

Americans on International Courts and Their Jurisdiction Over the US

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The Program on International Policy Attitudes (PIPA) is a joint program of the Center for International and Security Studies at Maryland and the Center on Policy Attitudes. PIPA undertakes research on American attitudes in both the public and in the policymaking community toward a variety of international and foreign policy issues. It seeks to disseminate its findings to members of government, the press, and the public as well as academia.

WorldPublicOpinion.org is an online publication devoted to increasing understanding of public opinion in nations around the world and to elucidate the global patterns of world public opinion. It conducts its own studies of public opinion on international issues as well as analyzing and integrating polls from other organizations around the world. It is published by the staff of the Program on International Policy Attitudes.

Knowledge Networks is a polling, social science, and market research firm based in Menlo Park, California. Knowledge Networks uses a large-scale nationwide research panel which is randomly selected from the national population of households having telephones and is subsequently provided Internet access for the completion of surveys (and thus is not limited to those who already have Internet access).

The Center for International and Security Studies at Maryland (CISSM), at the University of Maryland's School for Public Policy, pursues policy-oriented scholarship on major issues facing the United States in the global arena. Using its research, forums, and publications, CISSM links the University and the policy community to improve communication between scholars and practitioners.

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INTRODUCTION

The United States has historically played a seminal role in establishing international courts, tribunals and other bodies to adjudicate a broad system of treaties and conventions governing the behavior of nations. Recently the United States, however, has resisted being subjected to their jurisdiction. Most prominently, the Bush Administration has refused to participate in the International Criminal Court and reduced the International Court of Justice’s jurisdiction over US citizens. It has also sought to narrow the reach of various treaties and conventions, including the Geneva Conventions and the Convention Against Torture. When the UN Commission on Human Rights determined that US officials had violated international human rights standards at the Guantanamo detention camps, the United States resisted making the prescribed changes.

These developments raise numerous questions about American public opinion. More broadly, they raise the question of whether these actions reflect a decline in public support for the system of international treaties governing international behavior. They raise other more specific questions as well:

- Do Americans support having international bodies adjudicate compliance with such treaties and are they willing to subject the United States to their judgments?
- How do Americans react to the recent judgment of the UN that the Guantanamo detentions camps violate international standards? Do they think the United States is obligated to change its practices according to U.N. prescriptions?
- Do Americans think the United States should participate in the International Criminal Court? Even if, as the Bush administration has argued, it might be used against US soldiers?
- Do Americans think an international court should have the right to investigate possible cases of torture or is this purely a domestic matter? Who do they view as responsible for torture: those who carried out the torture or those who gave the orders?

In order to shed further light on American attitudes on these critical issues, WorldPublicOpinion.org/Knowledge Networks conducted a nationwide sample of 1,023 Americans, April 18-24. The margin of error was +/-3.1-3.6% depending on the sample size for each question. The poll was fielded by Knowledge Networks using its nationwide panel, which is randomly selected from the entire adult population and subsequently provided internet access. For more information about this methodology, go to www.knowledgenetworks.com/ganp.

Key findings of the study were:

1. International Adjudication of Treaties and Exceptional Treatment of the US

A very large majority favors having an international body, such as a court, judge compliance with treaties to which the United States is party. A large majority rejects the idea that the United States should receive exceptional treatment in the adjudication of treaty compliance. Arguments against international adjudication, however, hold some sway, suggesting that Americans acknowledge there are some costs and risks associated with it..... 3

2. US Detainee Treatment at Guantanamo Bay

Two in three Americans say the United States should change the way it treats detainees at Guantanamo Bay, as prescribed by the UN Commission on Human Rights. An overwhelming majority wants the United States being part of treaties that limit what signatories can do when detaining individuals.....6

3. Charging Individuals and the ICC

A majority favors giving international bodies the power to judge individuals charged with extreme violations of human rights if a national government is not performing this function. A large majority favors US participation in the International Criminal Court even after hearing US government objections.8

