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## **The New Debate on Torture - A Challenge for Human Rights Education**

Human Rights Education (HRE) involves more than knowledge of rights and wrongs. It developed to enable individuals to act in an informed way to protect human rights or to prevent human rights violations. HRE is therefore both empowering and restraining in order to protect human dignity. Freedom from torture and other cruel, inhuman or degrading practices is central to human dignity. This article starts from the universal and absolute prohibition of torture under international human rights law. While considering the contradictive relationship between war and torture the article focuses on the war against terror as defined by the US administration as "new type" of warfare "that requires" a "new thinking in the law of war". From this point of departure the article elaborates the challenges to human rights education developing from the debate on the legalization of torture. While comparing the discussion and application of law in Germany and U.S.A. the author argues for a more coherent international human rights protection system and for the establishment of a comprehensive accountability mechanism within international human rights law. Particular attention will be paid to artificial loopholes in international law which facilitate a lack of accountability. The article also focuses on the arguments for legalizing and legitimating torture so as to highlight how HRE can be employed to foster the normative understanding of human rights such as the right to freedom from torture. By highlighting the moral, political, legal and social dimensions to human rights standards, it will be shown that HRE can help to close loopholes in international law and counteract arguments against the absolute prohibition of torture.

### **Keywords:**

Torture, human rights education, coercive interrogation, Torture Debate, Torture Debate in Germany, Torture Debate in the USA, war on terror, Guantánamo, torture in Iraq, role of Human Rights Education

## **1 Introduction**

A common proverb suggests that knowledge is power. Human rights education demands more than sole knowledge about rights and wrongs. Human rights education was designed in order to make those educated able to act in accordance with their knowledge - either to restrain from violations or to claim human rights for their protection. Human rights

education is therefore seen as restraint and as empowerment and in this regard the United Nations General Assembly states that

"human rights education involves more than providing information but rather it is a comprehensive life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect within a democratic society."<sup>1</sup>

One core element of the human dignity is to be free from torture and other cruel, inhuman or degrading practices. Article 1 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person."<sup>2</sup> This internationally agreed prohibition of torture further outlaws any possible justification while stating: "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."<sup>3</sup>

It does not surprise, that the internationally agreed prohibition of torture bans any kind of justification, especially the state or threat of war. The word torture comes from the French *torquere* with its roots in the Latin *tormentum*, which means to twist or to bring in disorder. The German words for torture are *Folter* or *Marter*. The latter has its English equivalent in *martial* which derives from the French *martial* that roots in the Latin *martialis*, meaning acts belong to warfare and the God of war Mars. Because torture and war were seen as interrelated the international community disconnected and outlawed both. The absolute prohibition of torture international human rights law de-legalized torture and de-legitimized its use.

But what was possible in the aftermath of the Second World War gets challenged by the global war on terrorism. The today Attorney General of the U.S.A. and in that time White House Legal Council, Alberto R Gonzales, stated in 2002, that this "new type of warfare ... requires a new approach to our actions towards captured terrorists"<sup>4</sup> and President Bush required a "new thinking in the law of war."<sup>5</sup> This kind of new thinking produced a debate about legalizing torture via "torture warrants", as proposed by distinguished Harvard professor Alan Dershowitz<sup>6</sup> or the legitimization of coercive interrogation methods as "lesser evils", as suggested by another renowned Harvard scholar and director of the Carr Center for Human Rights Policy at Harvard University, Michael Ignatieff.<sup>7</sup>

In Germany a public debate followed a kidnapping and murder case in 2003, where the second in command of the Frankfurt am Main police had ordered threats and the actual use of physical and psychological violence during interrogations. Directly following publicity about this incident, the president of the association of German judges stated that under certain circumstances, such as to prevent terrorism, torture was a last resort, but a permissible one.<sup>8</sup> The Federal minister of justice initially conceded that when police officers used torture, an emergency might justify the means.<sup>9</sup> The debate enjoyed a renaissance when a German professor and instructor at one of Germany's top two military officer training schools in Munich,

Michael Wolffsohn, repeated the arguments of the Dershowitz-Ignatieff-Debate and argued for a distinction between illegal torture but its permissible use in cases of emergency and necessity. Wolffsohn attracted controversy in Germany after he stated in a TV interview: "if we attempt to counter terror with gentlemanly methods, we will fall."<sup>10</sup>

This article will reflect about both cases in order to show how this torture debate puts human rights in danger and challenges human rights education in particular. The article argues for a more coherent international system of human rights protection and the establishment of a comprehensive system of accountability in international human rights law. In this regard the article will have a special focus on artificial loopholes in international law in order to escape responsibility. The article with furthermore focus on the arguments used in the debate about legal and legitimate torture in order to explain how human rights education can foster the normative understanding of human rights such as the right to be free from torture. It will be shown that human rights education in this concern will be able to implement human rights standards in their moral, political, legal and social dimension to close loopholes in international law and to deconstruct arguments against the absolute prohibition of torture.

