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Untying Guantánamo's knot: A Portuguese contribution

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Ironically, what once was a humanitarian facility used for housing refugees became one of the most visible locations of human rights' violations. Since 9/11, the U.S. Guantánamo Naval Base in Cuba has been used as a detention center for individuals responsible for or suspected of committing or supporting terrorist acts.

Apart from accusations based on a militant anti-Americanism – which should obviously be discarded – the controversy lies in the suspects' lack of legal protection, the mistreatment to which they were subjected, and finally on the circumstances in which an important segment of the detainees were put into custody. With respect to this last question, the majority of the prisoners were turned over to the authorities by third parties, usually with eyes set on rewards granted by the U.S. military. Officials accepted the suspects almost without any investigation, often based on sketchy intelligence.

In January 2009, shortly after taking office, U.S. Presi-

dent Barack Obama delivered on his electoral promise and signed three executive orders to initiate the closure of Guantánamo, to halt procedures which might be considered torture, and to review the detention policy's legal framework. The drafting of these orders was prudently vague, leaving open some loopholes. In case there was any doubt, the current state of affairs regarding Gitmo shows that its closure is easier said than done. Besides the obvious security and diplomatic issues, there are numerous legal problems to address. Furthermore, a valid way out requires reaching across the aisle for a compromise between Democrats and Republicans.

Without going into an exhaustive explanation of all the legal angles, one should bear in mind that they consist mainly of three aspects: the jurisdiction of the facility and of the military commissions created to try the prisoners; the difficulty that suspects have on building a case to challenge their detention (absence of *habeas corpus*



and the admission of hearsay in trial); and the political and juridical complexity inherent drafting and approving legislation to solve the aforementioned problems. The Bush Administration suffered a number of setbacks on these matters. Amongst other rulings, in 2008 the U.S. Supreme Court declared unconstitutional the law that authorized judging the detainees before military courts. White House legal advisers underlined at the time the security threats posed by the suspects and argued that releasing the evidence against them could endanger American officers abroad and jeopardize intelligence gathering.

Of nearly 800 detainees, close to 500 were transferred or released during the Bush Administration. In trying to answer the question of what to do with the suspects in custody, we find security and law deeply intertwined. There are three types of detainees:

- “Enemy Combatants” facing charges with great probability of being convicted;
- A second group, for whom the evidence against them may not guarantee a condemnation, but who are considered dangerous, and remain detained to prevent a return to terrorist activities. The Obama Administration is trying to see if at least some of them can be tried in federal courts, but it is a delicate process due to the fact that exposing evidence without some assurance of conviction could carry serious security and diplomatic risks;
- Thirdly, a group of inmates cleared for release, not because they are innocent, but because in some cases there is not enough evidence to detain them.

On the other hand, the effect on the prisoners of their time spent in Gitmo is unclear. Some could return to their home countries. If so, there are two possible problems on arrival: facing torture or simply being freed without further investigation.

Recidivism is indeed a concern. Said al-Shihri and Mo-

ammed al-Awfi, former Gitmo inmates transferred to Saudi Arabia in November 2007 and graduates from the Kingdom’s Rehabilitation Program, resurfaced in Yemen as al-Qaeda operatives. It was embarrassing for both the Saudis – who claimed rehabilitation success rates of 100% – and for President Obama, who had just set one year as the time frame for definitely closing Guantánamo. Saudi de-radicalization centers are successful because they work but also for the reason that they do

not accept everyone. As Mansour al-Turki, Saudi Interior Ministry’s spokesman said to Time magazine “With some people, there is just no cure”. The Carnegie Endowment for International Peace’s expert Christopher Boucek argues that such programs need more time to reintegrate individuals and make them come to terms with the time spent in prison. Boucek adds that “the investi-

gation and risk assessment stages of rehabilitation cannot take place at the same time as religious and psychological counseling”. In addition, there must be a clear-cut and universal distinction between de-radicalization and simply renouncing violence.

Besides untangling the legal, political, security and diplomatic knot, the Obama Administration is also trying to avoid acquittals based on technicalities, and further trying to prevent the reappearance of released individuals in jihadist cells. For a proper solution of Guantánamo, many other issues must be tackled, such as improving screening processes to identify false positives and false negatives; new legislation (both national and international); and developing de-radicalization programs.