4. Torture

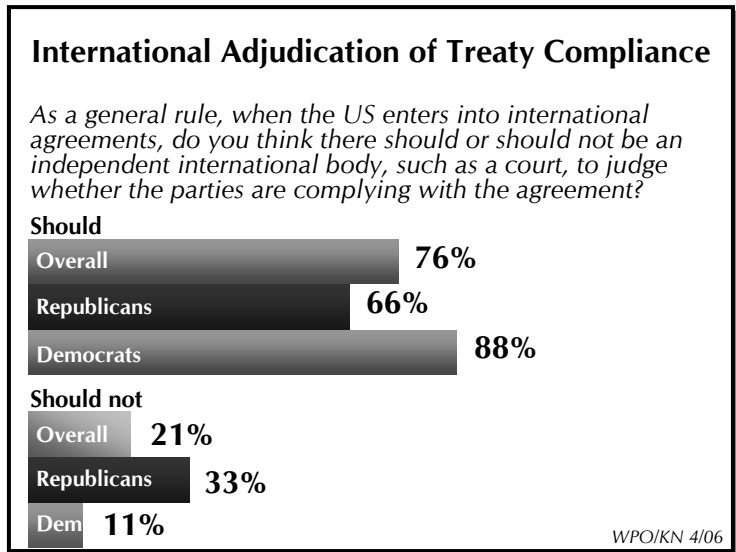
Americans overwhelmingly endorse US participation in treaties prohibiting torture and a large majority favors giving an international court the right to investigate when governments fail to take action against individuals who may have engaged in torture. A very large majority says that individuals who gave orders to torture should be held liable, as well as those who carried out the orders.9

FINDINGS

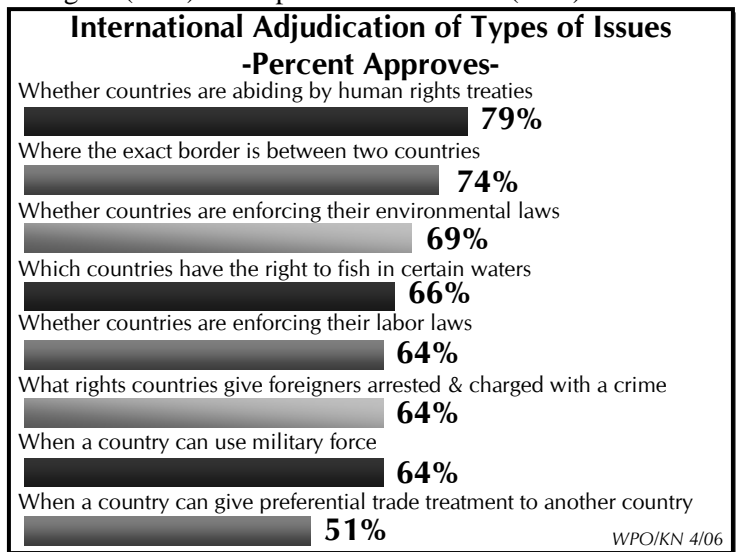
1. International Adjudication of Treaties and Exceptional Treatment of the US

A very large majority favors having an international body, such as a court, judge compliance with treaties to which the United States is party. A large majority rejects the idea that the United States should receive exceptional treatment in the adjudication of treaty compliance. Arguments against international adjudication, however, hold some sway, suggesting that Americans acknowledge there are some costs and risks associated with it

A very large majority favors having an international body, such as a court, judge compliance with treaties to which the United States is party. Asked, “As a general rule, when the US enters into international agreements, do you think there should or should not be an independent international body, such as a court, to judge whether the parties are complying with the agreement?” 76% said there should be such a body when the US enters into international agreements, while 21% said that there should not be. This majority included two-thirds of Republicans (66%) and nearly all Democrats (88%).



Support was also quite strong when respondents were asked about the possibility of adjudicating a wide range of specific types of disputes. In every case, a majority expressed support; in all but one case, a large majority did so. The highest support was for adjudication of disputes over whether states are abiding by treaties governing human rights (79%) or disputes over borders (74%). There were also strong majorities for having international bodies adjudicates disputes over whether countries are enforcing their environmental laws (69%), which countries have the right to fish in certain waters (66%), whether countries are enforcing their labor laws (64%), and what rights nations give foreigner who are arrested and charged with a crime (64%). Curiously, the one type of dispute that fell below 64% support was about “when a country can give preferential trade treatment to another country.” A bare majority of 51% supported adjudication in this instance, with 44% opposed.



