermin[ing] the dignity of the country," and publishing "false news... likely to disturb public order." Azerbaijan imprisoned at least 10 journalists on a range of trumped-up charges to prevent criticism of President Aliyev and his government. It also shut down the leading independent newspaper. Kazakhstan closed a television station and weekly newspaper owned by the president's estranged son-in-law, now a political opponent. Like Azerbaijan, it also uses criminal libel laws to jail critics for such charges as "insulting the honor and dignity" of the president. At least six journalists have died in suspicious "accidents" in Kazakhstan since 2002.

#### *Preventing opposition rallies*

One way for candidates to speak to supporters and to demonstrate political strength is to organize public rallies. Yet because large opposition rallies can show the emptiness of a government's claim to broad popular support, these demonstrations are another favorite target of repression.

In Malaysia, for example, which bans public gatherings of more than five people without a permit, the police used chemical-laced water and tear gas to break up an orderly and peaceful march of protesters demanding electoral reforms ahead of planned elections

expected in early 2008. In Russia the authorities beat, detained, and harassed participants in peaceful political protests, including, in November 2007, the former chess champion and current opposition leader Garry Kasparov.

In Zimbabwe, armed riot police violently disrupted political rallies in February 2007, firing tear gas at opposition supporters and arresting more than 70 of them in the cities of Harare and Bulawayo before imposing a three-month ban on all political rallies and demonstrations in Harare, the capital. Authorities also violently broke up rallies in Egypt and the Democratic Republic of Congo.

#### *Shutting down civil society*

In addition to political parties, a vibrant democracy requires a variety of associations and organizations so that people can mobilize support for their policy preferences and make their voices heard. These civil society organizations thus are another common target of autocratic rulers.

In Russia, for example, a 2006 law regulating nongovernmental organizations (NGOs) has served as a pretext for growing harassment. The law requires groups to submit annual reports on their activities and their use of foreign funds on pain of liquidation—a sanction that already has been used. Meanwhile, organizations have been subject to intrusive inspections, and a 2007 law allowing any politically or ideologically motivated crime to be designated “extremist” and subject to harsh punishment raises concerns that the law will be used to silence dissent.

In Turkmenistan, severe legal restrictions on NGOs include the need to register every grant with the government, inform the government of every meeting, and allow a government representative to participate. Just three independent NGOs have been registered since 2003, only one of which has anything to do with human rights or public accountability. In Uzbekistan since the 2005 Andijan massacre, at least 17 human rights defenders have been imprisoned on politically-motivated charges, dozens have had to stop their human rights work or flee the country altogether, and numerous international organizations have been forced out. The United Arab Emirates bans most civil society organizations, and in August 2007 the Palestinian Authority announced that it would shut down 103 civil society organizations on a variety of technical grounds.

In countries where domestic funders of critical NGOs risk governmental wrath, a limitation on external sources of funding is a serious impediment to organized independent voices. Yet Egypt shut down a local human rights group engaged in vigorous anti-torture advocacy by reviving a years-old complaint against it for using funds from a foreign donor without government permission. Jordan and Bahrain have proposed similar legislation requiring government permission to use funds from abroad. Iran and Syria have already enacted this requirement and exercise complete control over the day-to-day operations of civil society. The Tunisian government has blocked European Union grants to the Tunisian Human Rights League and other independent organizations.

*Undermining the rule of law*

Much of the repression and manipulation outlined above is illegal. Governments seeking to use it thus must avoid independent legal oversight. Sometimes, this can be accomplished by beating and arresting lawyers, as in Zimbabwe or China. Other times it occurs by way of amnesties for any crimes committed. Pakistan's Musharraf and the military rulers in Thailand, for example, pushed through constitutional changes granting them impunity for actions taken during their respective coups. Musharraf also dismissed the Supreme Court judges who threatened to rule against the legitimacy of his selection as president, replacing them with pliant loyalists who promptly validated the choice. The Bush administration acquiesced in Musharraf's maneuverings rather than risk the tenure of its counterterrorism ally. Washington also seemed to want to stop the courts from continuing to free suspects who had disappeared into the custody of Pakistan's abusive Directorate for Inter-Services Intelligence (ISI), a detention and interrogation service that the US government has had occasion to avail itself of.

**The Weak International Response**

The use of these techniques to trivialize democracy does not occur in a political vacuum. Abusive governments may want to legitimize themselves on the cheap, but it takes their peers to let them get away with it without major political cost. To a significant degree, half-baked democrats succeed in passing themselves off as the real thing because they are beneficiaries of diminished expectations from the more established democracies.

In part the problem is one of competing interests. Would-be defenders of a more meaningful vision of democracy are too ready to allow commercial opportunities, access to resources, or the perceived requirements of fighting terrorism to override concern with a government's democratic credentials. In part, though, the problem is one of hypocrisy avoidance. Even seemingly flourishing democracies can, as noted, find it inconvenient to embrace all the rights that constitute genuine democracy lest the subject lead to their own violations.

The problem is compounded by inconsistency in promoting democracy—a longstanding problem. These days, for example, the US government's vigorous criticism of democratic shortcomings tends to be reserved mainly for long-time adversaries or pariahs, such as Syria, Burma or Cuba. Washington has largely exempted such allies as Saudi Arabia, Tunisia, or Ethiopia, while its short-lived pressure on others, such as Egypt or Jordan, has waned. Indeed, the US government is often a major funder of these allied governments despite their repressive practices. This obvious double standard makes the promotion of democracy seem like an act of political convenience rather than a commitment of principle, weakening the pressure for real democratic change.

Ethiopia has been an illustrative beneficiary of this double standard. The government of Prime Minister Meles Zenawi arrested thousands of demonstrators protesting against fraud in the 2005 elections and charged 18 journalists with treason. These arrests were part of a broader pattern of repression, including the use of torture, detention, and intimidation of people perceived as political opponents and, more recently, extraordinary brutality in

suppressing an insurgency in the Ogaden region and fighting Islamic forces in neighboring Somalia. The US government has expressed dismay about the post-election crackdown, but Ethiopia, a key counterterrorism partner, remains Washington's biggest aid beneficiary in sub-Saharan Africa. (Ethiopia is also among the top African recipients of European Union aid. After the 2005 election violence, the EU, along with the World Bank and the United Kingdom, suspended portions of their direct budget support to Ethiopia, but the UK has since increased its aid.)

Jordan has also benefited from diminished democratic expectations, due largely to the US government's fear that Islamists in the country might replicate Hamas's victory in the Occupied Palestinian Territories, but also to Washington's apparent gratitude for Jordan's assistance in fighting terrorism by providing secret detention centers where US-delivered suspects were tortured. Jordan's municipal elections in July 2007 were reportedly tainted by massive fraud, including soldiers bussed to opposition strongholds to vote for the government, multiple voting, and manipulated voter rolls. Yet both the US ambassador and Congress congratulated Jordanians on the exercise of their democratic rights. Some of these faults were allegedly replicated in parliamentary elections in November, but the US State Department "commend[ed]" the Jordanian government for "ensuring another step has been taken on the country's path of political development." The State Department praised in particular the use of "independent national observers" without noting that, as mentioned, the government had reneged on its promise to allow them to enter polling places, forcing them to try to observe the proceedings from outside.

(The European Union's reaction to the Jordanian elections was no more principled. It issued no known public protest, even though Jordan, as a member of the European Neighborhood Policy (ENP), has signed an Association Agreement with the EU, of which respect for democratic principles and fundamental human rights is supposed to constitute an "essential element." This failing reflects broader problems with the ENP, since unlike the successful Copenhagen criteria for accession to the EU, there are no benchmarks or timelines associated with it, and it is becoming increasingly focused on issues such as cooperation on border management and migration control.)

Such unprincipled endorsements suggest that Washington and often the European Union will accept an electoral facade so long as the "victor" is a strategic or commercial ally. The fairness of the vote and the openness of campaign conditions seem to matter less than the political orientation of the democracy pretender.

