

Are We Civilized Enough to Hold Our Leaders Accountable for War Crimes? The World Is Watching | [Original Article](#)

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Remarkably, the confirmation of President Obama's Attorney General nominee, Eric Holder, [is being held up](#) by Texas Republican Senator John Cornyn, who apparently is unhappy that Holder might actually investigate and prosecute Bush Administration officials who engaged in torture. Aside from this repugnant new Republican embrace of torture (which might be a winning issue for the lunatic fringe of the party and a nice way to further marginalize the GOP), any effort to protect Bush officials from legal responsibility for war crimes, in the long run, will not work.

It is difficult to believe that Eric Holder would agree not to enforce the law, like his recent Republican predecessors. Indeed, if he were to do so, President Obama should withdraw his nomination. But as MSNBC "Countdown" anchor [Keith Olbermann](#) stated earlier this week, even if the Obama Administration for whatever reason does not investigate and prosecute these crimes, this still does not mean that the Bush Administration officials who were involved in torture are going to get a pass.

With few exceptions, the discussion about what the Obama Administration will do regarding the torture of detainees during the Bush years has been framed as a domestic matter, and the fate of those involved in torturing has been largely viewed as a question of whether the Department of Justice will take action. In fact, not only is the world watching what the Obama Administration does regarding Bush's torturers, but other countries are very likely to take action if the United States fails to do so.

Bush's Torturers Have Serious Jeopardy

Philippe Sands, a Queen's Counsel at Matrix Chambers and Professor of International law at University College London, has assembled a powerful indictment of the key Bush Administration people involved in torture in his book [Torture Team: Rumsfeld's Memo and the Betrayal of American Values](#). He explains the legal exposure of people like former attorney general Alberto Gonzales, Dick Cheney's counsel and later chief of

staff David Addington, former Office of Legal Counsel attorney John Yoo, the former Department of Defense general counsel Jim Haynes, and others for their involvement in the torture of detainees at Guantanamo, Abu Ghraib, and CIA secret prisons.

After reading Sands's book and, more recently, listening to his comments on [Terry Gross's NPR show "Fresh Air," on January 7, 2009](#)

I realized how closely the rest of the world is following the actions of these former officials, and was reminded that these actions appear to constitute not merely violations of American law, but also, and very literally, crimes against humanity -- for which the world is ready to hold them responsible.

Here is what Professor Sands told Terry Gross on NPR: "In talking to prosecutors around the world, as I have done, they all recognize the very real political difficulties of taking on someone who has been Vice President of the United States, or President of the United States, or Secretary of Defense of the United States. But those arguments melt away as you go a little down the chain. And I don't think the same arguments would apply in relation to the man, for example, who was Vice President Cheney's general counsel, at the time the decisions were taken, David Addington ... I think he faces a very real risk of, you know, investigation for complicity in an act that amounts to torture ... " Later, referring to "international investigations," he added that Addington (and others) were at "serious risk of being investigated."

These are remarkable statements from a very well-informed man. Because we have a common publisher, I was able to contact him in London, and pose a few questions. I find his book, statements and responses to my questions chilling.

Q & A With Professor Philippe Sands

The following is my email exchange with Professor Sands:

John W. Dean: When talking to Ms. Gross you said you were not calling for such international investigations because we all need more facts. Given the fact that [Judge Susan Crawford has now made clear](#) that torture occurred, do you -- and others with your expertise and background -- have sufficient information to call for other countries to take action if the Obama

Administration fails to act?

Philippe Sands: Last week's intervention by Susan Crawford, confirming that torture occurred at Guantanamo, is highly significant (as I explain in a piece I wrote with Dahlia Lithwick: ["The Turning Point: How the Susan Crawford interview changes everything we know about torture"](#)). The evidence as to torture, with all that implies for domestic and foreign criminal investigation, is compelling. Domestic and foreign investigators already have ample evidence to commence investigation, if so requested or on their own account, even if the whole picture is not yet available. That has implications for the potential exposure of different individuals, depending on the nature and extent of their involvement in acts that have elements of a criminal conspiracy to subvert the law.