## **2 The Torture Debate - General Remarks**

As from the early beginning in the medieval times people in power tried to legalizing torture "to force someone to acknowledge mistakes"<sup>11</sup> and gaining further information. This was done by either the formal legalization or due to changes in the definition of torture. As it will be shown on the example of the U.S.A. the denial of torture, its legal re-definition and the avoidance of the "T"-word as such is an ongoing practice. Therefore the creation of loophole in international law by excluding certain groups, territories or practices from the prohibition of torture will be the main focus of this article.

Though focussing especially on the U.S.A. and its "war on terror," these examples are only pieces of a broader picture and the global threat to international norms.<sup>12</sup> For example, in a two-to-one ruling of August 11, 2004, by the Court of Appeal in London ruled that evidence acquired under torture in third countries may be used in special terrorism cases, provided that the British government has "neither procured the torture nor connived at it."<sup>13</sup> The United Kingdom also introduced the possibility of "indefinite detention" without trial in order to bypass human rights law that goes as far back as to the habeas corpus act of 1679.<sup>14</sup> On December 16, 2004 the Judicial Committee of the House of Lords ruled by a majority of eight to one that "indefinite detention" violates the human rights of the detainees.<sup>15</sup> The court held that the British anti terror law as such is discriminatory on the grounds of nationality, because it applies only to foreign nationals suspected of terrorism, despite a comparable threat from terrorism suspects with U.K. nationality. The Law Lords also ruled that the suspension of human rights was unjustified because indefinite detention powers that

apply only to some of those who pose a threat cannot be said to be "strictly required", as requested by the legal test for suspending such rights. Nevertheless the Law Lords missed the chance to address the tortures aspects of a detention without trial and refused to argue about the admissibility of the evidence obtained by torture.<sup>16</sup>

Though torture is a fact which is brought into our living rooms through the pictures from Abu Ghraib, Guantánamo and information about secret detention centres, torture flights, interrogation on ships in international territories and disappearance, one has to consider not only the facts and the administrative decision but also the underlying arguments for its justification.

As the president called for a "new thinking" the first "thinker" who joined the debate, was Dershowitz. While referring to "FBI's frustration over its inability to get material witnesses to talk," Dershowitz imagines the "rare 'ticking bomb' case--the situation in which a captured terrorist who knows of an imminent large-scale threat refuses to disclose it" and asks the rhetorical question: "Would torturing one guilty terrorist to prevent the deaths of a thousand innocent civilians shock the conscience of all decent people?"<sup>17</sup> Dershowitz does not say "yes," but admits that he is sure that the law enforcement of the United States of America would torture. For Dershowitz torture as such is not an issue but "the real debate is whether such torture should take place outside of our legal system or within it".<sup>18</sup> His arguments are that democracy needs transparency and in order to keep the "rule of law" and the primacy of justice he introduces the concept of "torture warrants", issued by judges in each case. Dershowitz does not discuss if torture legitimate but wants to make it legal.

The question keeping torture illegal but making its use in certain circumstances legitimate was later on discussed by Ignatieff. In order "to balance civil liberties and national security in a war on terror" Ignatieff also starts with the worst case scenario of a trade off between freedom and security. By this the terrorists indirectly "exploit our freedoms". In regard to the war on terrorism he presumes that this fight requires violence and in order "to defeat the evil, we may have to traffic in evils: indefinite detention of suspects, coercive interrogations, targeted assassinations, even pre-emptive war."<sup>19</sup> From this point of departure Ignatieff draws his idea that because a democracy uses the evil in order to defeat itself, its institutions and the freedom of its people these are "lesser evils" than the atrocities by terrorists. Ignatieff's ideas of "lesser evils" are a theory of necessities in the war against terrorism. Though Ignatieff distances itself slightly from Dershowitz' idea of "torture warrants" he requests a "presidential order or Congressional legislation that defines exactly what constitutes acceptable degrees of coercive interrogation."<sup>20</sup> Ignatieff's list of permissible and impermissible duress nevertheless lasts blurry and focuses merely on the distinction between mental disorientation and physical harm. In the view of Ignatieff, permissible interrogation practices, endorsed by democratic institutions might constitute a lesser evil but do not amount in torture. Though Ignatieff writes

"No one should have to decide when torture is or is not justified, and no one should be ordered to carry it out. An absolute prohibition is legitimate because in practice it relieves public servants from the burden of making

intolerable choices"<sup>21</sup>

His ethics of lesser evil open the back door to detention centres and torture cells.

