amnesty international

UNITED STATES OF AMERICA
Human rights v. public relations

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A recent report sponsored by the non-partisan US think tank, the Council on Foreign Relations (CFR), concluded that the US government is failing to counter the fact that "around the world, from Western Europe to the Far East, many see the United States as arrogant, hypocritical, self-absorbed, self-indulgent, and contemptuous of others".[1] On the day of publication, the White House responded that it will set up an Office of Global Communications to play a coordinating role in countering such perceptions. As the President's spokesman put it, "better coordination of international communications will help America to explain what we do and why we do it around the world."[2]

In the area of human rights, at least, the USA will need to move beyond public relations and into substantive change if it wishes to improve its reputation abroad. There are some immediate ways in which it could begin to do this, while at the same time promoting and upholding international law.

Almost 600 foreign nationals from over 30 countries are being held at the US Naval Base in Guantánamo Bay, Cuba. The US Government has paid lip service to the Geneva Conventions - the principal and almost universally ratified instruments of international humanitarian law - but refused either to grant any of the detainees prisoner of war status or to have any disputed status determined by a "competent tribunal" as the Conventions require. The prisoners are held in cells smaller than the minimum recommended by the American Correctional Association. The use of shackles appears to have been excessive, the out-of-cell time minimal. Some of the detainees have now been held without charge or trial for seven months. Senior government officials, including President Bush, have been less than respectful for the fundamental rule of the presumption of innocence, collectively labelling the group as hard-core "terrorists". Interrogations, with a view to possible prosecutions as well as for intelligence-gathering purposes, have been ongoing for months. Yet none of the detainees has had access to legal counsel.

[1] *Public diplomacy: A strategy for reform.* A report of an Independent Task Force on Public Diplomacy sponsored by the Council on Foreign Relations. 30 July 2002.

[2] Ari Fleischer, White House press briefing, 30 July 2002.

Meanwhile, still looming is the prospect of trial by military commission, executive bodies with the power to hand down death sentences; in violation of international law, the commission's decisions cannot be appealed to a higher court.

Foreign nationals held at Guantánamo Bay have thus far been kept out of the reach of the US courts. In the latest court ruling on the case, US District Judge Colleen Kollar-Kotelly concluded that Supreme Court precedent, specifically the 1950 *Johnson v Eisentrager* decision, dictated such a finding. However, she noted that the *Eisentrager* ruling had itself not had a clear run through the courts, with one federal court overturning another's decision before itself being reversed by a divided Supreme Court. The three *Eisentrager* dissenters, quoted by Judge Killar-Kotelly, wrote that by depriving the foreign nationals in that case "of the privilege of *habeas corpus* solely because they were convicted and imprisoned overseas, the Court is adopting a broad and dangerous principle".[3] The US administration is pursuing that principle half a century later in the case of the Guantánamo detainees, to the detriment of the USA's reputation and of respect for international law.

While Judge Killar-Kotelly concluded that she had no jurisdiction over the Guantánamo detainees, she also said that her opinion "should not be read as stating that these aliens do not have some form of rights under international law."[4] In February, another federal judge had given a similar hint: "The Court understands that many concerned citizens, here and abroad, believe this case presents the question of whether the Guantánamo detainees have *any* rights at all that the United States is bound, or willing, to recognize. That question is *not* before this Court and nothing in this ruling suggests that the captives are entitled to no legal protection whatsoever."[5]

[3] *Johnson v Eisentrager*, 339 U.S. 763 (1950). The petitioners in that case were 21 German nationals captured in China and tried and convicted there by a US military commission for violating the laws of war.

[4] *Rasul v Bush*, US District Court for the District of Columbia, 31 July 2002.

[5] *Coalition of Clergy v Bush.* Order dismissing petition for writ of *habeas corpus* and first amended petition for writ of *habeas corpus*. US District Court, Central District of California. 21 February 2002.

On 3 June 2002, five months after it started transferring detainees to Guantánamo Bay, the USA signed the Inter-American Convention Against Terrorism. Article 15 of the Convention states that "The measures carried out by the states parties under this Convention shall take place with full respect for the rule of law, human rights, and fundamental freedoms," and "Any person who is taken into custody... shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law." Given the US government's unchanged stance on the Guantánamo detainees, the conclusion of the Council on Foreign Relations that, in the Middle East, Europe, Asia and Latin America many people "do not trust what we say because they feel our words are contradicted by our policies", is given further relevance. As is Secretary of State Powell's assertion in March that the US "will not relax our commitment to advancing the cause of human rights". Assistant Secretary for Democracy, Human Rights and Labor, Lorne Craner, joined him and gave assurances that the "US Government is deeply committed to the promotion of universal human rights".[6] In similar vein, in his State of the Union Address in January, President Bush promised that "America will always stand firm for the non-negotiable demands of human dignity", including the rule of law.