#### **A False Dichotomy: The Tyrant You Know or the Tyrant You Fear**

The weak international response to the manipulation of democracy is founded in part on fear that an autocrat might be replaced by someone or something even worse. Beginning with the FIS parliamentary victory in Algeria in 1991, the rise of political Islam has made that fear especially acute. Savvy dictators have learned to use a me-or-them logic to justify continued rule, but the dichotomy is often false.



For example, Egypt's President Mubarak has profited from Western concern that Islamists will win any fair election in the country. As evidence, Mubarak can point to the parliamentary elections of 2005, when candidates backed by the Muslim Brotherhood captured a majority of the seats they contested. There is no doubt that the Muslim Brotherhood is genuinely popular, but some of that popularity is a product of limited choice. In 30 years, the Egyptian government has refused to register more than 60 political parties while accepting only two, one of which it later suspended. Many of these parties could have served as a rallying point for a secular opposition.

The Muslim Brotherhood, as noted, is also banned as a political party, but it has been able to build a following by providing social services and developing a reputation as above corruption. So, today, if an Egyptian seeks an alternative to Mubarak and his ruling National Democratic Party, the Muslim Brotherhood appears to be the only real game in town. That serves Mubarak well, because Western acquiescence in his electoral manipulations is more likely in light of this false political choice. US pressure for democratization largely ended with the strong Muslim Brotherhood showing of 2005.

President Bush got it right earlier this week when, speaking at the World Economic Forum in Egypt, he pronounced:

Some say any state that holds an election is a democracy. But true democracy requires vigorous political parties allowed to engage in free and lively debate. True democracy requires the establishment of civic institutions that ensure an election's legitimacy and hold leaders accountable. And true democracy requires competitive elections in which opposition candidates are allowed to campaign without fear or intimidation.

Too often in the Middle East, politics has consisted of one leader in power and the opposition in jail. America is deeply concerned about the plight of political prisoners in this region, as well as democratic activists who are intimidated or repressed, newspapers and civil society organizations that are shut down, and dissidents whose voices are stifled. The time has come for nations across the Middle East to abandon these practices, and treat their people with dignity and the respect they deserve. I call on all nations to release their prisoners of conscience, open up their political debate, and trust their people to chart their future.

Unfortunately, that clear and admirable statement of principle has rarely been applied to Egypt or other US allies in the Middle East.

Pakistan's Musharraf has played a similar game to Mubarak's. He justified "emergency rule" as the only alternative to rule by al-Qaeda and Islamic extremists. For far too long, the West accepted and even embraced Musharraf's manipulation of the political landscape as a form of "moderation" and a step on the road to "democracy." Never mind that Pakistanis

historically have voted for centrist political parties (corrupt and inept as they often were); that Islamist political parties never gained more than 11 percent of the vote in a competitive national election (and considerably less in the February 2008 elections); that Musharraf's attacks on the moderate center had forced him to seek alliance with and, in turn, bolster the Islamists; and that the lack of opportunity under a military government for peaceful political change is a powerful recruiting force for the Islamists.

The Bush administration's inconsistent response to Musharraf's declaration of emergency rule was illustrative. On the one hand, Deputy Secretary of State John Negroponte flew to Islamabad to ask Musharraf to lift emergency rule and to release the thousands of political prisoners who had been detained. He even said, appropriately, that "[e]mergency rule is not compatible with free, fair and credible elections." Even Bush urged Musharraf to "take off your uniform."

But since the February elections, the US government has refused to back efforts by the governing coalition to reinstate the independent Supreme Court judges whom Musharraf had dismissed in favor of the pliant allies who blessed his selection as president while still military chief. To the contrary, by allowing its loyalty to Musharraf to take precedence over its commitment to the democratically elected government, the Bush administration seems willing to provoke a split in the ruling coalition which would force the Pakistan Peoples Party to join ranks with Musharraf and thereby, in the long run, discredit this important pro-Western ally.

Fear of rising Islamic militancy seems also to lie behind a mixed international response to Bangladesh. At first, the international community promoted a more principled vision of democracy. The United Nations and the European Union found elections planned for January 2007 to be too compromised to warrant sending observers, thus contributing to their postponement. However, the caretaker government brought in ostensibly to ensure free and fair elections has instead declared a "state of emergency" and become a vehicle for de facto military rule, presiding over large numbers of arbitrary arrests, cases of torture, and custodial killings by security forces acting with impunity. The US, UK, and Indian governments have expressed concern about the slow pace of election preparations but not the country's poor human rights record. Nor have they called on the army to return full powers to a civilian government. However, the EU has been more outspoken and is providing financial assistance for governance and human rights.

Such complicity in dictatorial rule is sometimes rationalized with patronizing claims that the people in question—often Muslim, frequently Arab—are not "ready" for democracy, that the risks in these societies are simply too great to afford them the same rights of freedom and self-governance that people everywhere else aspire to. Put another way, Western governments sometimes complain that there is no opposition worthy of support. But that supposed lack of readiness, the lack of political alternatives, is no more than the warped political conditions that, with Western acquiescence, these countries' leadership has bequeathed them. The entire point of the pseudo-democrats' repression is to cripple the

emergence of an effective opposition. Indeed, in the case of Saudi Arabia, lack of readiness is an excuse that the government itself has used to avoid elections. Pakistan's Musharraf made similar excuses, charging that the West has an "unrealistic obsession with your form of democracy, your human rights and civil liberties... which you took centuries to (evolve), but you want us to adopt in months.... [T]his is not possible."

To reject that logic is not to suggest that immediate, unfettered elections are the answer, either. Just as extremism flourishes in a constrained political environment, so it may prevail in a snap election called in such an environment. A more sophisticated response is needed, one that would push autocrats to allow a range of political choices before rushing to elections—that is, to prioritize respect for an array of essential political rights over the balloting itself. Instead of accepting a dictator's cramped set of options as the only conceivable ones, democracy promoters should press to transform the political landscape so that voters will face a meaningful range of political options before marking their ballot. That genuine choice tends to be an enemy of extremism.

#### **Banking on the "Democrat" Rather than Democratic Principles**

One common failing is to support a particular proclaimed "democrat" rather than the human rights principles that make democracy meaningful. Established democracies seem increasingly to look for individuals—rather than institutions—to save the day, hoping that people will equate the ascendance of a leader prone to democratic rhetoric with the arrival of democracy itself, even though the first lesson of democratic theory is that unrestrained power tends toward tyranny. This failing has certainly characterized Western policy toward Pakistan's Musharraf, but it has also played a central role in the response to such disparate countries as Russia, Nigeria and Georgia.

Bush famously embraced Putin in 2001 after "look[ing] into his eyes and s[eeing] his soul." Putin proceeded systematically to undermine nearly every competing center of influence in Russia—the Duma, the regional governors, the press, the NGOs, even the oligarchs. The US government ultimately did react, but it had lost an early opportunity to build US-Russian relations around principles rather than personal chemistry. The European Union, largely at the behest of Germany, has also tended to acquiesce in Russia's authoritarian slide.

The US and UK governments as well as the EU were candid about the blatant fraud that marred Nigeria's presidential and parliamentary elections in April 2007, but these Western governments seemed eager to work with President Yar'Adua because his rhetoric was reformist, even though the circumstances of his election set a far more powerful precedent than his conciliatory words. Nor did Yar'Adua translate his reformist message into prosecution of anyone responsible for the fraud and parallel political violence. Again, the message seems to be that, so long as the leader in question is friendly to the West, even fake elections will suffice to legitimize him.