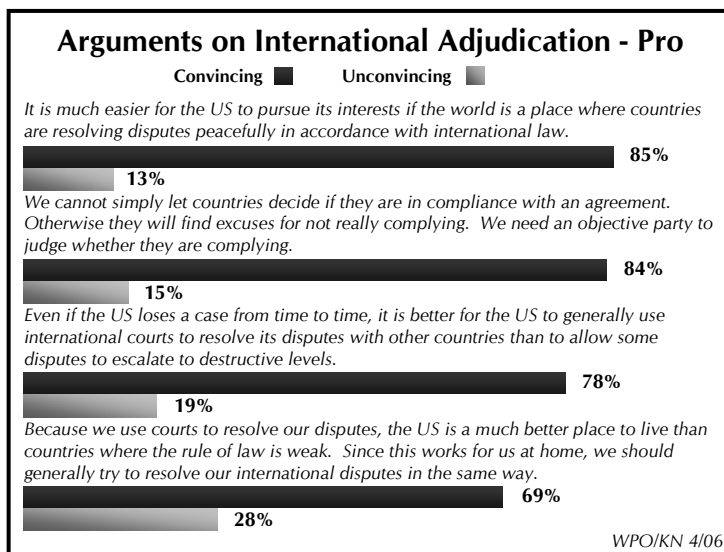
Republican support for international adjudication was not as robust as Democratic support but still constituted a substantial majority in every case, except one. In cases involving preferential trade treatment, 57% of Republicans opposed such adjudication, while 62% of Democrats favored it.

Respondents also showed very strong support for international agreements per se. For the three cases presented support was overwhelming. Seventy-nine percent approved of “the international law that prohibits a nation from using military force against another nation except in self defense or to defend an ally” (71% of Republicans, 91% of Democrats). Eighty-six percent approved of the United States being part of “treaties that establish standards for protecting the human rights of their citizens” (87% of Republicans, 92% of Democrats). Eighty-two percent approved of the United States signing treaties that prohibit the use of torture (81% of Republicans, 90% of Democrats).

Pro and Con Arguments

To dig deeper into respondents’ views and find out how solid they were, respondents were presented a series of four arguments in support of and four in opposition to international adjudication and asked how convincing they found each one.

All four of the arguments in favor of international adjudication received overwhelming support. Eighty-five percent found convincing (41% very convincing) the argument that “It is much easier for the US to pursue its interests if the world is a place where countries are resolving disputes peacefully in accordance with international law.” An equally large number—84%—found convincing (35% very) the argument that: “We cannot simply let countries decide if they are in compliance with an agreement. Otherwise they will find excuses for not really complying. We need an objective party to judge whether they are complying.” For these arguments, Republicans and Democrats who found them convincing were both in the 81-91% range.

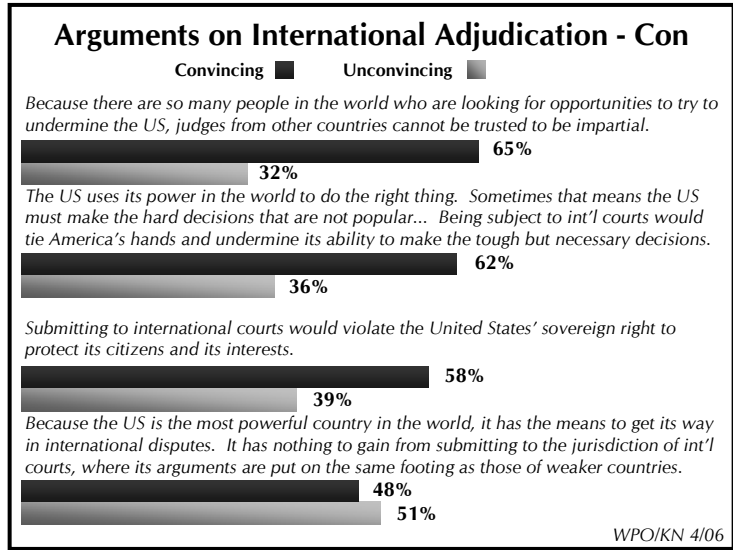


Even the argument that recognized that the United States may “lose a case from time to time” generated 78% concurrence with the view that it is nonetheless “better for the US to generally use international courts to resolve its disputes with other countries than to allow some disputes to escalate to destructive levels” (33% very convincing). The argument that did least well (69% convincing, 22% very) proposed that the positive experience with the rule of law at home should be applied to the international sphere. For these arguments, Republicans and Democrats who found them convincing were both in the 66-89% range.