The human rights guarantees contained in international law, including the provisions of the International Covenant on Civil and Political Rights (ICCPR), which the USA ratified in 1992, apply to persons subject to the jurisdiction of a state party even abroad. Article 2(1) of the ICCPR states: "Each State Party to the present Covenant undertakes to respect and to ensure to *all individuals* within its territory and *subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind", including on the basis of national origin (emphasis added). Article 9(4) of the ICCPR states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Human Rights Committee, the expert body established by the ICCPR to oversee implementation of the treaty, has stressed that this "important guarantee... applies to all persons deprived of their liberty by arrest or detention".[7] Indeed, it has stated that this right is non-derogable, even in states of emergency.[8] The Committee has made it clear that the ICCPR applies to places outside the territory of a state party which are under its control.[9]

[6] Both the Secretary of State and the Assistant Secretary were speaking at the Release of the Country Reports on Human Rights Practices for 2001. US State Department, Washington, DC. 4 March 2002.

[7] Human Rights Committee. CCPR General comment 8. 30 June 1982.

[8] General Comment no 29. Paragraphs 11 and 16. CCPR/C/21/Rev.1/Add.11. 31 August 2001.

[9] See, for example, Concluding observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/79/Add. 93, 18 August 1998, para 10.

Amnesty International put all this and more in a 61-page memorandum sent to the US Government in April.[10] At the same time, the organization renewed its request, first made in January, for access to the Guantánamo detainees. The organization has not received an acknowledgment of its requests, nor any response to the recommendations made in its memorandum or questions raised in an accompanying letter.

The Council on Foreign Relations report recommended that the US Government adopt an "engagement approach that involves listening, dialogue, debate and relationship-building". It added that the government should pay "special attention to relations with non-governmental organizations [and] international organizations".

The concerns of other human rights bodies have also not been acted upon. On 23 July 2002, the Inter-American Commission on Human Rights of the Organization of American States repeated the request it first made to the USA on 12 March, to "take the urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal". The Commission stressed that "it is not sufficient for a detaining power to simply assert its view as to the status of a detainee to the exclusion of any proper or effectual procedure for remedying that status". The government has so far refused to comply with the Commission's request.

[10] *Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay*. AI Index: AMR 51/053/2002, April 2002.

There are other, equally urgent, matters for the USA to consider. Recent and forthcoming executions in violation of international law are cases in point. The USA has, of course, frequently been criticized in international fora for its continuing resort to judicial killing in an increasingly abolitionist world, and has responded that the death penalty is an internal matter to be determined by public opinion and constitutional constraints.[11] It is noteworthy, then, that the CFR report says: "The United States must feel free to criticize undemocratic or corrupt regimes, especially on human rights abuses... This is admittedly delicate because blunt criticism of regimes - especially those we directly or indirectly support - are likely to be resented as "interference in domestic affairs". "Quiet diplomacy", the CFR report says, "is essential in pointing out to foreign leaders that abuses of human rights and other undemocratic actions will undermine bilateral relations." This is no less true when the violator is the United States.

[11] For example on 6 June 2002 the US Ambassador to the Organization for Cooperation and Security in Europe (OSCE) said to the OSCE Permanent Council: "With all due respect to our EU colleagues, I would note at the outset that there is no OSCE commitment prohibiting use of the death penalty, and that international law clearly permits the imposition of the death penalty. [..] polls indicate that a majority of Americans support the death penalty..."

The execution of Mexican national Javier Suárez Medina in Texas on 14 August has damaged US relations with Mexico. Indeed, following the execution, President Vicente Fox of Mexico, who had personally called for clemency for Javier Suárez, cancelled a trip to Texas during which he had been scheduled to meet President George Bush. A spokesman for President Fox suggested that "the cancellation of this important presidential visit will contribute to a strengthening of the respect by all states for the rule of international law". Like most of the other 100 or so foreign nationals on death row in the USA, Javier Suárez was never informed of his right, under the Vienna Convention on Consular Relations, to contact his consulate for assistance. It is not difficult to imagine the outrage that would be expressed by the USA in the event of the same thing happening to one of its own nationals abroad. In June 2001, the International Court of Justice (ICJ) found that the USA had breached its Vienna Convention obligations in the case of two German nationals, and must allow review and reconsideration of similar cases. The US State Department's intervention in the Suárez case consisted of expressing its "regrets" to the Mexican government for the treaty violation and asking the Texas Board of Pardons and Paroles to "give specific attention" to that violation when considering Javier Suárez's petition for clemency.[12] It must be clear to the State Department by now that apologies are not enough in such cases and moreover that to rely on Texas clemency procedures is to rely on procedures described by a federal judge in 1998 as "extremely poor" and less merciful than "the flip of a coin".[13] True to its past record, the Board voted 17-0 to reject clemency for Javier Suárez, and the USA's international human rights reputation took another serious blow.