In Georgia, the 2003 Rose Revolution brought to power a government with a strong commitment to democratic principles and a vibrant civil society. But serious human rights

problems persisted in the years that followed, particularly in the criminal justice system. Yet international organizations and governments—the US most prominently among them—resisted robust criticism, wishing to believe in the good intentions of a Western-educated ally, President Mikheil Saakashvili. The danger of embracing a person rather than democratic principles became apparent when in November 2007 the Georgian government unleashed a violent crackdown on protesters and imposed a nine-day state of emergency.

### **Conclusion**

It is a sign of hope that even dictators have come to believe that the route to legitimacy runs by way of democratic credentials. Broadly shared and deeply felt values underwrite the principle that sovereignty lies with the people of a nation and that the authority to govern is ultimately theirs. But that progress is fragile, its meaning dependent in large part on the commitment of the world's established democracies. If they accept any dictator who puts on the charade of an election, if they allow their commitment to democracy to be watered down by their pursuit of resources, commercial opportunities, and short-sighted visions of security, they will devalue the currency of democracy. And if dictators can get away with calling themselves “democrats,” they will have acquired a powerful tool for deflecting pressure to uphold human rights. It is time to stop selling democracy on the cheap and to start substituting a broader and more meaningful vision of the concept that incorporates all human rights.

For the United States, that conclusion suggests several policy steps:

First, the United States must end its own human rights violations which make it so reluctant to talk about human rights as the essence of democracy in its dealings with other governments. That means stopping the CIA's use of coercive interrogation and bringing it under the interrogation rules now contained in the Army Field Manual; ending the misguided use of substandard military commissions and bringing terrorism suspects for trial instead before regular civilian courts (or, if a suspect is captured on a battlefield, a regular court-martial); stopping rendition of suspects to governments that torture (without pretending that diplomatic assurances of proper treatment in such cases make any difference); and closing Guantanamo and the CIA's secret detention facilities without effectively moving these facilities on-shore through a regime of preventive detention.

Second, the United States should find a dramatic way to illustrate its renewed commitment to human rights and the rule of law by, for example, re-signing and ratifying the treaty for the International Criminal Court. Congress, ideally with the support of the president, should also establish a 9/11-style commission to investigate the serious human rights abuses committed in the name of fighting terrorism and recommending steps to ensure that these wrongful and counterproductive steps are never taken again.

Finally, the United States should rearticulate a commitment to democracy founded on human rights. That requires an end to the Bush administration's reluctance to speak in terms of human rights, a willingness to promote democracy in its fullest sense rather than

accepting cheap or manipulated elections, and a determination to make another government's respect for human rights a key determinant of its access to US military, diplomatic, and economic support.

Mr. DELAHUNT. Thank you, Mr. Roth, for your testimony.

Thank you to both of you for your testimonies.

It is insightful and substantive. I am going to go first to the vice chair of the committee, the gentleman from Missouri, Mr. Carnahan. But before I do, I would just like to make an observation. I think in terms of our policy vis-à-vis human rights and democracy promotion is missing an important ingredient, and that is transparency, an explanation of our behavior that can take many forms. What concerns me about the behavior of this administration and the ranking member is correct, we have seen both Democratic and Republican administrations through the years. We have seen the deficiencies and the defects and the inconsistencies transcend party lines. But this particular administration has I think achieved a level of secrecy that is profoundly disturbing.

To have a healthy democracy, the more transparency, the better. And let me just cite one example.

Mr. Roth, you talked about repatriation or resettlement of detainees and the reliance on diplomatic assurances. There was a hearing that we held concerning a Canadian-Syrian national that was sent to Syria as opposed to his request to go to the country where he had resided for the last 20 years, which was Canada. It has been the resistance from the Department of Justice for information that is not only perplexing, it is beyond anything I have ever witnessed.

We have secured one letter from the then deputy attorney general that acknowledged that he was—this individual was sent to Syria rather than to Canada, and the letter stated this: Pursuant to his authority, the attorney general, rendering, if you will, for lack of a better term, this individual to Canada—to Canada—would have been prejudicial to the United States.

Without a more full and ample explanation of that statement, I know that we have inflamed opinion, public opinion in Canada. And we are oblivious to it here. The Toronto papers don't get here. The Canadian broadcasting system, unless you have some sort of satellite, it doesn't get here. But it is something that Canadians are talking about, and it is reflected in the decline of respect for this country in Canada.

And yet there is no explanation. And it goes to the issue of inconsistency. But it also goes to the issue of, if you don't get the information out, if you have an administration—I don't care whether it is a Republican administration or a Democratic administration—if there is not more transparency, then our own democracy suffers and suffers profoundly, and it is something that I think we all have to be cognizant of and concerned about, and it ought to be part of any effort in terms of restoring a confidence in the genuine democratic soul of this country.

With that little speech, I will yield to the gentleman from Missouri, Mr. Carnahan.

Mr. CARNAHAN. I want to thank the chairman, the ranking member and the witnesses for being here today.

Earlier we had done a series of hearings that I know have been referred to about our standing in the world. And, you know, the bad news was that it was among the lowest ever, almost everywhere.

The good news, if you dug into that polling, was there was a genuine reservoir out there about the idea of America and what we are about, international cooperation, standing for the rule of law; those kinds of things are still out there. And I think there was, again, back to the hypocrisy, that people believe that is what America is about, but that is not what they are seeing in practice too often.

So I appreciate you all being here and really highlighting how we deal with this and address it. And I wanted to start with the question for Ambassador Shattuck in terms of, just take the example of Colombia and the proposed free trade agreement. There are many concerns with that, but in particular the horrific treatment of labor leaders there. You know, how do we deal with those kinds of issues, using our beliefs and the human rights principles to be a part of that debate and to begin to incorporate that into those kinds of agreements?

Ambassador SHATTUCK. Well, thank you, Mr. Carnahan.

I think the fundamental—I mean, it is not by accident that my bureau when I was running it in State Department, and it still has this name, was the Bureau of Democracy, Human Rights and Labor. And issues of freedom of association and opportunities for labor groups in other countries to engage in the kind of protected activity that they can engage in in our country is really part of a broader human rights agenda, which I think resonates in the international covenant of civil and political rights and all of the freedoms and rights of association that go along with that.

So I think we need to build into all of these kinds of trade agreements. And the Colombia one, I confess I am not in detail familiar with where that stands at the moment. But we need to build in these trading agreements ways of opening up markets, opportunities to reinforce the rights that people should have in those countries with whom we are engaging in these kind of open trade arrangements.

And, I think there have been some voluntary agreements that have been entered into by various American industries, particularly the apparel industry has been involved in trying to reduce the amount of child labor, for example. I mean, of course, that also resonates in another dimension of human rights, the international rights of the child, which the U.S. has not signed that convention or has not ratified it in any event.

But I think, in direct answer to your question, we need to build a human rights dimension, and it is particularly in this area of labor and free association into the kind of trade agreements we enter into. And I think some attention has been paid to that. Again, I am not an expert on the Colombia treaty, so the—the Colombia free trade opportunity, so I can't say how much has been done there.

Mr. ROTH. Maybe if I could say a word on Colombia.

Mr. CARNAHAN. Yes, please.

Mr. ROTH. First of all, I agree very much with John that a basic principle of free trade is that the workers who produce the goods to be traded should also be free. And freedom number one is that, if you form a labor union, you shouldn't be killed. That is the freedom that is at issue in Colombia. Now, the Congress I think quite properly has insisted that before the free trade agreement is to be

adopted or accepted, that the Colombian agreement has to vigorously pursue and prosecute the authors of this massive number of murders of Colombian trade unionists. More trade unionists are killed in Colombia than any place else in the world.

The pressure is working in that, as you know—I guess it was just last week, President Uribe dramatically extradited to the United States 14 paramilitary leaders whose paramilitary operations have been behind a good number of these murders. That is very good news. And suddenly these paramilitary leaders, who might have been getting just a slap on the wrist, a maximum of 7 years in very modest confinement in Colombia, suddenly are facing real time in the United States.