Portugal and the resettlement of former Guantánamo inmates

On the 60th anniversary of the Universal Declaration of Human Rights, Portuguese Foreign Minister Luís Amado

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sent a letter to his European counterparts and to the E.U. High Representative for the Common Foreign and Security Policy, Javier Solana, stressing the need for consensus on closing the Guantánamo Bay detention center. Amado stated that, as a matter of principle and coherence, Europe should send a clear sign of its commitment in helping the U.S. Government and he argued that resettling former inmates would be an important manner to do so. "The time has come for the European Union to step forward", he wrote. Later on, Amado added that this was a way of reaching out to the U.S. in an effort to revitalize trans-Atlantic relations, while solving a humanitarian and "complex juridical issue". The whole process comprised a number of diplomatic encounters between Portuguese and North American officials, most importantly the visits to Lisbon by former State Secretary Condoleezza Rice in September 2008 and U.S. Special Envoy on Guantánamo Dan Fried, in June 2009, when the agreement was apparently solidified. A Foreign Ministry press release stated that "In the Portuguese Government's final decision on this matter different aspects

were reconciled: the humanitarian and the external relations dimensions, safeguard aspects related to security, as well as the prospects for the successful integration of these former detainees. The decision to grant legal status to these people meets the provisions set by Article 68 of Law No. 23/2007 of July 4, regarding the entry, stay and exit of foreigners in national territory. This law provides a special visa that allows entry into national territory".

Two Syrian nationals were transferred to Portugal at the end of last August. The Portuguese Interior Ministry

affirmed that both men are "not subject to any charge, they are free people and are living in homes provided by state". While the men were cleared for release, for reasons previously mentioned some sort of monitoring was required. Back in December 2008, Luís Serradas Tavares, then a legal adviser to the Portuguese Foreign Ministry, said the resettlement would need to be worked out and might include a follow up program. According to the

Portuguese weekly newspaper *Expresso*, the domestic intelligence agency SIS is monitoring the two former inmates.

The decision to accept the former detainees will not have a significant impact in the domestic realm. However, as far as Portugal's foreign policy is concerned, Amado's leading role was relevant for three broad reasons:

First, it has shown Washington that, more than a critic, Portugal is also able to be a proactive part of a solution. It would be politically incoherent if the European States, hard critics of the Guantánamo detention center, when called upon to help would not offer any assistance. Portugal was the first E.U. member to publicly show its willingness to receive a few

Guantánamo inmates. Thus, in a crucial moment, Lisbon has demonstrated to the Obama Administration that it is a responsible trans-Atlantic partner, while at the same time reaffirming its role as an international security provider.

Second, Portuguese foreign policy traditionally is situated in three spheres: European, Lusophone and trans-Atlantic. As many other European countries, the Portuguese relationship with the United States was weaker during the Bush Administration. With a new president

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in office, more favorable conditions were in place for reestablishing stronger diplomatic ties. Ronald Asmus, executive director of the German Marshall Fund (GMF), recently wrote an op-ed in the *New York Times* affirming that “European attitudes toward the United States have experienced ups and downs during past decades — with significant drops in support during the Vietnam War, the Euromissile crisis of the early 1980s or the war in Kosovo in 1999. But never before in the history of trans-Atlantic polling have we seen the kind of plunge that took place under George W. Bush”.

Commenting on polls conducted by the GMF, Asmus stated that the “President Obama’s popularity is almost stratospheric. He has essentially reversed the loss to America’s image that accrued during the Bush years”. Perceptions have changed and European leaders would be irresponsible if they did not take advantage of the opportunity this affords. A political gesture like the resettlement of former inmates would set in motion the rapprochement process. Portugal’s announcement that it would accept a few Guantánamo inmates paved the way for other E.U. countries to do the same. The U.S. reaction can be found, for example, in State Department’s August 7 daily press briefing. Robert Wood, Deputy State Department Spokesman, after confirming the acceptance of the two Syrians by Portugal, said that the U.S. was “very grateful for the efforts of the Government of Portugal (...) and for the leadership it exhibited in achieving a common European position on resettling Guantánamo detainees”.

Finally, Portugal’s image was tarnished by the results

of investigations into the extent and routes of the CIA’s flights to Guantánamo and other detention facilities. There were private and public investigations, the E.U. established a special commission to work on the topic and there was some media frenzy around the alleged use of Portuguese airports within the overall CIA transport network to and from Guantánamo. By accepting two Syrian nationals previously incarcerated in Gitmo, Portugal

made a contribution to close the cycle and to show exactly where Lisbon stands regarding this matter.

Why closing Guantánamo matters

The resettlement of these former detainees and Portugal’s contribution for closing Guantánamo might demonstrate that it understands the nature of the Salafi-Jihadist threat as well as the specifications and urgency of successful anti-terrorism policies. We now know that Guantánamo and what it represents damages the image and credibility of the West in the eyes of Muslims. NGO’s, academics and anti-terrorism experts have made this point many times. Likewise, even within the U.S. intelligence community this is already an accepted fact: Retired Admiral Dennis C. Blair,

currently the Director of National Intelligence, stated in a memo regarding torture that “These techniques have hurt our image around the world. The damage they have done to our interests far outweighed whatever benefit they gave us and they are not essential to our national security”. Facilities such as Guantánamo and the interrogation methods used in them are used as arguments for radicalization and therefore recruitment by al-Qaeda and its affiliates.

