

Scrapping the Geneva Conventions

By Jim Lobe | October 4, 2006

In enacting new legislation last week governing the treatment and trial of suspects in Washington's "global war on terror," Congress has turned its back on both international law and the U.S. Constitution, according to the country's major human rights groups.

The legislation, which cleared the Senate last Thursday and is expected to be signed into law by President George W. Bush in a high-profile ceremony over the next several days, will also do further damage to Washington's declining moral authority around the world, according to the groups, as well as many Democratic and a handful of Republican lawmakers who opposed the bill or tried to amend it.

"This was the moment for Congress to pass legislation that reflects the fundamental values of this country," said Elisa Massimino, Washington director of Human Rights First (HRF), an international rights group. "Instead, it rushed to adopt an ill-considered law which history will judge harshly."

"The many flaws in this law raise fundamental constitutional issues [and] will result in prolonged legal challenges, instead of fair trials that ensure justice," she predicted.

One group that has represented hundreds of detainees held at the U.S. Guantanamo Bay naval base in Cuba said that it would immediately challenge the new law, the Military Commissions Act of 2006 (MCA), and particularly its denial of the right of suspected terrorists to challenge their detention before a court that is independent of the executive branch.

The New York City-based Center for Constitutional Rights (CCR) noted that the provision could lead to indefinite detention without charges.

"Since the nation's founding the writ [of habeas corpus] has been suspended only four times—each only briefly and in a territory that was an active combat zone," said CCR Director Vincent Warren in a statement. "This bill would suspend it for all non-citizens inside and outside of the United States—even if they have not been charged with any crime. This unprecedented and expansive suspension of habeas corpus is utterly unconstitutional, and we will challenge it."

Even the Republican chairman of the Senate Judiciary Committee, Sen. Arlen Specter of Pennsylvania, predicted that the courts will rule unconstitutional the MCA's elimination of habeas corpus, which dates back to the Magna Carta of 1215. "What this bill will do is take our civilization back 900 years," he warned.

Despite those warnings, the Senate voted 51-48 to reject Specter's amendment to restore habeas corpus and went on to approve the MCA by a 65-34 margin. Twelve Democrats, most of whom face reelection in November, voted with the majority Republicans, while one

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moderate Republican, who also faces a tough reelection fight, voted with 33 Democrats to oppose it.

The House of Representatives had voted 253-168 to approve the identical bill on Wednesday on a mainly party-line vote.

One particular item of concern was the bill's expansion of the definition of "unlawful enemy combatants" who could be subject to detention under the MCA to cover people—including U.S. citizens and legal permanent residents—who have "purposefully and materially supported hostilities against the United States or its cobelligerents," or anyone deemed as such by a "Combatant Status Review Tribunal," which is overseen by the Pentagon.

Passage of the MCA, which Bush said will "ensure [that U.S. troops] are prepared to defeat today's enemies and address tomorrow's threats," puts an end to a three-week congressional debate over what to do about a July U.S. Supreme Court decision that determined that, contrary to the administration's position, suspected terrorists in U.S. custody are entitled to the protections of "Common Article 3" of the Geneva Conventions as a matter of both U.S. and international law.

Among other provisions, Article 3 requires humane treatment of detainees "in all circumstances" and bans "cruel treatment and torture" or "outrages upon personal dignity, in particular humiliating and degrading treatment." It also requires that all detainees be given a fair trial with all the guarantees "recognized as indispensable by civilized peoples." That decision required the administration to seek legislation to establish standards for the treatment and trial of detainees, including 14 so-called "high-value" al-Qaida suspects who had been held incommunicado by the CIA and subjected to what Bush called "alternative interrogation procedures" before the court's decision. They have now been transferred to Guantanamo and are expected to face trial under military commissions established by the new law.

As a result, Bush submitted new legislation earlier this month. But several senior Republican senators with distinguished military records, backed by former military lawyers, rights groups, and most Democrats, strongly objected to many of the draft legislation's provisions, which they claimed redefined Article 3 standards in ways that would permit abusive treatment and unfair trials.

Lengthy negotiations ensued between the three Republican rebels and the administration, resulting in a compromise that on one hand appeared to reaffirm Article 3 as the law governing the treatment of detainees, but on the other hand provided the executive branch considerable latitude in how it would be interpreted, particularly with respect to CIA interrogation tactics.

Some groups, notably HRF and Human Rights Watch (HRW), hailed changes in the bill that

they said would preclude the use of especially harsh methods, such as waterboarding, prolonged stress positions or sleep deprivation, hypothermia, and mock executions. However, their overall opposition to the bill—particularly with respect to the denial of habeas corpus, various procedural aspects of the military commissions, and proposed changes in the 1996 War Crimes Act—remained unchanged.

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"This provision expands the concept of combatant way beyond anything that is traditionally

accepted, and it could come back to haunt Americans," said HRW Director Kenneth Roth. "It would make every civilian cafeteria worker at a U.S. military base, and every worker in an American uniform factory, someone whom enemy forces could shoot to kill."

Among other objectionable provisions, the groups assailed changes to the War Crimes Act that could permit CIA interrogators to use "humiliating and degrading [interrogation] practices" proscribed by Common Article 3 but that fall short of causing "serious" physical or mental pain or suffering.

Amendments to the 1996 War Crimes Act would provide retroactive immunity to U.S. officials for serious violations of Common Article 3, including for using or authorizing tactics, such as waterboarding, that most groups consider torture. Moreover, changes would bar the Geneva Conventions from being invoked in any lawsuit against the U.S. government.

Common Article 3 of the Geneva Conventions

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Yet another provision permits the government to introduce evidence in military tribunals that was coerced under torture or gathered illegally either here or abroad or based on hearsay.

“Nothing could be less American than a government that can indefinitely hold people in secret torture cells, take away their protections against horrific and cruel abuse, put them on trial based on evidence they cannot see, sentence

them to death based on testimony literally beaten out of witnesses, and then slam shut the courthouse door for any habeas corpus petition,” said Christopher Anders, legislative counsel for the American Civil Liberties Union. “But that’s exactly what Congress just approved.”

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