So that is a positive step. But it is not reason to give up on the pressure, one, because the people who are still actually committing these murders for the most part have not been prosecuted, and we would like to see a real pattern of prosecutions before the free trade agreement is adopted. That is the only way we are going to be able to signal to the murderers in Colombia that you can't get away with killing trade unionists if they have the audacity to try to form a trade union, there will be a price to be paid. The pressure is working but we need to keep the pressure on. Second, there was something very odd about the timing of the extraditions. We have been pushing for extradition for years and years and years, and President Uribe has resisted. And suddenly he turned these 14 over at a point where they had begun to cooperate with Colombian prosecutors looking at the so-called parapolitics scandal; that is, the relationship between the paramilitaries and senior government officials.

And it was just about a month ago that Mario Uribe, the President's cousin and probably closest political confidant, was arrested because of the ties with the paramilitaries. And suddenly, in that context, the paramilitaries who had been cooperating are sent off to the United States. So Human Rights Watch has written to Attorney General Mukasey urging him to make sure that the administration's desire to get the free trade agreement passed does not stand in the way of ongoing cooperation between United States prosecutors and Colombian prosecutors so that we can get to the bottom of the parapolitics scandal.

Our fear is that the administration is so eager to see the agreement through, that it is going to make it difficult for the paramilitary leaders to continue to provide information that may lead still higher within the Colombian Government. We think it is very important that the Congress reinforce that message and not just take this important gesture as being sufficient for ending the impunity that lies behind so many of these trade union murders.

Mr. CARNAHAN. Thank you very much.

Mr. DELAHUNT. Before I go to Mr. Rohrabacher, I feel compelled to respond to the situation in Colombia.

I have seen a significant commitment on the part of the fiscalia. I have met with the fiscal, Mario Iguaran. Congress has readjusted, if you will, the assistance to enhance considerably the funding flow, the legal system, the judicial system. I have made no public announcement as to where I am on this particular issue of the free



trade agreement, but I feel compelled to acknowledge a level of commitment that I have never seen before.

At the same time, I think you make a very good point, Mr. Roth. And I think we have to be clear. The fact that the extradition requests were honored at this particular point in time does not preclude the Department of Justice from providing access to Colombian authorities in terms of any investigations that they may wish to pursue.

And, again, I return to, oh, maybe several months ago where I was given access by the Colombian authorities to many of these same individuals. We interviewed them in prisons outside of Bogotá and Medellín with a focus on the relationship between American companies and paramilitary activities in Colombia. I just felt that was important for me to state that for the record.

Mr. ROTH. I appreciate that, Mr. Chairman.

And I actually share your sentiment.

But let me, if I could, just introduce a distinction. For North Americans, for citizens of the United States, we tend to think of prosecutors as just an arm of the executive. So if the prosecutor is making progress, we would applaud the attorney general.

That is not the way it works in Latin America and it is not the way it works in Colombia. The fiscalia is essentially a quasi-judicial body. It operates independently of the executive. And while there are fiscales who are quite bravely pursuing these incredibly dangerous cases, this does not necessarily reflect the commitment of the government, and indeed, there have been times when the government has stood in the way.

So, while I completely agree with you that the prosecutors are making progress, our focus should be on whether the government is helping them or hurting them in that effort.

Mr. DELAHUNT. I look forward sometime to having a private conversation with you on this particular issue.

Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

Just right off the bat, I would like to note that I have a profound disagreement with Mr. Roth on his analysis of what has been going on in Russia in the nature of Mr. Putin's regime. Now, I am open minded to that, and I would like and I would request now publicly that this committee hold a subcommittee hearing specifically on Russia to get to the heart of this matter because I hear all of these clichés and all of these broad strokes about painting Mr. Putin an enemy of freedom and how horrible he is, and at the same time, I see a lack of details. I keep asking people give me the details. I think it would be good for us to get people like Mr. Roth here and discuss this issue in depth. I would note that—

Mr. DELAHUNT. Your request will be granted.

Mr. ROHRABACHER. Thank you.

Mr. Von Klaus of the Czech Republic, one of the great conservative leaders, has indicated that he agrees with my analysis, that this is—there is some sort of, let us put it this way, irrational condemnation of Mr. Putin, and I would like to see what the specifics are of that.

Let me note just for the record that I am one of the few Americans who, during the Cold War, who actually engaged personally

with the Russian troops. And very few times—you will meet people engaged with the Vietnamese and others, but I engaged with the Russian troops, and no one can doubt that I was the ultimate cold warrior.

I do not see the facts behind this attack on Putin, and I would be very happy to discuss them and am open minded about it. So that is my first request.

I think when we are discussing human rights in general, that we need to understand that human rights and the standards of human rights that we are talking about basically is something that deals with non-democratic governments and how they deal with those who would bring democratic elections and individual freedom to their societies, in essence—now that is not to say that is the whole scope of human rights, but the largest portion of human rights' concern is these non-democratic countries and how they deal with those people who would bring democracy to their countries. It is not basically about how democratic governments deal with those who use force or would use force to terrorize their populations into submission and perhaps into a change to a non-democratic government.

Basically, I happen to believe that if an innocent person, which happens at times and as we have proven here in these hearings, and at times gets unjustly mixed in with criminal terrorists, and force and violence is used against him to try to extract information that he does not have or she does not have because it is an innocent person, well, that is a violation of that person's human rights.

I do not believe that when you have a terrorist, as with criminals in the United States—we execute murderers in the United States, and that is not a violation of their human rights. I know there are other people around the world would like to think it is. I don't believe that. It is not a violation of human rights to take a criminal who has raped a woman and put him in jail for a certain length of time so he cannot rape other women or deter others from conducting rape. That is not a violation of those human rights. That is force being used against an individual.

And if you have a terrorist and we are using force against that terrorist to extract information that will save the lives of hundreds or thousands of innocent people, that, I believe, it is a travesty to make that as part of your human rights analysis as to whether we believe in human rights or not.

And I see a lot was that in the basis of the criticism of the United States of America. Not to say there isn't other criticism where we are actually taking the side of dictators, taking the side of the Chinese communist dictatorship in order to promote commercial interests; that we are not doing what we need to support the Burmese, even before the cyclone, because they are human beings and their rights are being violated by a non-democratic government; and certainly the manipulation of our Government by the likes of Musharraf and even to some degree Mubarak, but certainly Musharraf is something that is very demonstrable.

So I have made some points here. I would like to suggest—and with the testimony of the Ambassador, Mr. Ambassador, when you worked with the Clinton administration, you are not trying to tell us that this administration spends less on the Bureau of Human

Rights or the National Endowment for Democracy or the broadcasting or in the Democracy Fund that was spent during the Clinton administration, are you?

I have figures in front of me that says, in real dollars, this administration has outspent the time you were part of the Clinton administration by almost 2 to 1.

Ambassador SHATTUCK. Well, that is an interesting question, Mr. Chairman.

Nowhere in my testimony did I claim nor do I now claim that the human rights policies of the United States, which I think have fallen into severe disrepute around the world and you have agreed with some of that proposition—

Mr. ROHRABACHER. Sure.

Ambassador SHATTUCK. That really has very little to do with the money that is expended in any particular area.

I think it is commendable that this administration has spent money in what it claims to be the promotion of human rights, but the whole thrust of my position, and I believe yours, is that, unfortunately, we have seen our reputation on these issues of human rights and the rule of law plummet.

Mr. ROHRABACHER. I would agree with that and what the essence of what we are saying here, it is not what—here we have a governmental facade that is set up in the name of human rights, and it is not that we maintain this facade. It is what the principles are and how we as—and our leaders and what the commitment of our leaders are.

And I would certainly agree with what I have heard today. I would say—suggest that this President's commitment to human rights is on par with what we had under President Clinton, who dramatically undercut our efforts in the human rights community when he made permanent Most Favored Nation status for China, which was one of the greatest losses, I would say, in my lifetime of human freedom because America went over to permanently establish this relationship with China.