As shown above the German professor Wolffsohn also makes the difference between illegal torture and its possible legitimization. Wolffsohn said in regard to the torture scandal at the Abu Ghraib: "In the anti-terror fight there are really no effective laws of war. I believe that torture, or the threat of torture, is legitimate as one of the instruments against terror, because terror basically... has nothing to do with our civilized order"<sup>22</sup> In his later released clarification Wolffsohn stated that he acknowledges the national and international legal prohibition of torture. His intention was to open a debate about cases, where torture might be necessary and legitimized by circumstances that lie outside and above the law.<sup>23</sup>

In order to challenge this discourse and the re-definition of torture this article uses the international definition of torture as given above and takes into consideration the general human rights approach to inhuman treatment. This view incorporates the victim's perspective into any discussion about what is torture and what should be allowed and what outlawed. In addition, torture has to be seen in the context of political, social, and cultural conditions that promote, encourage, and excuse it.<sup>24</sup> Human rights in general and the prohibition of torture and other cruel and inhuman treatment in particular will be seen as normative standards, e.g. rights of potential victims and duties of potential perpetrators which exist outside of any synallagmatic relationship between both.<sup>25</sup>

While acknowledging the threats posed by terrorism and the significant role of States to protect people under their power against such threats, the article follows the conclusion of the United Nations Special Rapporteur on Torture that

"the absolute nature of the prohibition of torture and other forms of ill-treatment means that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture."<sup>26</sup>

### **3 Torture Debate in Germany**

In spring 2003 it became public knowledge that the second in command of the Frankfurt am Main police had ordered threats and the actual use of physical and psychological violence during interrogations in the investigation of a 2002 kidnapping and murder case, in order to discover the whereabouts of the kidnapped child. After being verbally threatened by the interrogating police officers, the suspect divulged the place where the body could be found and admitted his guilt.<sup>27</sup> The above mentioned spontaneous statements of the Federal minister of justice and the president of the association of German judges - who is today Minister of justice in the State of Saxony - justifying threats of torture during extreme situations contradict not only the German constitution but Germany's international

human rights obligations as well. Germany is a state party to various international human rights agreements that prohibit torture. These include the European Convention on Protecting Human Rights and Basic Liberties of November 4, 1950,<sup>28</sup> the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of November 26, 1987,<sup>29</sup> and the International Convention Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, which entered into force in Germany on October 31, 1990.<sup>30</sup>

As described above, the threat with physical or mental pain is torture and neither justifiable nor excusable. Despite these unambiguous international standards, the debate about this case has shown that the public majority felt sorry for the questionable police officer and public polls showed that up to 68 percent would acquit him. In addition, not a small minority of intellectuals and law teachers tried to find any excuse by definition of torture. These individuals declared that torture was permissible under certain circumstances, and the question is whether these individuals were simply unaware of these international proscriptions, or whether they were ignorant of their duty to respect and protect human rights.

In December 2004 the regional superior court for Frankfurt am Main ruled that the charged police officer is guilty of intimidation and that there is no excuse or justification for his acts. Because of the specific circumstances of the case the police officer got no punishment but a caution. The German Constitutional Court ruled out also in December 2004 with regard to an appeal of a later live imprisoned murder against the use of his statement, made under torture. The Constitutional Court examined the threat of the police officer clearly as torture. Nevertheless it dismissed the appeal because the later convicted murder repeated his confession afterward in trial.

With both judgments, the one of the Constitutional Court that clearly stated that the acting of the police officer was torture and with the other of the court in Frankfurt am Main which made clear that such acts have never any excuse or justification, the international standard of the absolute prohibition of torture was applied. Considering the debate and advocacy for exemptions of the normative prohibition of torture as well as the public opinion which was in some parts in favour of the police officer, the German juridical system gave priority to human rights and fundamental freedoms.

In the end, however, this discussion is just one example of the lack of knowledge of human rights within German society in general and among civil servants and political decision-makers in particular.<sup>31</sup> The right decision of the German courts has to be seen from the German history. Public opinion and political demand are important for the political discourse, but is not a source to define the law. Human rights have to be understood from their postulation after the Second World War and the genocidal Holocaust. "Principiis obsta!" or "Never Again" - has to be the point of departure for any German policy or judgment. Keeping this in mind, the judges acted responsible and the remaining question is how to deal with the omissions by politicians, media and public opinion contrary to human rights.

This question becomes even more important after it became public in late

2004 that "torture games" are common in the German army "Bundeswehr". Wolffsohn stated that for the Bundeswehr the prohibition of torture has no exemptions and that he is sure that no soldier ever tortured anybody.<sup>32</sup> Nevertheless, in army camps and military exercises low-ranking officers mistreated recruits during basic training using methods possibly modelled on US torture in Abu Ghraib.<sup>33</sup> Since the German army is only a mirror to the society the main challenges for human rights education in Germany is how and were to address these issues in formal and informal education.

#### **4 Torture Debate in and about U.S.A.**

The distinction between the case in Germany and the torture cases under United States administration is that while in Germany the rule of law is tried to be re-established the U.S.A. creating loopholes in the law in order to escape accountability. Accountability can be seen as being responsible towards a certain community with regard to certain values, standards or norms. While German courts uphold mandatory and universal human rights norms, the U.S. administration reinterpreted these norms in order to escape accountability. By this the U.S.A. denies being a part of an international community and rejects values it is based upon.