None of the arguments against international adjudication did as well as the arguments in favor, but three out of four were nonetheless found convincing by a majority. This suggests that most Americans acknowledge that there are costs and risks associated with international adjudication. But

when asked to weigh these costs and risks against the benefits, most come down in favor of international adjudication.

The most convincing argument against accepting international adjudication was that “judges from other countries cannot be trusted to be impartial”... “because there are so many people in the world who are looking for opportunities to try to undermine the US.” Sixty-five percent found the argument convincing—not only 75% of Republicans but also 55% of Democrats. This concern may be enhanced by polls around the world that show US foreign policy is unpopular.



Somewhat less successful was an argument based on sovereignty concerns: “Submitting to international courts would violate the United States’ sovereign right to protect its citizens and its interests.” While 58% said this was convincing, it did not have bipartisan appeal: 73% of Republicans found it convincing but only 47% of Democrats (51% unconvincing).

The weakest argument against adjudication started from a hard-core realist view that, “Because the United States is the most powerful country in the world, it has the means to get its way in international disputes,” therefore, “It has nothing to gain from submitting to the jurisdiction of international courts.” Only 48% found this convincing, while 51% found it unconvincing.

It proved much more acceptable to make an exceptionalist argument based on responsibility, rather than on power alone: Sixty-two percent found convincing the argument that the United States “uses its power in the world to do the right thing” and therefore international courts should not be allowed to “tie America’s hands.” While Republicans overwhelmingly found that argument convincing (78%), so did a modest majority of Democrats (54%; 46% unconvincing).

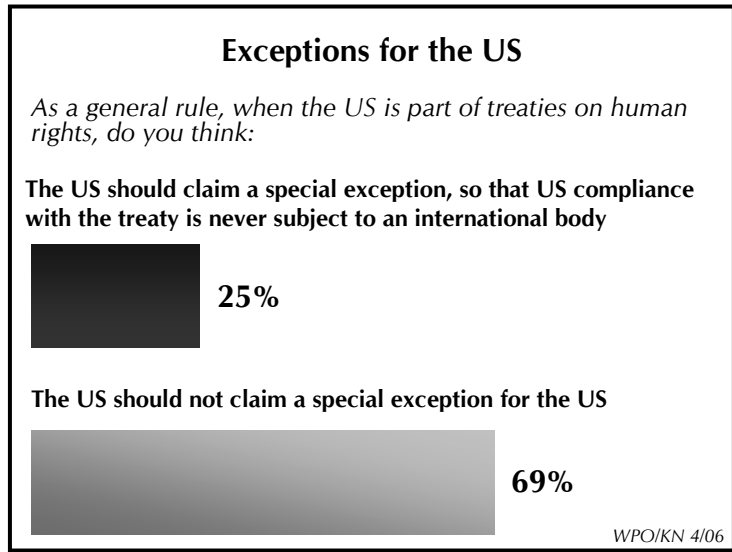
After evaluating arguments for and against international adjudication, all respondents were asked (half for the second time) whether, “As a general rule, when the United States enters into international agreements, do you think there should or should not be an independent international body, such as a court, to judge whether the parties are complying with the agreement?”

Although majorities gave the arguments against adjudication a good hearing, most felt that the benefits of international adjudication still outweighed the costs. Seventy-one percent said that when the United States entered into an international agreement, an independent body should judge compliance—down 5 points from when they were asked the same question before evaluating the arguments. Twenty-five percent said no. Republicans were most affected by arguments: 54% said no after pondering the arguments, down from 66% before hearing the arguments. Democrats and independents, however, were virtually unaffected (down 1.5 points each).