I would put our problem with the secrecy that the chairman has indicated, however, for two causes that we have this secrecy now we did not have before. And although I would have to say we did have secrecy before, but we had secret policy before. Secret policy supporting of the Taliban before.

But I would suggest that this President has a stubborn streak and doesn't like criticism. And I think that he has been faced with a challenge. He has been faced with a challenge of dealing with a war on terrorism that was, you know, part of the legacy left him by the last administration and, but now we are in the fight, and he—that is one factor, but he does not like—he has—as a person, this is a personal failing of our President, in that he wants to do things in secret because he does not like criticism, and he is stubborn. And so I would suggest that that might be a personal failing that has some effect on whether or not we can have the influence on how things are done because we know about them.

Let me also note that rendition that we have heard about today—and the chairman has given us a good example. We had a hearing on it where the wrong man—there was an innocent man who was taken, I think, off the streets of Italy and then sent to

Syria, where he was tortured, and we unearthed some evidence, and of some others that were picked up and sent to Guantanamo who may have been innocent people. We should readily—unlike our President, we should as a nation be readily willing to accept the fact and admit the fact that we are imperfect and make mistakes, and that does not mean the goal is something you have to give up. But you have to be willing to admit those mistakes, to protect the rights of these particular individuals.

The rendition policy started under the Clinton administration, and in fact the person that we are talking about was caught and captured with the complete cooperation of the Italian Government. This is not the United States out on its own picking up this man and rendition that way. This is cooperation among our democratic allies. That cooperation was laid down in private agreements that were made during the Clinton administration. The President is just using the authority granted him by what was set up then.

That is no excuse ever to violate the rights of an innocent person, and when we do make a mistake and their rights are violated, we should admit it. But we should also protect those human rights of all of those potential victims if we let a terrorist loose and he goes back and bombs a railroad car filled with innocent people.

So please feel free to—I have made a couple of points here.

And, Mr. Roth, I made a—had a disagreement with you about Mr. Putin.

And please feel free to comment.

Ambassador SHATTUCK. Let me make a few comments initially. Thank you, Mr. Rohrabacher.

There is an awful lot on the table, and I have to say, the largest topic that you have raised is the question of responsibility for what happened on 9/11. And, of course, I don't sit here as an expert on that subject, but I do feel compelled to refer to the 9/11 Commission Report, which I think makes very clear that, as you quite rightly say, there have been mistakes that have been made in the past. But an awful lot of what happened in 9/11 and what has happened since in terms of the impact on human rights does fall at the feet of this administration. Now, that is not to say that the Clinton administration didn't commit mistakes. We all make mistakes. You quite rightly said we also need to admit mistakes.

But let me go to another topic that you raised, which I really do find a little surprising, which is the—I think you said at one point that Secretary Albright promoted ties with the Taliban and basically saw the Taliban as a potential ally of the United States.

Well, I can tell you that, first of all, the United States under the Clinton administration condemned the Taliban consistently, publicly, openly for one of the worst violators of human rights in the world. We certainly did this in the Human Rights Report—

Mr. ROHRABACHER. Was our foreign aid directed into Taliban-controlled areas of Afghanistan?

Ambassador SHATTUCK. Well, I mean, I—

Mr. ROHRABACHER. Well, then, that is what counts. You see. The words don't mean anything to people like the Taliban. But they noted that when they told us not to deliver a certain amount of aid to non-Taliban-controlled areas, the aid didn't get there, and then we delivered the aid to the Taliban. What was the real policy?

When I tried to find those answers during those years, I would tell you, for the last 4 years of the 1990s, I was here on this spot, right here insisting on information. And when you talk about secrecy, our policy on the Taliban was kept totally secret from what was going on, and just as I say, if we are ending up not giving supplies to the anti-Taliban areas and giving support to the Taliban, what are they going to think? Those words didn't mean anything.

Mr. DELAHUNT. Ambassador Shattuck, I am going to give you all the time you need to respond to the ranking member.

Ambassador SHATTUCK. Well, you know, I don't know whether we can get into a long discussion of what was going on with the Taliban in the 1990s and even the earlier period, of course, when we are talking about the effort to engage the Soviets when they were occupying Afghanistan. There is a lot of history here to be sure.

But I want to just be very clear on one thing. I am sitting here as your witness from that era on human rights, and I can tell you that, consistently and repeatedly and through diplomatic encounters in many different places, including Europe and other places, the United States was condemning in the strongest possible terms what the Taliban was doing to human rights in Afghanistan. So that is a very, I think, a very, very important point.

You know, on the question of secrecy and the point that the chairman made about the great importance of transparency in our policies and in our actions, I think this is a pervasive problem in the field of human rights. I think there are often human rights violations that take place abroad and certainly in our own country under the cloak of secrecy. It took enormous amount of effort to find out what was going on in some of the most abusive situations, whether it was Guantanamo or Abu Ghraib or anything else, and certainly the policies that were adopted that suspended or at least pushed aside the Geneva Conventions and some of the other most basic human rights treaties that—some of what we saw going on in the 2002, 2003 period.

Even today in The Washington Post, you know, for the first time, 6 years later, there is a revelation that there were some very brave attorneys and career attorneys in the Department of Justice and in the FBI who were making this very point, that we can't do all this in secret.

Now, you know, I would differ with you that there was secrecy in the Clinton administration comparable to what we have seen today. I just don't think that any objective criteria can bear that.

Mr. ROHRABACHER. For example, was the rendition agreement with Italy made public?

Ambassador SHATTUCK. I don't know about that. So I can honestly tell you—

Mr. ROHRABACHER. Well, that is very important—

Ambassador SHATTUCK. I am thinking about comparability.

Mr. ROHRABACHER. I think it is pretty comparable.

Ambassador SHATTUCK. And comparability in the area of rendition, which basically became a fairly standard practice during the last number of years, it was certainly to my—I knew nothing about it at the time.

Mr. DELAHUNT. Ambassador, can I interrupt you for a minute? I have a request.

Ambassador SHATTUCK. Sure.

Mr. DELAHUNT. And I am going to get to Mr. Flake in 1 minute. And we will get back to Mr. Rohrabacher.

We really don't have rules in this subcommittee. We just—it is a free flow.

Ambassador SHATTUCK. Free flow of information.

Mr. DELAHUNT. A free flow of information.

I get uneasy about any secret agreements without—particularly of consequence that implicate the potential for hostilities without some sort of imprimatur from the Congress, whether it be under President Clinton or the current administration or previous administrations. We are on the verge right now of discussions about a bilateral agreement between the United States and Iraq which would remove—which would end the U.N. mandate leaving American troops in Iraq, in my opinion, without the legal basis to be utilized in any combat operations whatsoever. And this administration has no intention to come to this Congress for authorization. This is what I am talking about in terms of secrecy. What concerns me is the role of Congress and its constitutional burden and responsibility to be part of these kinds of decisions in a way that reflects, I think, again, our constitutional—not prerogative, but responsibility to ensure that the checks and balances are out there.

Any comment from either one of you?

Ambassador SHATTUCK. Let me just say—and you very kindly gave me leave to leave when I must catch my plane for an engagement that I have this evening. And I can stay for somewhat longer, and I want to honor the questions of the subcommittee.

But very directly in response to that, I think you have illustrated, Mr. Chairman, as I tried to in my opening remarks and can do so again now, why this bipartisan, bicameral commission on human rights is so important. I can't think of a single piece of legislation in the field of human rights that is more important than the one that you have introduced.

And I hope other members of the subcommittee will look closely at it and ultimately cosponsor it, because what it does is to create a very reasonable, conservative model in the context of what was done in the Helsinki Commission of implementing and overseeing the obligations that the United States has in the field of human rights. And it will give this subcommittee, or those members of it who are on this commission, the kind of authority that the Congress clearly has and that you now can assert by enacting this legislation.