##### *Torture as Means in the War on Terror*

In the second half of the 20th century civil wars displaced interstate war. One could see both blocs behind the iron curtain trying to move it a bit north or south as well as east or west.<sup>34</sup> Characterized by violent irregular forces and rogue states, these civil wars tended to monopolize and perfect coercive means. Specialists in coercion, such as those employed by private military and security corporations and machineries, started to operate autonomously in the absence of governmental authorities and the rule of law. In this manner, former interstate conflicts were divorced from territory and accountability.

The turn of the 21st century saw a shift from a bipolar to a unipolar world. With the United States an omnipresent military power, military conflicts such as those in Serbia and Montenegro, Afghanistan, and Iraq became wars between US-led forces on the one side and outlaw or absent governmental powers on the other side. For this reason, state-led military violence met with non-state violence, such as terrorism. The reaction was an even wider reliance on irregular forces by states and the adoption of terrorist patterns in military actions. Among these were those inducing fear in<sup>35</sup> or committing violence against third - mainly civil - parties for political strategy.<sup>36</sup>

The terrorist attack of September 11, 2001 has to be seen in this connection. They constitute a cruel and inhuman reflex to the U.S.A. own conduct aboard by a minority of fanatics. As Marx wrote in his reflections about the revolt of sepoys in India: "There is something in human history like retribution; and it is a rule of historical retribution that its instrument

be forged not by the offended, but by the offender himself".<sup>37</sup> Thus the war came back to the U.S.A. and as they had "dealt with attacks as primarily a law enforcement matter"<sup>38</sup> President Bush decided after September 11, 2001 "we were going to war."<sup>39</sup> As Commander-in-Chief, President Bush regarded this war as a "monumental struggle of good versus evil".<sup>40</sup>

As Pope Innocent's IV Bull "ad extirpanda" of 1252 the Bush administrations torture memos levelled the way for atrocities via labelling people in good and evil, right and wrong and "terrorists, killers, dangerous, the worst of a very bad lot and bad people."<sup>41</sup> By seeing in potential or actual criminals Untermenschen the torture memos are an attempt to bring human rights back into a synallagmatic relationship and denying them to people who are considered as not worth to have human rights. This denial of universality of human rights is not supposition but a clearly defined aim under the war on terrorism, as the U.S. administration suggested, that

"United States needs to redefine its approach to customary and treaty international humanitarian law, which must be adapted to the realities of the nature of conflict in the 21st Century. In doing so, the United States should emphasize the standard of reciprocity."<sup>42</sup>

It is beyond the scope of this article to go into detail of the torture memos<sup>43</sup> but a few details will show how the U.S.-administration tried to bend the law until it breached it. Secretary of Defense approved techniques in a memo for use in Guantánamo that stress positions, sensor deprivation, isolation, hooding, stripping and the use of dogs to inspire fear. And another Justice Department memo of August 1, 2002, written by a today's Federal Judge in response to a CIA request, suggested that torture would only occur if the pain caused rose to the level "that would ordinarily be associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions". Furthermore this memo suggested that the U.S. President's authority as Commander-in-Chief could override international laws "that, under the current circumstances, necessity or self-defense may justify interrogation methods that might ... amount to torture."<sup>44</sup> Though the memos give not a blanket approval to all torture techniques, such as death threats, exposure to cold weather or water, Pentagon's General Counsel proposed nevertheless that these were "legally available" on a case-by-case base if "military necessity" demand such proceedings.<sup>45</sup>

Of course, one has to admit that there were doubts about this position within the U.S. administration. Already six month after the Pentagon's torture approval an internal working group contented in a "secret until 2013" classified memo, that the President as Commander-in-Chief is not bound by international law.<sup>46</sup> Nevertheless, the approved practices took their way from Guantánamo via secret detention camps in Afghanistan and Pakistan into Abu Ghraib. Because of the Abu Ghraib torture scandal most of the documents are available to a broader public. Soon after their leakage in June 2004 the U.S. administration attempted to distance itself from its contents, suggesting that parts of it would be rewritten.<sup>47</sup> In early 2005 U.S. justice department published a revised and expanded definition in a new memo that torture may consist of acts that fall short of provoking excruciating and agonising pain and thus may include mere physical



suffering or lasting mental anguish. In a statement on the U.S. justice department's website, it was declared that "torture is abhorrent both to American law and values and international norms."<sup>48</sup>

But this public retreat in words is not followed by performance. The U.S.A. continuing to torture outside of their territorial jurisdiction, by either using Guantánamo and other detention centres in Iraq and Afghanistan that are under their direct control or by transferring detainees to facilities in, among others, Syria, Libya and Pakistan.<sup>49</sup> In addition, the former legal creativity is now seen in operational inventiveness when the U.S.A. are using prison ships and privately run airplanes for their interrogation sessions.<sup>50</sup> Under these circumstances the words by President Bush "We don't torture people in America,"<sup>51</sup> become a specific meaning.