Exceptions for the US

Overall, it appears that Americans find some arguments against international adjudication persuasive, based primarily on themes that the United States should be viewed as exceptional. However, while these arguments may give Americans pause, in the end they come down firmly in favor of international adjudication. This was true on the general question as well as the eight specific types of disputes (all of which were presented *after* respondents had evaluated the pro and con arguments).

Equally significant, seven out of ten Americans reject making a special exception for the United States in international treaties on human rights. Only 25% thought that as a general rule “US compliance with the treaty” should never be “subject to the judgment of an international body.” Sixty-nine percent thought the United States should not claim a special exception.” This included 63% of Republicans and 78% of Democrats.

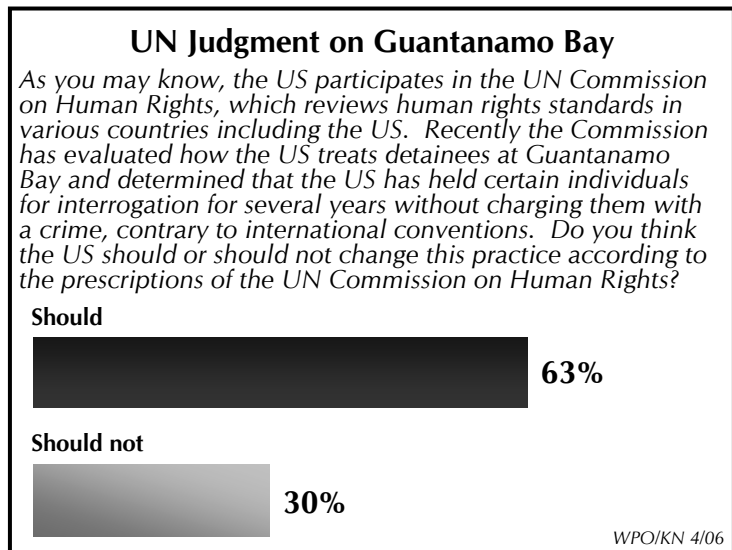


2. US Detainee Treatment at Guantanamo Bay

Two in three Americans say the United States should change the way it treats detainees at Guantanamo Bay, as prescribed by the UN Commission on Human Rights. An overwhelming majority wants the United States being part of treaties that limit what signatories can do when detaining individuals.

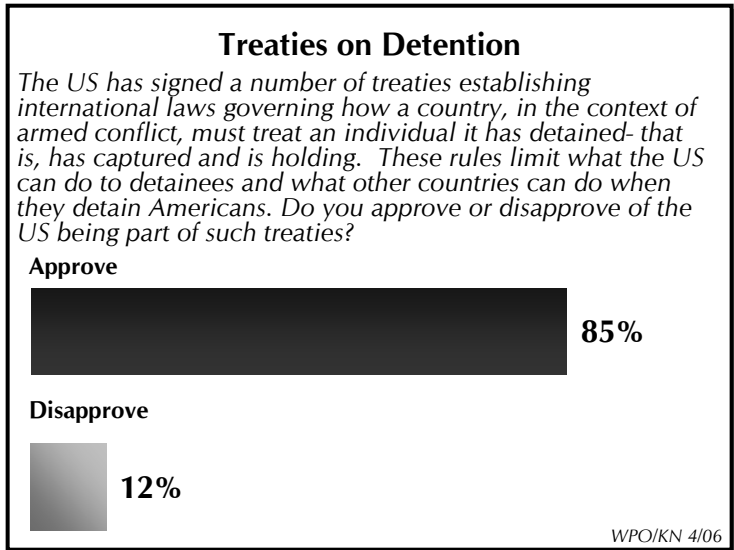
Perhaps the clearest recent test of Americans’ willingness to be subject to international adjudication is related to the recent UN Commission on Human Rights evaluation of US treatment of detainees held in Guantanamo Bay.

Respondents were told that “the US participates in the UN Commission on Human Rights” and that the report “determined that the US has held certain individuals for interrogation for several years without charging them with a crime, contrary to international conventions.” They were then asked whether the United States should follow the Commission’s prescriptions to change these practices. Sixty-three percent said the United States “should change this practice,” while 30% said the



United States should not do so. Republicans were divided, with 49% saying the United States should comply and 47% saying it should not; Democrats were 76% to 20% in favor of compliance.

