

Guantanamo detainees face military tribunals

Bush picks six for drumhead trials, possible execution

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President Bush last week selected six out of an estimated 680 detainees held at the Guantanamo Bay naval base for possible trials before a secret military tribunal that could end in the defendants' execution.

"The president determined that there is reason to believe that each of these enemy combatants was a member of Al Qaeda or was otherwise involved in terrorism directed against the United States," a Pentagon statement issued July 3 read.

Military officials have indicated that the plans for trials are going hand-in-hand with the construction at Guantanamo of a permanent prison equipped with a death row and an execution chamber.

The US government has refused to classify the Guantanamo detainees as prisoners of war, despite the fact that most of them were captured during the US invasion of Afghanistan, where they were fighting on behalf of the Taliban which constituted the existing government of that country. Others have in effect been kidnapped by CIA agents or military special forces units operating in Afghanistan, Pakistan and elsewhere.

Many of the detainees have been held for more than 18 months without being charged and with no access to lawyers or family. Washington has taken the position that they are entitled to neither the rights afforded prisoners of war under the Geneva Convention nor to those covering criminal defendants within the US courts.

The international statutes governing the treatment of POWs do not apply, according to the administration's cynical reasoning, because they are "unlawful combatants," a term that has no standing under either US or international law and could with greater justification be applied to the US military itself. As for the US Constitution, the administration has argued—with the acquiescence of the US courts—that it has no applicability because the men are not detained on US soil, but on a naval base that theoretically is Cuban territory, though the US has controlled it for a century.

The end result is that the military tribunals, or commissions, as the administration terms them, will improperly subject civilians to military justice while at the same time depriving POWs of their rights under the Geneva Convention. The objective is the same in both cases: to deny the accused due process; and to assure the verdicts desired.

The president's announcement was made in the atmosphere of military secrecy that has pervaded the US administration's treatment of the detainees since it began shipping them in shackles and hoods to the Guantanamo prison camp in January 2002. No names were released, and it was indicated that whether the six will be brought to trial is an open question. The US government may opt to continue holding them without any charges or trial as it has for the past year and a half.

The decision as to whether or not to bring the six before a special military panel rests with Deputy Defense Secretary Paul Wolfowitz, who has been designated to head the kangaroo court system. Wolfowitz will

supposedly base his decision on a review of information extracted through interrogations that have included forms of torture, as well as other "evidence" procured by US intelligence.

The administration did inform the designated detainees' governments of the president's edict. Three out of the first six to be selected for possible trial—two Britons and one Australian—are citizens of the only two countries in the world that actively participated in the illegal US war against Iraq.

The British detainees facing trial are Feroz Abbasi, 23, from London; and Moazzam Begg, 35, a resident of Birmingham. David Hicks, of Adelaide, Australia was also placed on the possible trial list. The other three on the list have yet to be identified. It is probable that Washington's puppet regime in Afghanistan would observe silence on the status of any of its nationals in US custody.

Begg, a translator and charity worker who ran a school for underprivileged children in Kabul before the US invasion of Afghanistan, was abducted by the CIA in Pakistan in January 2002. He was taken back across the border to Afghanistan in the trunk of a car and kept there at Bagram Airbase for a year, undergoing interrogation before being shipped out to Guantanamo.

Abbasi's British lawyer, Louise Christian, termed the military tribunals and possible death penalties "barbaric" and told the *Guardian* newspaper that her client would be a victim of "victor's justice." She added that the failure of the Blair government to call a halt to the illegal detention and trial of Abbasi and other Britons held at Guantanamo "shows they have absolutely no influence over the US and have been able to do nothing for their citizens."

According to press reports, the two British detainees have been told by their military jailers to plead guilty and accept 20-year prison sentences or go to trial and face certain conviction and the real threat of execution. The US authorities may also be counting on the desperate conditions inside "Camp Delta," the detention camp at Guantanamo, to produce the guilty pleas they seek. Recently released detainees—approximately 40 in all—have spoken of widespread depression and mental disturbances among the prisoners, the result of being subjected to permanent solitary confinement in 6-by-8-foot cages with only one 15 minute exercise period (in a steel mesh container) and one 15 minute shower a week.