The main challenge for human rights education is therefore how to incorporate human rights as normative standards into a reluctant and human rights blind administration as well as how to make people aware of the ongoing human rights violations, executed by its administration.

#### *Torture as Private Business in Iraq*

Because the torture scandal at Abu Ghraib is indicative of the United States' overall conduct in recent armed conflicts, there should be an additional brief focus on how the U.S.A. created loopholes into international standards. The first step in order to ensure continuation in interrogation practices and torture was the promotion of Maj. Gen. Geoffrey Miller from commander of the task force in charge of the prison at Guantánamo to head of prison operations in Iraq. The result was, as Maj. Gen. Antonio M. Taguba reveals in his report of February 2004 that soldiers of the 372nd Military Police Company, 800th Military Police Brigade, and members of the US intelligence community engaged in a "systematic and illegal abuse of detainees."<sup>52</sup>

But because the Iraq was under U.S. occupation the legal experts of the U.S. administration had to find another way to escape accountability. What were the statuses of "unlawful combatants" and "unprivileged belligerents" for the international war on terrorism were the reliance on private military and security forces - outside of the chain of command and not culpable under international human rights law - in the war against Iraq. The U.S. administration amended domestic law in order to exclude via presidential executive orders private corporations from their jurisdiction and the U.S. and the Coalition Provisional Authority enacted different orders, which gave general impunity to persons who aid, assist, or associate themselves or work for the Coalition Forces or Coalition Provisional Authority and granted any foreign contractor or subcontractor and employees of such contractors of the Coalition forces or the Coalition Provisional Forces impunity for their official activities pursuant to the terms and conditions of the contracts and states that such contractors shall not be subject to Iraqi laws or regulations.<sup>53</sup>

In his secret report on the mistreatment of prisoners in US custody and prisons, Maj. Gen. Antonio M. Taguba remarked that employees of private military firms contracted by the US-led Coalition Provisional Authority for interrogation "were either directly or indirectly responsible for the abuse at

Abu Ghraib"<sup>54</sup>. Taguba reports further, that military police guards were directed and actively requested by army intelligence officers, CIA agents, and private contractors "to set physical and mental conditions for favourable interrogation of witnesses."<sup>55</sup>

From these remarks about privatization of human rights violations in order to escape accountability the test for human rights education is how to make these new actors aware of their existing obligations to respect the human rights of others and in particular to restrain from torture.

## **5 The Role of Human Rights Education**

Since torture is a fact and happen one would overestimate the role of human rights education if one would consider it as the one-fits-all-solution. Effective law enforcement, based on the normative principles of human rights, such as the prohibition of torture, is able to stop torture. Political commitments on national and international level are able to create an atmosphere were human rights can play a role in discourse about freedom, terrorist threats and security. In order to combat torture it is necessary to incriminate it, to enforcement its prohibition, to information about atrocities, to incorporate normative human rights standard in training curricula for public and private official. Human rights education in this regard can be seen as guidance and tool for both, law enforcement as well as political debates.

### *Human Rights Education as Deconstruction of Power-Relationships*

Considering human rights education as facilitating self-realization through recognition of human rights, it becomes clear that torture challenges this concept. If human rights education means the deconstruction of power relationships, than torture represents a relationship with absolute power of the perpetrator over the victim, which has to be broken up. Though human rights education focuses on actual and potential perpetrators and victims the case of torture shows that the empowerment of victims is important for reparation but torture itself will only end if the person responsible for these atrocities will stop them. The questions that arose from this are among others: How does one train and inform perpetrators about their duties in a culture that excuses and justifies torture? How does one alter the perspective of the single world power that human rights legitimize this power instead of putting them on danger? How does one establish a system of accountability of non-state actors, such as private military and security corporations if human rights standards are supposed to apply only to states?

As the case in Germany has shown, international human rights standards, such as the prohibition of torture, are unarguably accepted in the legal system, but there is a lack in knowledge and acknowledgment of these standards in general. In order to improve the protection of human rights, attempts have been made for some time to integrate human rights into

education. The goal is to ensure that the recipients of this message will act accordingly - that people who know about human rights will respect them and forego violating them, as well as protect them and work for their implementation. In regard to the prohibition of torture, the committee of the United Nations charged with monitoring the Convention against Torture had already called upon the Federal Republic of Germany in October 2000:

"The Committee recommends that police and immigration officers of all ranks, as well as medical personnel, receive compulsory training concerning human rights in general and especially concerning the Convention against Torture; in view of the fact that most reports of ill-treatment come from foreigners, the Committee recommends that these officers also receive compulsory training in the areas of conflict management and ethnic minorities."<sup>56</sup>

