

# Obama administration indicates military commission trials to resume

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Recent statements by top Obama administration officials and reports in the *New York Times* and *Washington Post* indicate that President Barack Obama plans to resume the system of military commission trials for some Guantánamo prisoners.

The articles, which are based on anonymous White House sources, and statements by Defense Secretary Robert Gates and Attorney General Eric Holder appear designed to prepare public opinion for a revival of the trials, which were temporarily suspended in an order issued by Obama on the day of his inauguration. The suspension is due to end May 20.

In testimony before the Senate Appropriations Committee Thursday, Gates was asked whether the Guantánamo military commission system would be shut down, to which he responded, “not at all,” and added that “the commissions are very much still on the table.”

At a news conference last week, Holder said that “it may be difficult for some of those high-value detainees to be tried in a normal federal court.”

The *Times* and *Post* articles, published Saturday and Sunday, respectively, broadly indicate that military commission trials would be used for some of the 241 prisoners still held at Guantánamo.

New trials would likely be preceded by a congressional revision of the Military Tribunal Act of 2006, which sanctioned, with substantial Democratic support, the Guantánamo system of drumhead military courts. The purpose of such a change would be to lend the trials a veneer of legal legitimacy, while overcoming obstacles that prevented the Bush administration from obtaining convictions.

In congressional testimony last week, Holder said any new military commission trials “would be different from those that were previously in place” and would have “significant changes made to the manner in which they

would be conducted.” The determination of whether to try detainees in US courts or in military tribunals would be decided on a case-by-case basis, Holder said.

In his testimony, Gates raised such changes rhetorically, asking, “Should there be any changes to the military commission law, if the decision is made to retain the military commissions?”

According to an anonymous official cited by the *Post*, Obama will likely ask for a three-month delay in the scheduled resumption of military commission proceedings. The *Post* said the administration “planned to use the extra time” to ask Congress to “tweak” the Military Commission Act.

Obama finds himself in a quandary. Administration officials fear that prosecutions in the US court system could, according to the *Times*, founder because judges “could make it difficult to prosecute detainees who were subjected to brutal treatment or for prosecutors to use hearsay evidence gathered by intelligence agencies.”

In other words, the evidence which the government wishes to use against detainees is fatally tainted by the use of torture or by its hearsay character. Such “evidence” is disallowed in any civilian court that adheres to minimal principles of due process laid down by the US Constitution and by statute.

As the *Times* notes, such evidence “is central to many Guantánamo cases because they are based on intelligence reports and detainees may never be permitted to cross-examine the sources of those reports.”

Another problem for the administration in allowing cases to be heard in civilian courts is the possibility of more public revelations of the torture methods employed by the US government as well as the exposure of connections between alleged terrorists and US intelligence agencies.

The administration continues to explore other avenues. Ongoing efforts to find third-party nations willing to

accept the Guantánamo inmates have largely failed.

In his Congressional testimony, Gates said the Obama administration might seek to place up to 100 of the Guantánamo inmates in US prisons without trial or judicial review. The administration has asked Congress to appropriate \$50 million to construct new domestic prisons for terror suspects it claims cannot be tried in federal courts.

Human rights groups such as the American Civil Liberties Union and Human Rights First were quick to raise objections to any resuscitation of the military tribunals. Jonathan Hafetz, an American Civil Liberties Union (ACLU) attorney, interviewed by the internet site *Public Record*, called military commissions a “failed experiment in lawlessness,” adding, “the only reason to perpetuate to military commissions in any form would be to circumvent the protections of the criminal justice system and insulate torture and other abuses from review.”

Francis A. Boyle, a professor at the University of Illinois law school and a specialist in international laws of war, called military tribunals “kangaroo courts” that “violate the Geneva Conventions and are thus a war crime.” He added, “There is no way they can be reformed.”

According to Boyle, the Geneva Conventions “require the use of regular, organized courts, which in this case would mean prosecution in United States Federal District Courts or else prosecution by means of formal US military court-martial proceedings with all the protections of the Uniform Code of Military Justice. To do otherwise is a war crime.”

Obama’s moves toward continuing the Guantánamo military commission trials is the latest exposure of his rhetoric about “change” and his pretense of breaking with the anti-democratic practices of the Bush administration.

When Obama ran for president, he repeatedly pledged to shut down the Guantánamo prison camp, which he called a “legal black hole.” Obama said he would “reject the Military Commissions Act,” and try terror detainees in the US court system. Then, in his January 20 executive order, issued to great media fanfare, Obama temporarily suspended ongoing cases in the military tribunal system.

His evident moves to revive the tribunals follow the decision to release four Bush administration Office of the Legal Counsel memos justifying torture, in response to a Freedom of Information Act lawsuit filed by the ACLU. In the face of denunciations from the Republican Party and the national security apparatus, Obama has promised

that there will be no investigations of Bush administration officials who ordered torture, or the CIA operatives who carried it out.

The fundamental reason that Obama now seeks to make use of the military tribunal system is that his administration, no less than that of Bush, is an instrument of American imperialism.

The military tribunal system, along with torture, grew out of a more fundamental criminal act: the launching of illegal and aggressive wars in Afghanistan and Iraq. These illegal wars enjoyed the support of the Republican and Democratic parties, as well as the media. As the *World Socialist Web Site* noted in a recent Perspective, “far from being an accidental or excessive byproduct, torture was an essential component in creating the web of lies and disinformation that allowed these wars to proceed.”

The centrality of the launching of aggressive war to other war crimes was established in the Nuremberg trials of Germany’s Nazi leadership in the wake of World War II. The victorious Allies who oversaw the trials defined this as the crime of crimes, from which all others flowed.

Obama is committed to carrying on the illegal war in Iraq and has escalated the war in Afghanistan and expanded it to neighboring Pakistan—like Bush, all in the name of fighting terrorism. It follows from this policy that Obama will not relinquish the anti-democratic and criminal methods of “the war on terror.”



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