This support for coming into compliance with UN Human Rights Commission recommendations is consistent with the even larger support for the general principle of the US participation in treaties on the treatment of detainees in the context of armed conflict, generally called the Geneva Conventions. An overwhelming 85% thought the United States should be part of treaties “that limit what the US can do to detainees and what other countries can do when they detain Americans.” This majority was bipartisan, with 85% of Republicans and 89% of Democrats approving.



These majorities are consistent with the findings of PIPA’s 2004 study on torture and detention (conducted shortly after the Abu Ghraib scandal broke). In that study, PIPA tested the Bush Administration’s position that combatants who are terrorists, not conventional soldiers, do not come under the protection of “the laws governing the treatment of detainees.” Respondents heard the argument that “because such people do not wear uniforms, do not fight in a conventional military fashion, and are not part of a nation that has signed these treaties, when dealing with them the US should not be required to give them the rights provided by the treaties.” However, only 37% agreed with this position. Instead, 60% thought “that, legally, the US is required to treat all detainees in a way that is consistent with the treaties and, furthermore, not giving detainees the rights of the treaties would be immoral, set a bad example, hurt America’s image and ultimately weaken the rule of law.”

In 2004, respondents also were asked about specific legal requirements for the treatment of detainees in international treaties to which the United States is party—notably, respecting a detainee’s “right to a hearing in which the government makes its case for why the detainee should be held and the detainee can challenge the government’s right to hold him or her.” Eighty-one percent favored this requirement; 17% were opposed.

But when Americans were presented some of these issues outside of the framework of treaty constraints they gave more equivocal responses. When Pew asked in March 2006 whether they favored or opposed “the U.S. government’s policy of holding suspected terrorists at Guantanamo Bay without formal charges or trials,” responses were evenly divided—44% in favor, 43% opposed. Respondents were given no information about treaty requirements. Moreover, the presentation of this action as “the US government’s policy” surely lent it legitimacy and may have led some to believe that it was consistent with US treaty commitments.

3. Charging Individuals and the ICC

A majority favors giving international bodies the power to judge individuals charged with extreme violations of human rights if a national government is not performing this function. A large majority favors US participation in the International Criminal Court even after hearing US government objections.

Where extreme violations of human rights are concerned, three out of five Americans favor giving international bodies the power to judge individuals when national governments fail to do so. This was true even when this view was challenged by a strong counterargument based on national sovereignty.

Respondents were first reminded that, “In most cases, the actions of individuals are simply governed by the laws of the country they live in.” Then they were asked to choose between two positions. The position favoring international jurisdiction went:

In some cases there are individual actions that are of such significance, such as acts of torture or genocide, that there should be international laws governing these actions that are applied by an international court or tribunal if a nation does not enforce them.

The other position argued that granting such jurisdiction would violate the principle of national sovereignty:

Only individual nations should make laws governing the acts of individuals, because having such international laws and giving international courts and tribunals the power to apply them would violate the sovereignty of nations.

Faced with these two arguments, 60% chose the first, supporting an international jurisdiction of last resort for grave human rights violations. Thirty-six percent chose the second, regarding national sovereignty as the more important principle. Partisan differences were slight. Among Republicans, 60% supported international jurisdiction as did 68% of Democrats. Among independents only 44% were in support.

This response is consistent with attitudes over the years toward US participation in the International Criminal Court (ICC), which tries individuals. Seventy-four percent of one half sample said the US should “participate in the International Criminal Court that can try individuals for war crimes, genocide or crimes against humanity if their own country won’t try them”; 21% were opposed. Republicans and Democrats were both within the 77-80% support range; independents were lower at 56% (26% opposed, 18% no answer). This result is basically unchanged from a survey by the Chicago Council on Foreign Relations that asked the same question in 2004 and 2002.

International Adjudication of Actions of Individuals

In most cases, the actions of individuals are simply governed by the laws of the country they live in. Do you think that:

In some cases there are individual actions that are of such significance, such as acts of torture or genocide, that there should be international laws governing these actions that are applied by an international court or tribunal if a nation does not enforce them.