Human rights organizations, civil liberties groups and legal defense associations have denounced the military tribunals as fundamentally unfair. The Bush administration has opted to use them because the evidence it has against the detainees would not stand up in a US court of law.

"Any trial before these military commissions would be a travesty of justice," Amnesty International said in a statement released last Friday. "We urge the US administration to rethink its strategy before it causes any further affront to international fair trial norms and any more damage to its

own reputation.”

Human Rights Watch warned, “If the proposed commissions try terrorist suspects under existing military orders and instructions, the trials will undermine the basic rights of defendants to a fair trial; yield verdicts—possibly including death sentences—of questionable legitimacy; and deliver a message worldwide that the fight against terrorism need not respect the rule of law.”

The entire structure of the tribunal is concentrated within the military chain of command, with officers under military discipline serving not only as judge, jury and executioner, but defense counsel as well.

Military defense lawyers will be assigned to each defendant. While under the tribunals’ rules detainees placed on trial may request an additional civilian lawyer, any such attorney must be a US citizen cleared by the government for access to information classified as “Secret” and subject to vetting by the military based on “relevant misconduct.” The government will not provide any funds for civilian attorneys, who, if they accepted a case, would effectively become detainees themselves at Guantanamo for the duration of any trial. How a detainee held incommunicado would obtain such an attorney is also unclear.

Under the rules of evidence, defense lawyers would be limited to developing legal arguments in the Guantanamo detention camp. They are denied the right to conduct interviews or procure any evidence aimed at proving the defendants’ innocence. The government also reserves the right to deny any evidence it sees fit from defense attorneys on grounds of national security. Attorney-client privilege is abrogated, with all conversations between the defendants and their lawyers recorded.

The prosecution, on the other hand, is entitled to introduce evidence that would be thrown out of a civilian court, including confessions extracted through torture, hearsay evidence, phoned-in testimony and testimony from anonymous witnesses. Moreover, defense attorneys are subjected to a sweeping gag rule that would effectively limit public information on the trials to handouts from the Pentagon.

The National Association of Criminal Defense Lawyers has advised its members not to participate in the Guantanamo tribunals on the grounds that they are inherently unfair. “It’s going to be very difficult for any senior military officer who has any career aspirations to vote to acquit someone who the president of the United States has designated for prosecution,” declared the association’s president, Lawrence Goldman.

As for the supposed presumption of innocence that the military claims is built into the tribunals, one only needs consider the statement of the Pentagon’s chief, Donald Rumsfeld, when asked about reports of mistreatment of the detainees: “They are being treated vastly better than they treated anybody else.”

Final decision on whether a defendant is guilty or innocent, as well as whether he should live or die, is placed in the hands of Bush as commander-in-chief. No appeal to any court, either US or international, is allowed. Bush’s power includes the ability to overturn an acquittal and order a detainee’s execution. Even if an acquittal stands, the US reserves the right to continue holding a detainee in custody indefinitely.

While ostensibly Washington formed the courts to try defendants for “crimes of war,” under the rules released by the Pentagon, the definitions of such crimes are so broad as to include virtually anyone alleged to be associated with or to have offered aid to elements deemed by US authorities to be terrorists.

The revelation that two British citizens will potentially be among the first placed before a military tribunal touched off an heated debate in Parliament July 7, with members from all parties condemning the proposed proceedings in terms such as “kangaroo court” and “a charade of justice.” Foreign Office minister Chris Mullin said that a transcript of the debate would be handed over to the US ambassador to underscore appeals by the government of Prime Minister Tony Blair that the US carry out the trials “in a fair and transparent fashion.”

These statements indicate that the Blair has no intention of pressing his formal demand that the British citizens be repatriated to the UK for possible trial. Despite its pro forma protests, the British government is prepared to let the exercise in military injustice go forward. Indeed, the *Financial Times* of London reported Wednesday that the Blair government is “concerned it could not get a British court to convict the men,” and that “evidence that will be used in the US military tribunal would not be permitted under English law because of the way it has been obtained.”