So I am very strongly in favor of it, and I think it is something that, whatever our differences may be with respect to, you know, what has happened at any particular time, going forward, this is a critical piece of legislation.

Mr. ROHRABACHER. If I could just intercede here because I guess it is my time still.

But that is essential in what we are talking about. And I certainly agree with the chairman 100 percent of the idea on transparency and secrecy and a free society; it is contrary to our inter-

ests. We should be able—if we believe in something, let's stand up for it.

I will tell you that for 4 years, I was—because of my involvement in Afghanistan earlier on, I had a personal tie to what was going on. I was in and out of that country trying to help what later became the Northern Alliance. I could not get, as a senior member of this committee, any of the documents from the State Department concerning our policy toward the Taliban. That was kept secret from the United States Congress.

Furthermore, our—the Afghan Embassy, which was controlled by non-Taliban Afghans, was shut down by the last administration; aid was channeled into Taliban areas.

And also, we organized, myself and Ben Gilman and some others, helped organize meetings between what was the Northern Alliance or what became the Northern Alliance, and the administration would hinder those meetings and putting people together. So I have to assume that there was a secret policy during the last administration that led—has led to the other problems we have.

That said, now let me just make a political point, because I do agree with these criticisms of the current administration. But it has led to say, let us talk about some fundamental principles, and the fundamental principles, yes, this administration is just cloaked in secrecy. But the last administration was as well. And during the Cold War, we had a great deal of this type of secret diplomacy going on with various non-democratic elements.

So maybe we should be doing better now, and that is the end of my time.

Thank you very much.

Mr. DELAHUNT. Mr. Flake.

Mr. ROTH. Could I—

Mr. DELAHUNT. Could I just ask you to hold because you are going to stay, and I want to give Mr. Flake an opportunity to pose whatever questions he may have?

Mr. FLAKE. Thanks.

I know it will be difficult to answer this without saying it is a compilation or all of the above, but if I could get a response from both of you as to what, not item, but what occurrence, I guess, or what action on our part has done the most to diminish our reputation around the world during this—since 9/11? Was it Abu Ghraib? Was it the invasion of Iraq itself? Was it—has it been the failure to enter into and abide by international agreements or commitments? Is it rendition? Is it Guantanamo?

Point to one, if you would, or rank them I guess, and that would give us some idea as to how quickly I guess we could progress, in your view, out of it or back to respectability.

I will start with Mr. Roth if you want to—you look to be ranking them one by one there on your paper.

Mr. ROTH. I will respond—is something I would like to get back to Mr. Rohrabacher on, but I will do this in the order the chairman designated.

Clearly the invasion of Iraq itself is a big part of the problem in that many people feel that it was not gone Security Council authorization, that whatever arguments of self-defense might have been made turned out not to be justified by the evidence. So that is a

problem. But that is a non-human-rights issue. So I am not going to dwell on that.

Mr. FLAKE. Was that recognized at the time, or has that kind of grown over time?

Mr. ROTH. In a sense, it doesn't matter, if the question is today, What does it take to redeem America's reputation? That is a scar.

My organization doesn't take a position on the war in Iraq, for or against it. So I am not going to dwell on Iraq.

In terms of the human rights issues, though, I wouldn't say Abu Ghraib, because Abu Ghraib did look like misbehavior on the night shift.

And I would distinguish that from the use of abusive interrogation that was clearly authorized from the top, the water boarding, the—to this day, the refusal to have the CIA abide by the very good rules the Army has adopted for itself; the regime that existed at Guantanamo, during a good part of its existence in which people were subjected to, at minimum, quite cruel conditions, ranging from extensive exposure to heat or cold, prolonged sleep deprivation, stress positioning, a number of things that taken together I think often did amount to torture. But even so, it amounted to prohibited cruel and inhuman and degrading treatment.

So I would say that one whole area is just the continued claim of a right to use a number of these techniques, which is a big problem. I think that could be ended if the Army rules were applied across the board and if there were some genuine effort to explore what went wrong and ensure that it doesn't happen again.

The other part is just Guantanamo is a symbol. And I think for most of the world, this symbolizes detaining people without trial. There are undoubtedly some pretty awful people in Guantanamo who are big time criminals and should be prosecuted. And to this day, I don't understand why the administration doesn't have faith in the American justice system to bring them to a regular Federal court or to a regular military court martial, prosecute them, and that way they can no longer say, "we are combatants," or the way Khalil Sheikh Mohammed says, "I am George Washington. I am doing just what George Washington used to do." He had the audacity to say that in his combatant tribunal hearing because he is not being prosecuted as a criminal or he is being prosecuted only before the substandard military commission but not a regular court.

So I think there is an urgent need to shut down Guantanamo. Insofar as people have committed crimes, prosecute them, but otherwise, let people go.

Mr. FLAKE. Ambassador Shattuck.

Ambassador SHATTUCK. Yeah, I largely agree with Ken's analysis.

I think the two points to be stressed here is, I think there are symbols which have—I mean, when you are talking about international public opinion of the kind that has been poled and has demonstrated the kind of loss—the loss of stature on the part of the United States, I think there are symbols that mean a great deal. They may not necessarily be the only elements. I would hesitate to put a label on these symbols as the most important ones.

But the biggest symbol is indeed Guantanamo. There is no doubt about it, it is the symbol that people see, and I think it has grown



over time. You know, it has become more of a symbol because it was, to some extent, understandable that in the heat of battle and the crisis in Afghanistan and all that was going on in the very early days, even though clearly there were human rights violations that were occurring, it was perhaps understandable that the United States would try to find some way of getting terrorists off the field of battle.

But as this has gone on, and the policies have been essentially not only not repudiated but enhanced, and we continue to have, as we did all through last year, debates about abusive interrogation techniques—is water boarding torture, things of that nature—the attorney general’s unwillingness to characterize water boarding as torture in his hearing, I think that is why the symbol has grown and there are many, many other aspects of why international public opinion is so negative.

Certainly the war in Iraq. But that is a very large topic, which is—which I don’t put specifically in the category of human rights. And so I think what we have seen—and this is why I have cited the article earlier about what the Justice Department attorneys revealed in the Inspector General’s report that is published in *The Washington Post* today: We have shot ourselves in the foot in so many different ways. We have tainted the evidence so that it is now not possible to try people in the way that really they need to be tried in order to resolve this issue.

So there is almost no way out of it, and that is a part of why we see the Attorney General in his confirmation hearings kind of shying away from characterizing acts of interrogation that might constitute torture because he wants to sort of protect those who may have been involved in all of this. So the evidence is tainted, and we have made it increasingly difficult to get out of all of this.

So that is why I think the world looks on at this catastrophic human rights problem that we have created as a self-induced problem.

Mr. FLAKE. Thank you.

Ambassador SHATTUCK. Mr. Chairman, thank you very much.

Mr. DELAHUNT. Thank you, Mr. Shattuck.

Let me just say that I agree with your analysis of Guantanamo. I dread the possibility of having created a situation where we have jeopardized a successful prosecution, where we have no credibility left, where military lawyers, including—I think it was Colonel Morris that discussed the—from his perspective, the political influence that was implicated in decision making that forced him to resign, that was recently supported by a decision by a Navy captain sitting on a particular case, that eliminated from any further involvement in the prosecution a general by the name of Hartmann, who is responsible for these trials.

And, you know, the old cliché, really, but a true one, justice delayed is justice denied. And in this particular case, I think that is what we are witnessing and observing. It is a disaster.

I intend to work with the ranking member to make an effort to go to Guantanamo and to interview directly inmates that are incarcerated there, after receiving the appropriate waivers of counsel, in our effort to begin to reconstruct, if you will, some semblance of

what we are about in terms of our respect for the rule of law. We have to make that effort.