Joining Mexico's interventions on behalf of Javier Suárez were the governments of 16 other countries.[14] The majority of them had signed on to a brief urging the US Supreme Court to halt the execution and hold a full hearing to resolve the legal implications of the treaty violation in this case. Other calls for the execution to be prevented came from the United Nations High Commissioner for Human Rights, the UN Sub-Commission on the Promotion and Protection of Human Rights, the Inter-American Commission on Human Rights, and the European Union. No amount of public relations can gloss over the fact that the USA's refusal to heed their appeals resulted in an irrevocable violation of international law.

The report of the Council on Foreign Relations noted that many people are critical of "what they see as a unilateral approach to international affairs" on the part of the United States. T.J. Jones recently paid the ultimate price for such an approach, when he was put

[12] Letter from William R. Taft IV, Legal Advisor, Department of State, Washington, DC., to Gerald Garrett, Chairman, Texas Board of Pardons and Paroles. 5 August 2002.

[13] See *Killing without mercy: Clemency procedures in Texas* (AI Index: AMR 51/85/99, June 1999).

[14] Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Panama, Paraguay, Poland, Slovenia, Spain, Switzerland, Uruguay and Venezuela.

to death in the USA on 8 August for a crime committed when he was 17 years old. Toronto Patterson is due to be put to death on 28 August for a crime committed at the same age. There is almost no other country in the world where he would be facing this prospect. For the international community has agreed that the use of the death penalty against child offenders, people who were under 18 at the time of the crime, is unacceptable and an unequivocal violation of international law. One hundred and ninety one countries have ratified the Convention on the Rights of the Child, one of the treaties which contains this non-derogable prohibition. The USA -- which although not a state party to the Convention is a signatory to it, and thereby obliged not to do anything which would undermine its provisions -- has executed 11 child offenders since 1998, more than two thirds of the known world total in that period.

The execution of Napoleon Beazley on 22 May 2002 for a murder committed when he was 17, ignored appeals from the United Nations, the Inter-American Commission on Human Rights, the Council of Europe, the European Union, and seven Nobel Peace Prize winners. His execution went ahead in the same month that the US described itself as "the global leader in child protection" at the UN General Assembly Special Session on Children. Again, while the Council of Foreign Relations stressed that "foreign perceptions of the United States are far from monolithic...there is little doubt that stereotypes of the United States as arrogant, self-indulgent, hypocritical, inattentive... are pervasive and deeply rooted". At a private luncheon with other dignitaries during the UN Special Session, former South African president Nelson Mandela was reported to have said: "If the US continues to act as if it's the only country in the world, it will increase chaos around the globe."[15] Or to put it another way, as a senior US federal judge did in a recent opinion: "The United States cannot expect to reap the benefits of internationally recognized human rights - in the form of greater worldwide stability and respect for people - without being willing to adhere to them itself."[16]

When any state, let alone a country as powerful as the USA, insists on its right to adopt a selective approach to international standards, the integrity of those standards is eroded. Why should any other state not then claim for itself the prerogative to adhere to only those portions of international human rights law which suit its purposes?

The Council on Foreign Relations report noted that the role of US ambassadors "has become increasingly important" in imparting the message of the USA. It is worth recalling, then, a brief filed in the US Supreme Court in 2001 on behalf of nine former

[15] Chicago Tribune, 19 May 2002.

[16] *Beharry v Reno.* Amended memorandum and judgment. US District Court, Eastern District of New York, 22 January 2002.

senior US diplomats. In it, the nine argued that the USA's use of the death penalty against people with mental retardation had "become manifestly inconsistent with evolving international standards of decency". Continuing to execute such defendants, the brief asserted, would "strain diplomatic relations with close American allies, provide ammunition to countries with demonstrably worse human rights records, increase US diplomatic isolation, and impair the United States foreign policy interests". If this is true of the execution of people with mental retardation -- which on 20 June 2002 the US Supreme Court ruled unconstitutional, noting the "overwhelming" disapproval of such executions "within the world community" -- it can be no less true in relation to the execution of child offenders, a practice prohibited under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, and now virtually unknown outside of the United States.