In a society, where human rights in their international formulation are seen as core standards of the society training about human rights duties might be sufficient. But the main challenge given by the U.S.A. and its wide spread torture practice starting from the reluctance to bring national law in accordance with international standards. In this regard the committee of the United Nations charged with monitoring the Convention against Torture expressed in its last concluding recommendations its main concerns about "the failure of the State party to enact a federal crime of torture in terms consistent with article 1 of the Convention."<sup>57</sup> This general reluctance is combined with the practice of most of the torture cases, which are taken part in real wars like the one in Iraq or Afghanistan or total-war against terrorism. Soldiers are trained to kill and so are often they degrading their target to something subhuman in order that the perpetrator can mentally apply standards far from the notion of human rights and standards of humanitarian law. If this thinking applies in the case of combat killing, it will surely continue when soldiers exercise executive and legal powers such as investigation, interrogation, and safeguarding prisons. Victims become material<sup>58</sup> and the foremost task for human rights education has to be to give detainees back their value as human beings. A precondition for that is to dismantle all practices and to make the atrocities public. But publicity not only means to leak secret documents but also to inform the victims about the general debate about the torture done to them and facilitates them with means for reparation and rehabilitation. This has to be done by giving the International Committee of the Red Cross not only access to all detainees but also by not classifying their reports and findings as internal. In addition human rights protection mechanism, such as special rapporteurs and independent experts have to be provided with full access to all potential victims.<sup>59</sup> And finally, detainees have to have the right to be informed about the alleged charges, having access to a lawyer and the juridical system.

Besides providing publicity by shedding light into secret U.S. prisons, people with power over detainees have to be trained about international standards which are not derogatory by any war or threat. Though Schlesinger's report recommends training and education these demands are to short-sighted because of their focus on "moral" or "ethical" values without giving human rights a central role.<sup>60</sup> Same is for the suggestions in the Fay report for training in cultural understanding.<sup>61</sup> The challenge for

human rights education is to serve as a core concept for any education and training, based of focussed on normative standards.

### *Human Rights Education as Re-Introduction of Accountability*

Another challenge is the artificial privatization of torture without a proper system of accountability. Taguba's report recommends dismissal from duty and non-judicial punishment of persons in charge for military intelligence and immediate disciplinary action of the private employees of CACI International, Inc., involved in the torture.<sup>62</sup> In addition, Schlesinger's report concluded that approximately 35 percent of private interrogation personnel lacked proper training, and, in the absence of proper oversight, contractors believed the techniques were condoned.<sup>63</sup> But confronted with the allegations, CACI International stated that the company was not aware of the kind of accusations of their employees in Iraq. In other words, they admitted they were just 'doing their job,' worth about \$66.2 million.<sup>64</sup> The challenge for human rights education is not only to find means of addressing obligations to non-state actors, such as the business community. In addition human rights education has to provide standards for holding new powerful actors, such as private military and security corporations, accountable to norms that were formerly accepted towards states obligations. One of theses standards are the United Nations Norms on corporate responsibility which oblige corporations to respect human rights "within their respective spheres of activity and influence."<sup>65</sup>

### *Human Rights Education as Challenge for False Justifications and Legalizations of Torture*

Finally, the challenge for human rights education through the practice of torture is to disconnect the struggle against terrorism from the means of a war. It will not be the hard values of weapons but the soft values of a culture that will prevail. Development, justice and human rights have to be given back their impact on people's daily life instead of being used in Sunday speeches. When President Bush addresses the United Nations General Assembly by saying that "the security of our world is found in the advancing rights of mankind,"<sup>66</sup> these words have to get a meaning for the people in Iraq and Afghanistan as well as for the U.S. administration.

The above outlined arguments in favour of legalizing or legitimizing torture can be summarized as follows: First, that all of them are missing a victim's perspective. Secondly, all thoughts start with a worst case scenario such as the "ticking bomb dilemma" or the example of "a kidnapped child is in a box with two hours oxygen."<sup>67</sup> Thirdly, all ideas rely on an assumption of general public fear and insecurity. Human rights education has to question these arguments.

In regard to the worst case scenarios and the reliance of the arguments on general fear and presumed insecurity, human rights education has to show that the world is more complex. Though after September 11 the public demanded action by the president and was willing to accept risks and sacrifices, human rights education has to address the question if the war

waging and torturing authorities have squandered the overwhelming mandate of September 11.<sup>68</sup> Simplifications, such as bad and good or terrorist and democrat bring order into chaos, they also force to choice for one side or the other.<sup>69</sup> Human rights education has to outline that the rights and integrity of a person does not depend upon his or her capacity as subject of law as in the case of the construction of "unlawful combatants", "ghost detainees" or "extraordinary rendition". Human rights represent an inclusive concept that considers men and woman as humans and does not rely on exclusive qualities as nationality, citizenship or right and wrong religion. Therefore human rights education has to stress the universal and inalienability of the normative human rights standards.