But Ambassador, thank you. And——

Mr. ROHRABACHER. For the record, Mr. Chairman, I obviously disagree with about half of that.

Mr. DELAHUNT. I am not going to ask you which half.

Mr. ROHRABACHER. Thank you very much.

Mr. ROTH. On the question of prosecution, clearly the use of torture and course of interrogation has made prosecution much more difficult. But I wouldn't say it is impossible. I have spent quite a bit of time reading the transcripts from the Combatant Status Review Tribunal Hearing. And there is quite a bit of evidence that the government has that is not tainted, usually computers seized or cell phones seized or surveillance testimony or evidence. And the duty on the government is to make sure that it doesn't introduce any evidence that is derived directly or indirectly from the course of interrogation. But there is quite a bit of independent evidence. And to make a case of conspiracy to commit an act of terrorism or material support for terrorism——

Mr. DELAHUNT. Let me ask you, Mr. Roth, from what we have heard, and we have had a series of counsel, obviously with their own bias, that have come before this committee and represented to us that, in many cases, their clients have been either declared a non-enemy-combatant or no longer a continuing threat to the United States.

It is problematic as to whether they can be resettled or repatriated. And in too many of these cases, initially, there wasn't the kind of even cursory investigation. I just wonder—and I think the number I hear, and I don't know if it is accurate or not, there are some 500 detainees that have already been released. How can you make 500 mistakes?

Mr. ROTH. I am with you on that completely. I mean, there have been 750 people through Guantanamo. They were all supposed to be the worst of the worst. And you are absolutely right; 500 have already been released. Of the 250 who remain, another 90 or so are going to be released to Yemen. There is no claim they should be detained. The administration's claim reduces to about 125 or 150 who they say are dangerous or criminals. And the question is, What do you do with those people?

Mr. ROHRABACHER. Also, let us not forget when we are condemning the government actions here and that is that, in a current situation, where there are terrorists—and since 9/11, there have been a number of terrorist acts around the world in which hundreds of people have lost their lives. You know, we always just focus on 9/11 where we lost over 3,000 Americans, but around the world, we have seen it in Spain and in Britain and elsewhere where hundreds of people have lost their lives from a terrorist action directly relating to radical Islamic terrorists.

And the job of our authorities today is not a criminal justice job of proving that someone was engaged in this activity after the act has occurred. What they are—what we are trying to do now is to make sure that we prevent a terrorist attack so that hundreds of innocent people won't be killed and we act by—in order to prevent it, what we do is we take people into custody who seem to be—

there is evidence of some kind—otherwise we are just wasting our time and resources—that may be engaged in a plot to conduct a terrorist activity.

Now, our children, our families, innocent people's lives are at stake. This is not a criminal justice system in the initial action.

Now, what we do with those people who we correctly withdrew from society, took into custody, well, that is another issue and how we should deal with them. But certainly if you have some telephone conversation, and we should hear the telephone conversations between people who are plotting to murder hundreds of civilians, we should take them into custody before they conduct that terrorist operation and save those people's lives. I mean, that—when you talk about the Guantanamo and the people that we have incarcerated since 9/11, let us remember that some of them were actually guilty. Some of them were involved with terrorist plots, and in fact, we may have thwarted terrorist plots by getting information from them.

Mr. ROTH. I completely agree that it is important with terrorism not simply to act after the fact, but to try to prevent acts of terrorism. And I know that the Pentagon likes to say that, of the 500 people who have been released from Guantanamo, 36 have returned in some way to terrorism.

Now, you know, first of all, when you read the fine print, you see some of them have just become propagandists or whatever.

Mr. ROHRABACHER. It depends on whether it is 15 or 36, there are some people who end up—who have been released and gone back to terrorism.

Mr. DELAHUNT. And I want to note my exception to the accuracy of the remark by my friend from California, because we heard yesterday from the Professor Denbeaux and others that that is simply not accurate.

But let's accept it.

Mr. ROTH. But even if we were to take it at face value, a recidivism rate of 36 out of 500 is a recidivism rate that any prison system in this country would beg for. It is a very, very low recidivism rate. And you have to then weigh against those 36 let us say alleged unreturned terrorists, the number of terrorists who are being generated by the U.S. Government's use of detention without trial at Guantanamo, its use of secret CIA detention facilities, of its use of torture and other courses of interrogation. And I guarantee you that those abuses have generated a magnitude well beyond 36. If you just look at terrorist recruiting sites, they wave those U.S. abuses around as a way to get the next generation of terrorists.

Mr. DELAHUNT. If I can, Mr. Roth, even the former Secretary of Defense at a moment of clarity indicated that he was of the opinion that there were possibly more terrorists being created than were being either detained or eliminated or killed.

But it is—well, I will yield back to Mr. Rohrabacher.

Mr. ROHRABACHER. Well, recidivism, again, just remember that we are not talking about one crime. We are not talking about one person being damaged and then we need to deter that type of activity among other citizens. We are talking about terrorists who were not recruited because of some notion that the United States is too harsh on people at Guantanamo or even Abu Ghraib. People who

are out conducting these bombings hate our way of life. Their religious opinion is that the freedom that we find in the United States is contrary to what they believe that civilized society should be all about. They believe it should be based on their religious—these are religious fanatics. And when you go to Iraq, you will find that.

In Iraq, the people now totally understand that these religious fanatics, when they have taken over parts of Iraq that we have withdrawn from, they come in and start telling all the women they have got to wear burqas and the girls can't go to school; nobody can play music. And all of the sudden, they realize these are religious fanatics.

Well, the people who are conducting these raids on us and on other Western countries and killing all these people, they are not being recruited because of how we are exercising the war against terrorism. They are out to get us because they believe that we are infidels, and they do not believe that the type of freedom that we believe for men and women and individuals is consistent with what they believe God wants in this world.

So I am sorry. I don't—and that is no excuse for ever doing anything wrong—any pressure being used on an innocent person. We should—that is why I say, we should readily admit it if we have made a mistake and picked up a person who is innocent and pay them compensation.

But during a war with the type of fanatics that I am talking about, we could end up if we don't watch out with thousands of other innocent people murdered by bombs being placed in subways or something like that.

Mr. DELAHUNT. Would my friend yield for a moment?

Mr. ROHRABACHER. Certainly.

Mr. DELAHUNT. I think Ambassador Shattuck, in his final comments, indicated that—and I think you have heard me put forth the premise that it is understandable initially in the fog of war and that it is, I think, acceptable to detain, to protect the country, to do it in a vigorous and robust way.

But if there is no process that implicates a fair and equitable determination of the facts, and that is the problem, and it is clear that it did not happen in the case of Guantanamo.

And those that are speaking out now, as Mr. Roth and Ambassador Shattuck have indicated, are not necessarily Members of Congress but people that are familiar with the system. We heard—I think it was yesterday or the day before, Colonel Abraham, who was involved with the Combatant Status Review Tribunals and condemned it as a sham. This is the problem. We all are willing to protect our country and our national security. At the same time, it was a failure—and I particularly lay this to the Department of Justice. If they had consulted with the then Secretary Rumsfeld in a way that has put a stain on our national honor, it has eroded our credibility and has put us at risk, hasn't helped us, in terms of protecting ourselves and enhancing our relationships with nations and societies that we need.

This isn't just simply about our values and respecting human rights. It is about protecting us. And we failed, and we failed to have a process in place. And now, as Mr. Roth indicates, we have the FBI, in a report by the Inspector General of the Department

of Justice that is absolutely appalling—when the—Mr. Roth, I am sorry.

Mr. ROTH. If I could use maybe a political analogy in this political season. I think of the fight against terrorism as a fight for the swing vote. And by that I mean, there are lots of people with grievances out there. The vast majority are law-abiding people who will never take up arms and never kill a fellow citizen. We don't really have to worry about them.

On the other side of the spectrum there are the Osama bin Ladens of the world. They are confirmed terrorists. We are never going to dissuade them. All we can do is try to arrest them or stop them.