The CFR report stated that "the purpose here is not to increase US popularity abroad for its own sake, but because it is in the US national interest". In view of what it saw as the negative perceptions of the USA abroad, the authors asked themselves "a fundamental, if obvious, question: What difference should it make to us that large numbers of foreigners hate, distrust, scorn or resent us?" "In answering this question", the report continued, "an essential starting point is to recognize that US foreign policy is weakened by a failure to include public diplomacy systematically in the formulation and implementation of policy. Examples of misunderstood or misguided policies include the rejections of the Kyoto Protocol on global warming, the treaty to ban anti-personnel land mines, the agreement to create the International Criminal Court, and the Genocide Convention."[17]

The USA was one of only seven states to vote against the adoption of the Rome Statute of the International Criminal Court in July 1998. Throughout the process of establishing the Court - which is being established to bring to justice people accused of the worst crimes known to humanity, including genocide, crimes against humanity and war crimes - the United States has sought an exemption for all US nationals from the Court's jurisdiction. The US administration has claimed that the Court could be used to bring politically motivated prosecutions against their nationals. Amnesty International and the majority of the international community which has either ratified or is in the process of ratifying maintains that the Rome Statute contains substantial safeguards to ensure that such a situation would not arise and repeatedly remind the US that the Court would only be able to investigate and prosecute a case when the national courts are unable or unwilling to do so. Despite these assurances, the current US administration has sought to undermine the Court by (1) seeking and obtaining a UN Security Council resolution that purports to exempt US nationals from the jurisdiction of the International Criminal Court for crimes committed in connection with UN established or authorized operations; (2) demanding

[17] Forty years passed between the USA signing the Genocide Convention and ratifying it.

that all states enter into bilateral agreements with the US committing not to surrender US nationals to the Court - those states that refuse have been threatened with withdrawal of US military aid; and (3) taking the unprecedented step of repudiating its signature of the Rome Statute, which was signed by President Clinton on 31 December 2000.

To the US stance on the ICC and the other examples given in the CFR's list above could be added the USA's record in relation to the:

- **International Court of Justice**. Apart from so far failing to take the necessary measures to comply with the ICJ decision on the issue of consular rights and capital defendants, the USA was already one of only two countries to have ignored an ICJ ruling[18] (the other being Iran);
- **Inter-American Commission on Human Rights**. Aside from ignoring the Commission in relation to the Guantánamo detainees, the USA continues to disregard its call for individual executions to be halted while it examines the prisoners' claims. For example, in 2001, the US government executed federal death row prisoner Juan Raul Garza despite the Commission's finding that the introduction of evidence at Garza's sentencing of his involvement in unsolved crimes for which he had never been tried or convicted had been "antithetical to the most basic and fundamental judicial guarantees". The Commission concluded that Garza had been sentenced to death "in an arbitrary and capricious manner" and that his execution would be a "deliberate and egregious violation" of US obligations under international law. The same thing occurred at the trial of Javier Suárez Medina, but he was killed before the IACHR could examine the facts of his case;
- **American Convention on Human Rights**, which the USA has failed to ratify 25 years after signing it;
- **Geneva Conventions**, as outlined above with respect to the Guantánamo detainees;
- **Vienna Convention on Consular Relations**, in particular as it impacts on foreign nationals in the USA accused of capital crimes;
- **Convention on the Elimination of All Forms of Discrimination Against Women**. The USA is one of only 23 countries not to have ratified this Convention;
- **International Covenant on Civil and Political Rights**, which the USA has ratified, but agreed to be bound by only to the extent that its restrictions on the death penalty and its prohibition on torture or other cruel, inhuman degrading treatment or punishment match its own constitutional constraints;

[18] The USA refused to recognize the jurisdiction of the ICJ when Nicaragua denounced US-sponsored military and paramilitary activity against the Sandinista government which led to serious human rights abuses. The USA subsequently used its power of veto to prevent the UN Security Council taking action to implement the ICJ's 1986 ruling on the Nicaraguan case.

- **International Covenant on Economic, Social and Cultural Rights**. While 145 countries have ratified this treaty, the USA has not, 25 years after signing it;
- **Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment**, to which the USA attached a number of "reservations" and other conditions upon ratification. The Committee Against Torture, the expert body established by the Convention to oversee its implementation, has asked the US Government to withdraw these reservations. The US Government has failed to do so and has ignored other recommendations by the Committee, such as to prohibit the remote-controlled electro-shock stun belt, widely used in the USA;
- **Optional Protocol to the Convention Against Torture**. This Protocol aimed at providing a system of unannounced visits to places of detention such as police stations and prisons was approved by the UN Economic and Social Council on 24 July 2002 despite US opposition;
- **Convention on the Rights of the Child**. In May 2002, Somalia signed the Convention, and indicated its intention to ratify it. Once it does so, becoming the 192nd state party to the Convention, the USA will be the only country not to have ratified this fundamental treaty.

The CFR report suggested that "the credibility of an American message will be enhanced significantly when the US position does not appear unilateral, and when we appeal to international legitimacy and consensus about the principles we are defending". International consensus and aspirations are contained in the very treaties and other international instruments that the USA is so reluctant to apply to itself.

The Council on Foreign Relations also suggested that "persuasion begins with listening". The USA should listen to the appeals for it to respect international law. The execution of Toronto Patterson on 28 August should be stopped, and the Guantánamo detainees granted access to legal counsel and the courts. More generally, the USA should ensure that it moves beyond public relations into genuine respect for international law and standards.

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