



Peace and Security Funders Group

INTERNATIONAL HUMAN RIGHTS FUNDERS GROUP

IHRFG-PSFG FEDERAL POLICY BRIEFING WASHINGTON DC

DETENTION AND TREATMENT OF TERRORISM SUSPECTS: SECURING HUMAN RIGHTS ACCOUNTABILITY

Wednesday, March 30, 2011

3:00 – 4:15pm

Speakers:

Sarah Cleveland, Counselor on International Law, Office of the Legal Adviser, U.S. Department of State;

Jonathan Hafetz, Professor, Seton Hall Law School

Elisa Massimino, President and CEO, Human Rights First

Moderator:

Elisa Massimino, Human Rights First

The next 18-24 months will be a pendulum or plateau for prisoner treatment, torture and trial issues. There are grim realities, policy risks as well as opportunity.

Speaker 1

A progressive voice outside the administration from philanthropists and grantees is essential and appreciated.

When calling on government to act, influence comes from: 1) the positions of one's allies 2) Democrats in Congress 3) media 4) civil society (but if we say you'll scream and then you don't, not helpful).

Since the Clinton administration the environment has become much more difficult. Since 9/11, the number of military voices have quadrupled and are very conservative; there is movement in a different direction. The state department is the most populated with energetic people committed to international law and the President's values when coming in, but are out-numbered overall.

Domestic legislative agenda proved some distraction to military issues.

Department of Justice conflicted on Article 3: accountability, government review of judicial action.

Our current struggle is to keep administration in positions of power, vs. having those positions erode. Our strategy has to be pragmatic, we are not ready for ideas. NGO efforts have to be coordinated. Instead of protesting the administration's inheritance of torture as a paradigm, focus on the threat of something like that happening again in the future.

Opportunity's:

- Develop legislation before the White House;
- Push the administration to confirm judges;
- Develop persistent, intellectual counterweight to voices like Jack Goldsmith, Cheney, Hughes, etc;
- Generate a similar group to the forum co-sponsored by Jeht Foundation to engage civil society in an effective and strategic direction on these issues, e.g. include David Martin, Trevor Morrison who are eager to help, as well as academics, advocates; hold a few Chatham house meetings.

Speaker 2

There is a plateau on detention, and it may even be swinging backwards. Here are some reasons why:

- New acceptance of prolonged detention without charge, e.g. Guantanamo;
- Appropriations that prevent Department of Defense funds from trying Guantanamo detainees in federal court and create legal roadblocks to proper dealing with terrorism suspects. Also affects separation of power, human rights, etc;
- Military commissions instead of prosecution, e.g. 5 promotions since 9/11;
- Habeas Corpus cases: Guantanamo detainees have a right to Habeas Corpus; in 2004 and 2006 congress tried to strip from detainees. Door opener to other issues which could be laid out during Habeas Corpus hearings, e.g. indefinite detainment; government evidence; also the appellate court is more deferential and defendants are losing cases more prevalently; periodic review of indefinite detainees by Obama; ability of court to grant remedies/release from GT, un-reviewed cases and response of court.

Speaker 3

...Federal funding (Department of Defense) has put a ban on deportation as well.

In an archive speech from May, 2009 the president said that detainees were too dangerous to release but can't be tried, so that GT needed to be dealt with separate from general policy on prisoners. Congress now wants not only to roll back progress and make GT an exception. Abandoning these progressive efforts would be a big step backward. We need a politically viable alternative.

Risks and Opportunity's:

- We are coming up on the 10th anniversary of 9/11. The achievements we've made will be reflective of the "new normal", e.g. restrictions on transfers.

Without leadership from the top a vacuum is created where “bad” things can happen;

- We are entering into the presidential campaign season. The bi-partisan window is closing;
- Why keep funding this area? Because we are stuck on a plateau. Failed shift in paradigm so laying a defensive strategy;
- From the front-lines US needs to get counter-terrorism policies in order: preventive detention and military trials or officials can’t effectively do their jobs.

Q+A

Q: What is Guantanamo called technically that allows it to operate outside of law?

A: Guantanamo is not a US territory, it is “Extra-territory”. It is a Naval Base for which the US holds a lease. It is de-facto US territory. We haven’t actually said that law doesn’t apply there, like Bush did. Bagram (Afghanistan) is potentially more complicated in terms of lacking definition.

Q: Is there a way to get Congress to recognize that international law matters?

A: The administration has been quite strong in its commitment to international law and restoring US legitimacy in that regard. There is talk about the US as a champion of peace and security, which is in our national interest.

Q: Does the President appreciate that the administration is seen as mediocre on Human Rights support?

A: The administration is insulated from a lot of perspectives...however both Secretary and representatives have pushed human rights issues and engaged in questions publicly more second year than first. Other places where President has done a lot, e.g. the International Criminal Court referral on Libya. Progress made on LGBT issues. More progress on issues where military is not at the table. Across the administration the commitment is there, but traction is difficult.

Q: Are some things the Pres is doing that are being purposely kept under the radar?

A: It is true that we are not productive on some measures because of potential legislative backlash., e.g. when domestic politics are mixed.

Q: It’s about doing more than keeping bad things from happening...what can the Human Rights community convey that is positive/affirmative?

A: We underestimate the amount of effort it takes to keep pushing the Human Rights agenda forward. Setbacks mean needing to gear-up and/or change strategy, on deploying troops, etc. It’s difficult to respond to all the issues, much less be affirmative. Need to realistically assess what it’s going to take.

Q: There is a perception that the strength of the constituency has eroded. What will it take to revitalize it? Is pooling funder dollars still only a drop in the bucket? If there were 10x the funding and human resources, where do we rebuild for the most impact? Do you think constant building is correlated with resources?

A: With more resources, we could create SWAT teams and work to identify allies. Create a chorus for an agenda that comes from different perspectives and not us vs. them. We could include Human Rights voices from abroad e.g. activists in Egypt and Tunisia. And spend over a concentrated time period.

Comment: New Human Rights funding not going to old issues. They are now country and issue specific, e.g. related to trafficking, sweat shops, corporate accountability, etc.

C: Philanthropists really aim to empower action and decision-makers inside the administration. We want to create a force for change consisting of those who're left.