The best way to underline the universal value of human rights is to define and teach them from a victim's perspective. Drawn from the Golden Rule which is endorsed by all the great world religions, human rights standards demanding to treat others as one want to be treated. Or as John Rawls formulated it: "The principles of justice are chosen behind a veil of ignorance", were nobody knows on which site and with what kind of entitlements he or she is provided. "This ensures that no one is advantaged or disadvantaged in the choice of principles."<sup>70</sup>

Human rights education furthermore has to single out inconsistencies and selectivity's in arguments, used to justify the violation of human rights. The validity of the arguments should come from their intention, to either foster real universalism with a commitment to human rights and protection of universal standards, or to reach a false universalism, were powerful actors invoking universal values in order to pursue their own interests.<sup>71</sup> As shown above, Dershowitz argues for "torture warrants" form the perspective of "FBI's frustration over its inability to get material witnesses to talk". As investigations and reports about September 11 have shown, this catastrophe had its origin in an incompetent administration rather than a lack of information. The world could witness this incompetence again after the South of the U.S.A. was devastated by Hurricane Katrina. Furthermore in 2001 Dershowitz requests "torture warrants" from judges, because they representing the rule of law. In 2005 he calls the Supreme Court of the U.S.A. a "collection of prima donnas in robes."<sup>72</sup> Britain justified its anti-Terror Law with threats by non U.K. nationals. Though the Judicial Committee of the House of Lords ruled that these general presumptions are not sufficient, the July 7, 2005 attacks in London had merciless shown that they were planned and executed by British nationals. These flimsy to and fro of arguments has to be pointed out by human rights education. By this, human rights education would combat the high-jacking of its underlying principles by bureaucrats and an academic "Hofmafia."<sup>73</sup> Therefore human rights education has to give human rights back their moral, legal, political and social meaning. Depoliticising human rights makes them empty and vulnerable for politics of interests and new apologetic ethics à la Ignatieff's "ethics of lesser evil."<sup>74</sup> Any simplification between freedom vs. security or democracy vs. terrorists will end in pseudo-religious ethics of human rights with empty meaning but justification of any kind of Orwellian supervision. Human rights education has to give human rights back their meaning as fighting tool for a just and better world as well as their legal protection mechanism.

## 6 Outlook

The Office of the United Nations High Commissioner for Human Rights outlines in its contribution for the proposals of a reform of the United Nations that closing the gaps in human rights protection is the principal test for the international human rights system.<sup>75</sup> These gaps are the security gap, where governments or armed group leaders deliberately pursue policies directly threatening personal security throughout, among others, repression, intimidation and violence, disappearances, and torture. In addition the democracy deficit, where States that practice torture claim to be democratic. And finally, impunity, in which case international human rights provisions lack an equivalent at the national level and where cases of torture go unpunished. In order to face this challenges the development of a culture of human rights, including through human rights education is proposed.

Such a "culture of human rights" was already aimed by the first United Nations Decade for Human Rights Education (1995-2004) declared by the United Nations General Assembly in 1995.<sup>76</sup> The Plan of Action for this decade<sup>77</sup> defines human rights education as an instrument to build a universal culture of human rights. Through training and disseminating information, and through imparting knowledge and skills and molding attitudes, human rights education should make an effective contribution to strengthening consciousness of human rights and behavior based on them. The "universal culture of human rights" is circumscribed by the following goals:

- a. strengthening respect for human rights and fundamental freedoms;
- b. the full development of the human personality and a sense of dignity;
- c. the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- d. the enabling of all persons to participate effectively in a free society; and
- e. the furtherance of the activities of the United Nations for the maintenance of peace.

Though the second decade has already begun one should not forget this ongoing obligations. Human rights legitimize state authority when they are respected, and they de-legitimize the exercise of power when they are violated. Human rights education thus also serves to deconstruct power relationships and replace them with a mutually agreed international standard of cooperation and coexistence. Human rights education thus becomes the litmus test of a democracy.

## Notes

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<sup>1</sup> OP 5 General Assembly Resolution "Human rights education decade" (GA Resolution 48/127) of 20 December 1993; U.N. Doc A/RES/48/127 and OP 4 of General Assembly Resolution "United Nations Decade for Human Rights Education" 22 December 1995, U.N. Doc. A/RES/50/177.

<sup>2</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, entered into force on June 1987 and signed and ratified by Germany in 1990 and U.S.A. in 1994.

<sup>3</sup> Article 2 Para. 2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see footnote 2).

<sup>4</sup> Memorandum for the President from Alberto R. Gonzales 2002.

<sup>5</sup> Memorandum for the Vice President, the Secretary of State, the Secretary of Defence, the Attorney General, the Chief of Staff to the President, the Director of Central Intelligence, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff 2002.

<sup>6</sup> See Dershowitz 2001 and 2002.

<sup>7</sup> Ignatieff 2004c; see also: Ignatieff 2004b

<sup>8</sup> Cf. Der Tagesspiegel 2003.

<sup>9</sup> Cf. Frankfurter Rundschau 2003b.

<sup>10</sup> Wolffsohn 2004a; see also: Spiegel Online 2004.

<sup>11</sup> See: Bull "Ad extirpanda" of Pope Innocent IV (1252).

<sup>12</sup> See: Amnesty International 2004.

<sup>13</sup> Court of Appeal 2004.