In my view, the fight against terrorism will either be won or lost by the swing vote, the people in the middle who have grievances and could frankly could go either way. They could either try to pursue their grievances through legitimate political means, or they could resort to violence and terrorism. And we need to be careful about, what does it take to tip that swing vote in the lawful direction.

And my fear is that things like Guantanamo and course of interrogation are losing us the swing vote.

Mr. Rohrabacher talked about the human rights applying mainly to non-democratic governments. The way that I see human rights applying in this realm is really through the Geneva Conventions. The way to understand the Geneva Conventions, those are human rights in a war context. And they make clear that we are past the era of total war. There are certain things you can't do, even if you are fighting the Soviet Army. You can't deliberately kill civilians obviously. You can't indiscriminately fire.

But for our purposes, you can't torture. You can't treat people inhumanly who are in custody. You can certainly shoot to kill if you are in a firefight. But you can only detain people with the degree of due process that is set forth in the Geneva Conventions.

And I think that the U.S. Government's failure to abide by those basic war rules even has hurt us by losing that swing vote.

Mr. ROHRABACHER. Do the Geneva Conventions cover people who are not wearing uniforms and conducting terrorist activities on civilian populations?

Mr. ROTH. Yes.

The part you are referring to would not. The third Geneva Convention, which deals with prisoners of war, would not be applicable here because for the most—al-Qaeda is not going to be a prisoner of war. They don't wear uniforms. They don't abide—

Mr. ROHRABACHER. And let us just note that when we—I say we. When the Taliban was driven out of Afghanistan, we had only a few people there. It was driven out by the people of Afghanistan themselves called the Northern Alliance, but we did have a few CIA people on the ground. And one of our only casualties was when we decided, in Mazar-i-Sharif—and I visited the actual fortress that this happened in, where we captured a number of these Taliban—excuse me—al-Qaeda fighters along with some Afghans, we treated them as is customary in Afghanistan. And that is, when someone surrenders in Afghanistan, it has become a custom over the years that they not at that time try to do something that will

injure or hurt their captors, because Afghans have never had the capability of maintaining prisons or prisoners over the centuries, and so that was part of their custom. So once someone has surrendered to you, you can rest assured through Afghan custom that they have surrendered and that you do not have to kill them or bind them up.

And, of course, the al-Qaeda fighters that were there in Afghanistan didn't abide by the rules. Surprise, surprise, the one casualty we had is when our CIA operative decided that they were going to be treated as Afghans treat their prisoners, which is very respectfully, I might add. And they instead—the al-Qaeda fighters, who were captured with the Afghans, hid guns and weapons in their clothing, and immediately when they had the chance, they rushed forward and killed this operative and many other, I might say, anti-Taliban Afghans that were there.

Now, they can't even respect the laws and traditions of their own hosts. They are not going to respect any of these laws, and I don't believe that we have the obligation under the Geneva Convention to respect them as we would any soldier in the field who is wearing a uniform who had gone along with the norms of battle or the laws of battle.

Mr. ROTH. You are right. It is a different set of rules. But the Geneva Conventions—not the third Geneva Convention, but things such as Common Article 3 apply regardless of whether you are a prisoner of war or a regular detainee. And the rules they apply are quite basic. For example, you can't torture somebody or treat them inhumanly.

And what I worry about—I am not under the illusion that if the U.S. respects the Geneva conventions, then suddenly al-Qaeda is going to do so reciprocally. That is not the case at all. But what I do worry about is that it is quite foreseeable that the United States could have adversaries who would respect the Geneva Conventions if the U.S. had a record of doing so. That could be North Korea. It could be China. It could be Iran.

Mr. ROHRABACHER. These are people who have uniformed soldiers. This is not terrorist operations.

Mr. ROTH. But you can't pick and choose. If you rip up the Geneva Conventions, they are not there when you need them.

Mr. DELAHUNT. If the gentleman would yield, I would point out the fact that it is many within the military, particularly retired military, names that are familiar to all Americans, that sent the letters to the congressional leadership imploring them to, you know, codify, if you will, in the field manuals because of concern about exactly the point that you are making, Mr. Roth, about protection for American soldiers.

Again, we are not doing this simply because it is some abstract value that appeals to our core sense of right and wrong, our moral value, if you will. It is because we want—we want to see terrorism end. And we want to be able to do it in a way that is intelligent, that doesn't generate generation after generation after generation. Let me—I think the point that you make about the cheapening of the term democracy is really a very valid one, and I think we have got to go back to speaking in terms of human rights, which are universal inalienable rights that every human being should enjoy be-

cause that goes to the genuine practice, if you will, of what we understand to be democratic principles.

I mean, everybody is a democrat now. I mean, you, I think, you eloquently put that before us. And when we at the same time don't continue to insist on due process, we start to slip along that slippery slope and use our ability to argue.

You know, Mr. Rohrabacher talked about, in the Arar case, I think he was—maybe I am wrong. But I think he was confusing that with the—I think it is Abu Omar case that was in Italy. This had nothing—the Arar case had nothing to do with Italy, had nothing to do with the CIA. But when we had the Attorney General of the United States make a statement that says to send to Canada would be prejudicial to our interest—I want to get back to the whole issue of transparency. You know, this administration has classified more documents and has utilized the term “security,” has utilized the term—you know, has utilized “state secrets” I believe to preclude them from being the object of criticism and embarrassment. And it is going to come out. It is going to eventually become part of the historical record. And we have requested documents, and we have requested the appearance of certain witnesses, some at the very highest level, and they have failed to appear. They will appear at some point in time because I think it is important for the historical record that it become very clear to the American people and to the world. I think it is incumbent upon us to do that.

Do you care to make a comment?

Mr. ROTH. I completely agree. I think that the most important thing this Congress could do in the next term would be to establish a 9/11 style commission that would establish this historical record. And it should have subpoena power, and it should pursue people like David Addington if they refuse to come. But it is critical that this secrecy be exposed because, frankly, my entire organization is built on the premise that people behave better when they are watched. And if you get away with the secrecy, you will get away with abuses. It becomes clear as a matter of principle that if ultimately the spotlight will be shined, you can make sure in the future people will not repeat these kinds of abuses.

Mr. ROHRABACHER. For the record, I agree with that.

Mr. DELAHUNT. Mr. Rohrabacher agrees with Mr. Roth. I want that duly noted. And I want to talk about democracy promotion, and I hope you don't have another engagement, and I don't want to hold you up.

You know, we hear from Iran, for example, “Don't send us money.” It stigmatizes us. You know, I support NED and the funding that goes through NED, NDI and the IRI. Do you have any opinions as to whether that is a mixed blessing or, is it an overall net plus, or is it a negative? I hear the same thing from democracy activists from Cuba.

Mr. ROTH. In the case of Iran, there is no question that money going to, for example, broadcast into Iran, you know, in Farsi a free message that is not censored by Ayatollah, that is a very valuable thing to do.

I think the problem has arisen when the administration announces with great fanfare, you know, we are sending X million dollars into Iran to help NGOs overthrow the government, or some-

thing to that effect. I mean, that becomes a huge stigma. There is no way the local groups can take that money. If they are somehow associated with the United States Government, they lose all credibility and in fact are subject to prosecution. So that seemed to be more about politics than about really helping things in Iran. And I think that the U.S. Government should be looking for things they can do on the outside, because there is much that can be done of the broadcasting nature.

But it is not helpful at this stage for there to be big announcements about money being channeled into NGOs in Iran. They don't want it. It is hurting them. There are smarter ways to help promote democracy and human rights in that country.

Mr. DELAHUNT. Mr. Roth, thank you so much. I have read your testimony. Again, it is informative and it gives us, I think, good guidance.

Thank you for the work that you do and for that of your organization.

[Whereupon, at 4:10 p.m., the subcommittee was adjourned.]