The Pentagon’s adviser on legal rules for the military tribunals, Johns Hopkins international law professor Ruth Wedgwood, ridiculed the statements of outrage in Parliament. “>From the chatter of certain British ministers, one might think this was a great surprise,” she told the *Financial Times*. “In fact, the US has been consulting with the British government for months.” In addition to her legal qualifications, Wedgwood is a member of the Defense Policy Board and the Committee to Liberate Iraq.

In Australia, the government of Prime Minister John Howard has offered what amounts to an endorsement to the system that may well yield the execution of David Hicks. Australia’s Attorney General Daryl Williams declared last week that Hicks “will be entitled to the normal rights accorded to an accused in a criminal court.” For his part, Howard declared himself “satisfied, on the information that I have, if any Australians are tried in the United States, the basic conditions of the presumption of innocence, access to a lawyer and so forth...will be applied.”

“I don’t see how the Australian Attorney General can suggest that is a fair trial,” Hicks’s lawyer, Stephen Kenny, said in an interview with the *Sydney Morning Herald*. The system, he said, included no guarantee of a presumption of innocence or any requirement of proof beyond a reasonable doubt, and lacked any right of appeal. “We do not believe that the trial that he may be facing will be a fair and free trial,” the lawyer said.

Meanwhile, there have been numerous indications that the drumhead justice being prepared at Guantanamo will be the model for Washington’s treatment of those accused of resisting US military occupation in Iraq, where the number of detainees now numbers in the thousands. While the Pentagon has insisted that it has no plans to ship any of its Iraqi prisoners to Guantanamo, it has deemed those who fought US forces—outside of the regular uniformed Iraqi army—to be “unlawful combatants,” just like the alleged Taliban and Al Qaeda fighters jailed in Cuba. Administration officials, meanwhile, routinely refer to the Iraqi resistance fighters as “terrorists.”

In Iraq, just as in Afghanistan, the US claim that its definition of its prisoners as “unlawful combatants” exempts it from observing the Geneva Convention is based not on any legal precedent but rather the sheer arrogance of those directing US military aggression. Signed in 1949, the Geneva Convention makes no mention of “unlawful combatants” and insists that no country can convict and sentence those captured in war without bringing them before a legally constituted court “affording all the judicial guarantees which are recognized as indispensable by civilized people.” It also demands that prisoners be kept under conditions as “favorable” as those enjoyed by the detaining power’s own troops.

Moreover, any dispute over whether a combatant is entitled to POW status is to be decided, according to the convention, by “competent tribunal,” meaning an international court, independent of the detaining power.

Washington’s wholesale violation of the Geneva Convention in its illegal war and occupation of Iraq extends far beyond the POW question. The treaty also bars the type of random detention of unarmed civilians that is presently taking place in the massive sweeps such as Operation Desert Scorpion and Operation Desert Sidewinder.

An article appearing in the *Times* of London July 9 reports of Iraqi men, women and even children being dragged from their homes at night by American patrols, or snatched off the streets and taken, hooded and manacled, to prison camps around the capital." A prison camp on the edge of Baghdad International Airport, where detainees are held in tents in the 122F heat, is already being compared by human rights organizations to Guantanamo.

The report cites the indefinite detention of young men for such "offenses" as eating a package of American biscuits (supposedly proof he was a looter) or going out to buy a package of cigarettes, in violation of a curfew. It cites the case of 11-year-old Sufiyan Abd al-Ghani, hauled away with his head in a hood and his arms tied behind his back after being stopped near his home, supposedly after someone in the area shot at a passing American patrol. Initially thrown into a tent with 22 adult prisoners at the airport, he was subsequently transferred, again in a hood and manacles, to a prison where he was kept in a room with 20 other youths. He has been kept imprisoned for six weeks with no evidence whatsoever of wrongdoing. Other children have been similarly jailed for writing anti-US graffiti on walls or insulting American soldiers.

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