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US stand against torture: firm enough?

As America takes aim at terrorists, international law - and a core US value - may hang in the balance.

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Is the United States engaging in torture? Most US officials wouldn't hesitate to state that torture - the intentional inflicting of severe pain or suffering, physical or mental, to obtain information - is unlawful and morally unacceptable.

Yet 10 months after the stunning revelations of abuse at Iraq's Abu Ghraib prison, questions about the interrogation of suspected terrorists are again stirring debate in political, legal, and military circles.

What fuels concern, some say, is that various government memoranda since 9/11 related to torture and the rules of war send a signal that the norms are different than in the past, and that new standards for interrogation are not yet clear. At the same time, some in legal and political circles are suggesting that torture could be justified under certain circumstances - a position others view with alarm.

Even as the Army sentenced reservist Charles Graner Jr. to 10 years on Saturday for his ringleader role at Abu Ghraib, stories continued to surface. The Justice and Defense Departments are investigating FBI complaints of abusive military methods at the prison camp at Guantánamo Bay. Press reports say close to 20 prisoners have died in US custody at other sites, and "ghost detainees" are being held by the US outside the knowledge of the International Committee of the Red Cross. Reported practices at these sites range from sexual humiliation to waterboarding, which makes a prisoner think he is drowning.

In a poll conducted early this month by Gallup/CNN/USA Today, the US public expressed strong disapproval of such practices.

Both President Bush and his attorney general nominee, Alberto Gonzales, say they abhor torture and that the US does not engage in it. Yet other leaders - from Republican Sen. Lindsay Graham to retired Army Gen. John Shalikashvili, former chairman of the Joint Chiefs of Staff - suggest that the country has lost the moral high ground.

Legal experts acknowledge that defining torture is a difficult task, but say that the Bush administration's reframing of the legal context for US policy sparked the debate. Before 9/11, the US followed the Convention Against Torture and the Geneva Conventions on rules of war. Memos by Mr. Gonzales, counsel to the president, and Justice Department staff have since argued that the US faces an unprecedented situation - fighting an enemy that violates the rules of war, an enemy that does not merit the protection of the rules.

In a January 2002 memo, Gonzales called parts of the Geneva Conventions "quaint" and "obsolete." Although Secretary of State Colin Powell vigorously protested, Mr. Bush directed that detainees at Guantánamo, Afghanistan, and other secret sites be held as unlawful combatants unprotected by the conventions, though "treated humanely."

The most strenuous objections have come from those with military experience.

In a recent letter to Congress, General Shalikashvili and 11 retired military officers wrote: "Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law." The letter contends that recent detention and interrogation polices have undermined intelligence-gathering and increased risks facing US troops overseas.

In August 2002, a Justice Department memo defined torture so narrowly that it eliminated anything short of inflicting pain equal to that "accompanying serious physical injury such as organ failure, impairment of bodily function, or even death." In the wake of public outcry, the department last month replaced that definition with a broader one, though critics charge that loopholes remain. And last month the White House pressed Congress to drop legislation that would have imposed restrictions on the use of extreme interrogation measures by intelligence officers.

The US is using torture, says Alan Dershowitz of Harvard University Law School, who deplores what he calls the hypocrisy of official statements on the topic. A better method, he suggests, would be to legitimize torture in limited instances, such as "ticking bomb" scenarios when a prisoner may have information that could prevent an impending disaster.

Requiring the government to seek "torture warrants" from a judge, he argues, would at least provide some oversight.

Others reject his proposal, saying not only is torture morally wrong, but also it seldom yields good information. "People will tell you anything to stop the torture," says Michael Grodin, a psychiatrist at Boston University who has written about the use of torture and treated many victims. The Army's intelligence manual also says coercion yields questionable results.

"The prohibition against torture must remain - it is absolute," says Hurst Hannum, professor of international law at Fletcher School of Law and Diplomacy in Medford, Mass. "The real question is whether there will be standards, and if additional pressures short of torture are appropriate in certain cases, then we need to let Congress and everyone else know what those standards are.... There has to be some decision as to what kind of a society we are."

Many in the legal community see America's values and its reputation at stake. "The standards of interrogation have been muddied ... since the invasion of Afghanistan," says Washington lawyer Eugene Fidell, president of the National Institute of Military Justice. "The administration has done incalculable damage with all the bobbing and weaving ... treating as debatable things that should not be debatable. I don't think our country is willing to give up its value system."

Others, though, insist the Bush administration is being clear that torture is not permitted. "There are always people who will go beyond their authorization," says John Yoo, a former Justice Department lawyer who helped shape the memos. Local police departments and prisons regularly face similar problems, he adds.

The administration is taking care to specify policy clearly, says Mr. Yoo, now a professor at UC Berkeley's Boalt Law School. He points to the working group that developed Defense Department guidelines for interrogators at Guantánamo.

Yet recently released FBI complaints about military practices there pose serious questions about what is seen as acceptable. And the New England Journal of Medicine recently reported that military medical personnel were inappropriately helping tailor interrogations to the physical and mental conditions of detainees.

According to Yoo, tougher interrogation measures are called for because they are "the most effective means of getting information to prevent further attacks." Dr. Hannum, for his part, prefers that intelligence officers receive more language and other training, rather than relying on

"torture lite" tactics against people who may or may not be guilty or possess information of value. He also worries that, with talk of a perpetual war on terror, practices instituted by the US could become a permanent part of the criminal justice system.

Perhaps the murkiest areas involve CIA interrogations at secret overseas sites, as well as the practice of sending some captives to countries such as Syria and Egypt, where they are likely to be tortured - a practice that is illegal in international law.

The most visible case involves Canadian citizen Maher Arar, who in September 2002 was detained by US agents during a stopover at JFK airport in New York, accused of terrorist connections, and sent by private plane to Syria. A father of two, he had emigrated from Syria to Canada as a teenager. Mr. Arar was tortured over a 10-month period, until Canadian officials finally won his release. No charge was ever made against Arar, and Canada has filed suit against the US attorney general.

As such cases come to light, military and legal experts say, they sully America's reputation as a promoter of universal human rights and even endanger US citizens around the world. The US, they argue, needs to treat others as it would expect others to treat Americans. Until recent years, the Army taught its interrogators that they should use only those methods that would be considered lawful if an enemy used them on Americans.