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Guantanamo Closed, Everything Okay? Arriving at Reality.

By *Sebastian Gräfe*



It was a one-two punch. Right in the first week of his term in office, President Obama issued four executive orders, all of which had one thing in common: It should be made clear to the American people and the world that torture and abuse in dealing with prisoners are now a part of the past. With much symbolism, the foundation is to be laid for regaining

credibility in the discussion on human rights. Above all, though, it was an effort to buy time. The Guantanamo prison camp will be closed at the latest in a year. Torture will no longer be tolerated as an interrogation method. A special task force is working out recommendations on what to do with the remaining prisoners at the camp.

One month later, disenchantment has already set in. Last summer, the Supreme Court had upheld that the Guantanamo prisoners could challenge their incarceration in the U.S. courts. Now Obama's Justice Department has issued a statement saying prisoners being held at the Bagram camp in Afghanistan do not enjoy those constitutional rights. According to the statement, they are in a war zone and are being held in the context of a military action. Therefore, their release or the involvement of U.S. soldiers in court proceedings would represent a threat to security. Human rights groups are shocked, among other reasons, because the new Administration has, in turn, taken the same legal position as its ignominious predecessor.

Only just earlier, the Justice Department was locked in a concrete proceeding against a Boeing subsidy to continue withholding information from a court on the basis of vital security interests. The company is said to have been involved in secret CIA flights for the extraordinary rendition of terrorist suspects. The Bush Administration often preferred to let all the counts be dropped against terrorist suspects rather than disclose in court what, in its view, was security-relevant information. The new White House residents seem to be following the same argumentation on a case-by-case basis. Nevertheless, they have assured the public, there would be a review of all cases where the release of information was denied under Bush.

Even in the case of this instrument – the extraordinary rendition of suspected terrorists, – there will be a continuation, if not even an expansion of, the policy. In January, Obama did order an end to secret prisons and extraordinary renditions of suspected terrorists to countries where torture possibly occurs. But the practice itself is viewed even by Obama's people as an indispensable tool in counterterrorism, provided that the suspects are only briefly in the "care" of the CIA. By contrast, the European Parliament criticized this practice of the past years again in a resolution on February 19. The EU member states and the Council had so far not taken any steps to shed light on the truth about the passive or active cooperation between various European governments and the CIA or the U.S. military in extraordinary renditions.

And now, an internal U.S. Defense Department report ordered by Obama has concluded that the treatment of prisoners at Guantanamo is now humane and consistent with the requirements of the Geneva Convention.

Is that what the promised change looks like? Some experts did not expect otherwise. Human rights activists are becoming restless. Newspaper commentators have acknowledged Obama's clear renunciation of torture, but admonished the new president to implement this policy more decisively in its handling of terrorist suspects. But, even on this point, Obama proves to be a pragmatist. While he won the election by, among other reasons, demanding a withdrawal from Iraq, he has, nevertheless, made clear that increased military (and civilian) efforts are needed in Afghanistan. Particularly in that region, more enemy combatants will be captured through expansion of the fighting. The closure of Guantanamo will accordingly lead to an expansion of existing, and construction of new, prison camps. A former Pentagon official who was responsible for prisoners during the Bush Administration recently said with some satisfaction at a discussion forum that Guantanamo would be reestablished elsewhere under a different name.

It is now becoming clear that the public debate on the treatment of prisoners in the fight against terrorism focused too much on Guantanamo during the election campaign. Think tanks and human rights organizations published dozens of recommendations on how the camp could best be closed and what to do with the remaining prisoners. But did they really think that once Guantanamo was closed, everything would be okay? When did Obama ever say, he wanted to end the global war on terror? What prompted the *Washington Post* three days after his inauguration to write the headline "*Bush's 'War' On Terror Comes to a Sudden End*"? Didn't we already once hear: "mission accomplished?" Everybody was excited when Obama reached out to the Muslim world in his inaugural address. But two paragraphs beforehand, he also said: "... And for those who seek to advance their aims by inducing terror and slaughtering innocents, we say to you now that our spirit is stronger and cannot be broken. You cannot outlast us, and we will defeat you. ..." The late night talk show host Jon Stewart even made fun of the speech on his program *The Daily Show*, juxtaposing excerpts from Obama's address with statements by Bush. That definitely elicited some smirks.

One would be doing Obama an injustice one month after taking office, if one were to reproach him already now for failing to reshape foreign policy so it is based more on human rights. Obama wanted to gain time with his first executive orders in order to initiate an internal review process before Guantanamo is closed next January to determine how in future to deal with prisoners in the war on terror. It must not remain an internal review process; it also has to be carried out with America's allies in Europe. And the European allies must not be allowed to hide behind the United States on these issues and play dumb, as they did in the case of the CIA flights and secret prisons. It still remains unclear how to define standards based on the rule of law and human rights in dealing with nonstate combatants and how to establish them as rules. After months of excitement and hope for change, the United States is arriving at reality and facing difficult questions. Europe has already taken in Guantanamo prisoners and will continue to do so at the request of the United States – actually a good opportunity finally to actively engage in the debate on human rights in the fight against terror.



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