To expect that the end or reform of Guantánamo will stop Jihadist propaganda, or moderate terrorists, is simply uneducated wishful thinking. The key to understanding the importance of closing Guantánamo is this: if States act according to their foundational principles, they will stop providing additional arguments and the Muslim main street will not be as receptive to radicalization.



To expect that the end or reform of Guantánamo will stop Jihadist propaganda, or moderate terrorists, is simply uneducated wishful thinking. The key to understanding the importance of closing Guantánamo is this: if States act according to their foundational principles, they will stop providing additional arguments and the Muslim main street will not be as receptive to radicalization. Its relevance lies in prevention. However, one could argue that even if harmful for public diplomacy, these techniques and infrastructures produce high-value information that could not be obtained through other means. According to the recent release of two CIA assessments from 2004 and 2005 concerning the results of detainee interrogation and also the CIA inspector general's Special Review from 7 May 2004, this does not seem to be the case. Capturing the attention and trust of Muslim communities around the globe is a basic provision for successfully combating Islamism: Muslims are the first victims of Jihadism, in part – but not exclusively – because they are the main source of recruitment. This does not necessarily mean that the battle for “hearts and minds” is the best way to cope with the threat. What it means is that a solid and capable front against a sectarian and aggressive distortion of Islam cannot alienate Muslims. In other words, closing Guantánamo is not only a matter of principle but also a requirement for a proficient war against Salafi-Jihadism.

Reestablishing a solid relationship between the E.U. and the U.S. is of the utmost importance to debunking violent Islamist doctrines. The United States and Europe –

two world powers, emblematic of liberal democracy and known targets of Jihadism – must agree on a common base of how to deal with the threat. Given the dimension and complexity of the menace, without a realistic and shared understanding, individual states will not be able to solve the problem of international Jihadism and

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guarantee the well being of their citizens. More than mass murder, Jihadism seeks to undermine the values and principles that sustain liberal democracies and Islamist leaders have it present as a threat at all times. Terrorists are highly mobile and know how to use the freedom of Western societies for their own benefit. Before 9/11, radical clerics and suspected terrorists frequently shielded themselves behind constitutional rights in societies they consider hedonist, decadent and depredatory in order to avoid deportation to their home countries. Democratic legal principles were also used to safeguard the dissemination of Jihadists' violent narratives. Islamist terrorist cells operate according to a decentralized structure, which makes early detection and investigation difficult tasks. They seek to polarize societies in order to recruit, but also with the purpose of debilitating the objects of their violence. When

states are divided and find reasons for polarization, they are creating the ideal setting for those who struggle to destroy them. The factors mentioned above demonstrate why there is no single solution to the Jihadist threat and why cooperation and coordination are paramount.



Jihadism needs social recognition in order to exist and develop itself. The best way to solve a problem is by disrupting its resources. Thus, stripping terrorist groups of their public support is a priority. Each time a state undertakes policies that are based in strategies like the ones used in Gitmo, the effect is exactly the opposite. The use of “enhanced interrogation techniques” and the cessation of individual rights allow Islamist terrorism to provide “proof” of their image of an imperialistic West, in a quest to capture the imagination of fellow Muslims. From the beginning of the War on Terror, it was defined as targeting terrorism, and not religion, but either way it provided dialectical weapons to the enemy. Radical Political Islam will sell it as an attack on the *Ummah* (community of the faithful), to radicalize moderates and close ranks. Of course this is a grotesque distortion of reality. Although the goals have always been clear, particularly for the US, states should seek to avoid policies that, from the general public perspective, may seem unclear in their objectives and thus can be easily misrepresented.

Regardless of future outcomes in the fight against international Jihadism, President Obama’s decision to close, or at least reform, Guantanamo’s detention facilities gave a new start to trans-Atlantic relations. Portugal provided a strong contribution by taking the lead in Europe and by setting the example.

Regardless of whether the concept of war is appropriate to describe the endeavor of combating the Islamist threat, it is unquestionable that the Jihadist groups have to be dismantled. What matters is that more than a struggle of violence, this is a conflict of ideas, emphasizing even more the need for common action and understanding. The strategic, operational and tactical concerns in the use of force cannot be disregarded. But the legal and ideological sides must also be addressed. The exploitation of both political vacuums and legal discrepancies is a trademark of Jihadist strategies. Elaborating a joint legal framework – which is to say “reforming international law” – constitutes without a doubt a herculean assignment, but it is one worth undertaking. Regardless of future outcomes in the fight against international Jihadism, President Obama’s decision to close, or at least reform, Guantanamo’s detention facilities gave a new start to trans-Atlantic relations. Portugal provided a strong contribution by taking the lead in Europe and by setting the example.

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