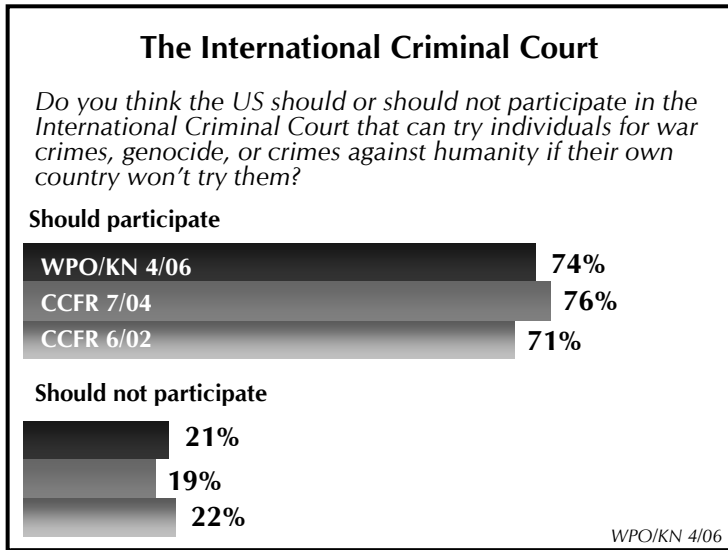
60%

Only individual nations should make laws governing the acts of individuals, because having such international laws and giving international courts and tribunals the power to apply them would violate the sovereignty of nations.

36%

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When another half sample was presented the US government argument against ICC participation, a large majority still favored it, though support was a bit lower. Respondents were presented a longer question which included the US government's argument that "trumped-up charges may be brought against Americans, for example, US soldiers who use force in the course of a peacekeeping operation." In this context, support was 68%, with 29% opposed—again, virtually the same as when this question was asked in 2002 by CCFR. The counterargument clearly raised concerns among Republicans: only 45% favored participation in this question with 52% opposed. Democrats, though, showed higher support than in the short question, with 85% favoring participation.

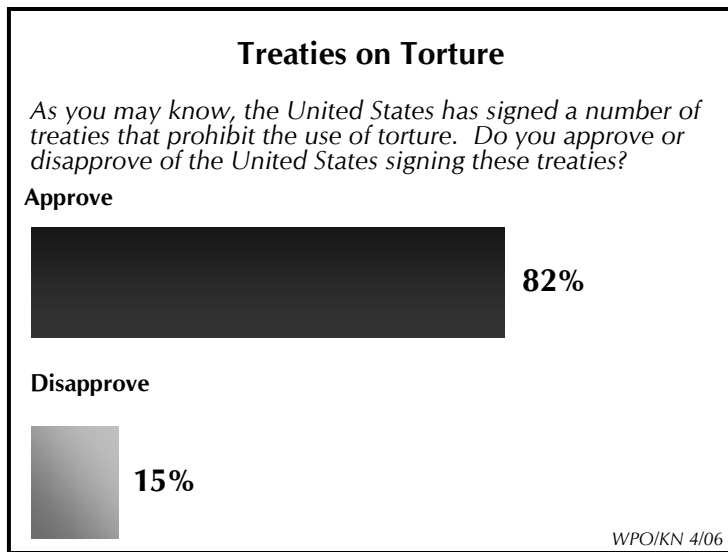


4. Torture

Americans overwhelmingly endorse US participation in treaties prohibiting torture and a large majority favors giving an international court the right to investigate when governments fail to take action against individuals who may have engaged in torture. A very large majority says that individuals who gave orders to torture should be held liable, as well as those who carried out the orders.

Americans overwhelmingly endorse US participation in treaties prohibiting torture. Eighty-two percent (81% of Republicans, 90% of Democrats) approved of "the United States [having] signed a number of treaties that prohibit the use of torture."

Further, a large majority favors giving an international court the right to investigate when governments do not take action against individuals who may have engaged in torture. Respondents were asked, "Do you think that states should or should not agree that if someone is tortured and no one is charged for it, that an international court should have the right to investigate to determine if someone should be charged?" Seventy percent said an international court should have this right; 26% disagreed. A clear majority of Republicans (57%) supported this type of jurisdiction, with 40% opposed. Among Democrats, 86% were in support.