<sup>14</sup> Indefinite Detention Without Trial in the United Kingdom Under Part 4 of the Anti-Terrorism, Crime and Security Act 2001.

<sup>15</sup> House of Lords 2004.

<sup>16</sup> Article 14 of the European Convention of Human Rights.

<sup>17</sup> See Dershowitz 2001 and 2002.

<sup>18</sup> See Dershowitz 2001 and 2002.

<sup>19</sup> See Ignatieff 2004b and Ignatieff 2004c

<sup>20</sup> See Ignatieff 2004b and Ignatieff 2004c

<sup>21</sup> See Ignatieff 2004a

<sup>22</sup> See Wolffsohn 2004a.

<sup>23</sup> Wolffsohn 2004b

<sup>24</sup> See: Huggins 2004.

<sup>25</sup> See among others: Brieskorn 1997, 133 f. (135).

<sup>26</sup> United Nations 2004.

<sup>27</sup> Cf. Frankfurter Rundschau 2003a (including additional references on the

entire debate).

<sup>28</sup> UNTS, v. 213, p. 221 (BGBl. 1952 II p. 685 / 953)

<sup>29</sup> Cf. BGBl 1989 II, p. 946

<sup>30</sup> A/RES/39/46 dated December 10, 1984, UN Doc. A/RES/39/46

<sup>31</sup> See: Rosemann, Lohrenscheit 2004.

<sup>32</sup> See Wolffsohn 2004b.

<sup>33</sup> Deutsche Welle 2004.

<sup>34</sup> Tilly 2002.

<sup>35</sup> Duvall, Stohl 1988.

<sup>36</sup> Hess 1988; Schmid 1988.

<sup>37</sup> Marx 1857.

<sup>38</sup> White House Counsel 2004.

<sup>39</sup> Woodward 2002 quoted Bush with "They had declared war on us, and I made up my mind at that moment that we were going to war".

<sup>40</sup> Remarks by the President in Photo Opportunity with the National Security Team, 12 September 2001.

<sup>41</sup> Hersh, Lane 2004.

<sup>42</sup> United States (Department of Defense) 2004c, Recommendation 9.

<sup>43</sup> See: Amnesty International 2004; Hersh, Lane 2004; Greenberg, Dratel 2005; Danner 2004.

<sup>44</sup> Memorandum for Alberto R. Gonzales, Counsel to the President 2002.

<sup>45</sup> Action memo 2002.

<sup>46</sup> Working Group Report on Detainee Interrogations in the Global War on Terrorism 2003.

<sup>47</sup> Associated Press 2004.

<sup>48</sup> Eggen, Smith 2005.

<sup>49</sup> Mayer 2005.

<sup>50</sup> AFP: US running secret camps on ships, says UN official, in: Dawn of 29 June 2005; Dawn: CIA uses charter plane firm to transport suspects, in Dawn of 1 June 2005

<sup>51</sup> Interview of the President by Laurence Oakes, Channel 9 TV, 18 October 2003.

<sup>52</sup> United States (Department of Defence) 2004a.

<sup>53</sup> See in detail: Rosemann 2005b.

<sup>54</sup> United States (Department of Defence) 2004a.

<sup>55</sup> United States (Department of Defence) 2004a.

<sup>56</sup> UN Doc. A/53/44 on U.N. Doc CAT/C/SR.328 and 329 of 11 May, 1998

<sup>57</sup> UN Doc. A/55/44 (Paras. 175-180) of 15 May, 2000

<sup>58</sup> See: Huggins 2004.



- <sup>59</sup> Reuters: UN experts accuse US of stalling jail visits, in: Dawn of 24 June 2005.
- <sup>60</sup> United States (Department of Defense) 2004c, Recommendation 7.
- <sup>61</sup> United States (Department of Defense) 2004b.
- <sup>62</sup> See United States (Department of Defence) 2004a.
- <sup>63</sup> United States (Department of Defense) 2004c.
- <sup>64</sup> See Rosemann 2005b.
- <sup>65</sup> Para. 1 Norms on the responsibility of transnational corporations and other business enterprises with regard to human right; UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, See also: Rosemann 2005a.
- <sup>66</sup> President speaks to the United Nations General Assembly. New York. 21 September 2004.
- <sup>67</sup> For the Children Case see: Dershowitz 2001 and 2002.
- <sup>68</sup> Fukuyama 2005.
- <sup>69</sup> Stein 2006.
- <sup>70</sup> Rawls 1999 (1971), 11.
- <sup>71</sup> Koskenniemi 2004, 233, 236, 244.
- <sup>72</sup> Dershowitz 2005.
- <sup>73</sup> See for this term: Allott 2003.
- <sup>74</sup> For depoliticization of human rights see: Rancière 2004, 305.
- <sup>75</sup> United Nations (Office of the High Commissioner of Human Rights) 2005.
- <sup>76</sup> Resolution GA/RES/50/177 of December 22, 1995.
- <sup>77</sup> Plan of Action program A/51/506/Add.1 of December 12, 1996; here, Art. 2.

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