JD: If yes, can you share what you and others might do, and when?

PS: I am in the process of completing the epilogue to my book *Torture Team*, which will be published in May 2009. That will set out, in detail, what I learned when I made a return visit to the European judge and prosecutor with whom I met in the summer of 2007, as described in the book. Watch this space.

JD: If no, what would it take for those like you to call for all countries with potential jurisdiction to take action?

PS: More than 140 countries may potentially exercise jurisdiction over former members of the Bush Administration for violations of the 1984 Torture Convention and the 1949 Geneva Conventions, including the standards reflected in their Common Article 3. Whether they do so, and how they might do so, turns on a range of factors, including their domestic procedural rules. In the United Kingdom, one criminal investigation is already underway, in relation to the alleged treatment of Binyam Mohammed, a Guantanamo detainee who is a British resident. I doubt it will be the last. That said, having set out the relevant facts in one case [in my book], to the best of my abilities, I feel it will now be for others to take this forward as they consider appropriate.

JD: Also, when talking to Ms. Gross you said that you did not think that David Addington and others involved in torture were likely to be travelling outside the United States. Do you know for a fact that any country might take action? Have you discussed this with

any prosecutors who could do so?

PS: This will be addressed in the epilogue to *Torture Team*.

JD: Do you believe that a failure of the Obama Administration to investigate, and if necessary, prosecute, those involved in torture would make them legally complicit in the torture undertaken by the Bush Administration?

PS: No, although it may give rise to violations by the United States of its obligations under the Torture Convention. In the past few days there have been a series of significant statements: that of Susan Crawford, of former Vice President Cheney's confirming that he approved the use of waterboarding, and by the new Attorney General Eric Holder that he considers waterboarding to be torture. On the basis of these and other statements it is difficult to see how the obligations under Articles 7(1) and (2) of the Torture Convention do not cut in: these require the US to "submit the case to its competent authorities for the purpose of prosecution". What happens thereafter is a matter for the prosecutor, who may decide that, in accordance with applicable standards ("authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State") and the facts of the case, including the prospects for a successful prosecution, that proceeding to actual prosecution is not justified.

JD: Finally, you mentioned the case proceeding in the UK regarding possible torture of a British national. Is it possible that even an American ally like Great Britain could seek extradition, and undertake prosecution, of U.S. officials like Addington and Yoo for facilitating the torture of a citizen of Great Britain -- if the U.S. fails to act?

PS: It is possible. The more likely scenario, however, is that which occurred in Senator Pinochet's case: the unwitting traveller sets foot in the wrong country at the wrong time.

What Will The Obama Administration Do?

As all who have followed this issue know, President Obama hedged after he was elected as to

what he may or may not do. So too did his Attorney General nominee. After Eric Holder declared waterboarding to be unlawful, no one on the Senate Judiciary Committee truly followed up as to what he was going to do, but it appears they are going to now press him on that point.

My question is how can the Obama Administration not investigate, and, if appropriate, prosecute given the world is watching, because if they do not, other may do so? How could there be "change we can believe in" if the new administration harbors war criminals -- which is the way that Philippe Sands and the rest of the world, familiar with the facts which have surfaced even without an investigation, view those who facilitated or engaged in torture?

One would think that people like Cheney, Rumsfeld, Addington, Gonzales, Yoo, Haynes and others, who claim to have done nothing wrong, would call for investigations to clear themselves if they really believed that to be the case. Only they, however, seem to believe in their innocence -- the entire gutless and cowardly group of them, who have shamed themselves and the nation by committing crimes against humanity in the name of the United States.

We must all hope that the Obama Administration does the right thing, rather than forcing another country to clean up the mess and seek to erase the dangerous precedent these people have created for our country. A first clue may come when Holder resumes testifying.