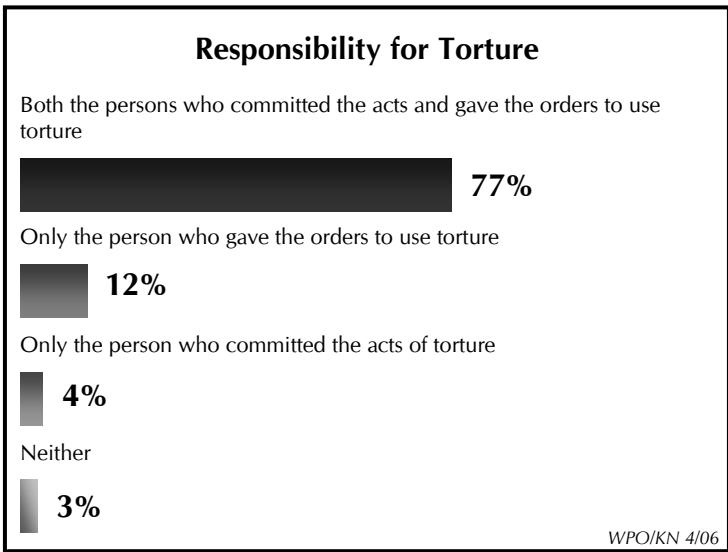
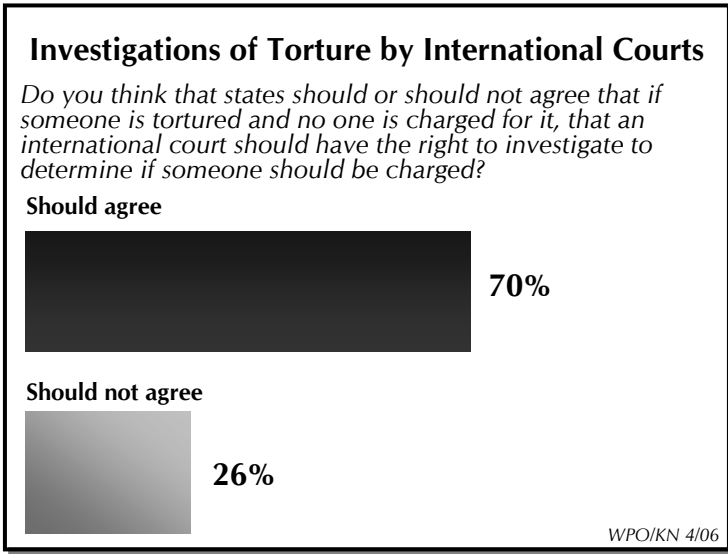


In dealing with severe violations of human rights, the extent of responsibility is always a difficult issue: who is more responsible—those in command who gave the orders, or those who obeyed and carried the orders out? This conundrum was posed to respondents, who were asked: “When acts of torture have been committed, who do you think should be held responsible? Only persons who committed the acts of torture; only the person who gave the orders to use torture; both; or neither?”

An overwhelming majority—77%—said that both those who committed torture and those who gave the orders should be held responsible. Only 12% said responsibility should lie only with those who gave the orders; and just 4% said responsibility should lie only with those who committed the acts. Republican and Democrat responses were essentially the same, with 75% of Republicans, 84% of Democrats and 66% of Independents saying “both” and “the person who gave the orders” coming in a distant second for each.

These majority positions are similar to those found in 2004, shortly after the eruption of the Abu Ghraib scandal. At that time, PIPA found large majorities supporting the principle of holding individuals responsible for their actions in regard to torture and abuse. Asked whether “government officials who engage in, or order others to engage in, torture or cruel and humiliating treatment as a way to get information should be tried and punished,” 71% said they should and just 24% said they should not.

Consistent with this view of personal responsibility, a large majority said in 2004 that soldiers should have the right to disobey an order to engage in torture or abuse. Asked whether a soldier “ordered to take an action against a detainee that the soldier believes is in violation of international law should or should not have the right to refuse to follow the order,” a remarkable 77% said that the soldier should have the right to disobey such orders, with only 19% saying a soldier should not. It is important to note that the question did not specify that the action was in violation of international law—only that the soldier believed that it was. Thus the public seems ready to give soldiers latitude in making such judgments.



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