

US justice, Guantanamo style

Human Rights

By Rafi Raza

Dawn 28/03

THERE are some 700 Muslim prisoners from 43 nations held at Guantanamo Bay, the US military base in Cuba. In the words of the distinguished British playwright Harold Pinter, 'At this very moment 700 people are chained, padlocked, handcuffed, hooded and treated like animals in a concentration camp'.

To the shame of the Muslim world, there has hardly been any talk, let alone criticism, of this in the Muslim countries whose nationals are so abused. On the contrary, some countries have obediently and happily 'delivered' their citizens and others to the US authorities. The cause of these wretched prisoners has been taken up by human rights, civil liberties, and other activists, mainly in the countries such as the UK and Australia, which have but a handful of their nationals among the total.

The perpetrators of this travesty of justice are none other than the erstwhile champions of liberty, democracy and freedom, the United States of America. How has this come about?

The events of 9/11 were indeed traumatic. The whole world sympathized with the US, not the least many Muslim countries. But the actions pursued by the US in the name of their own security have since driven a deep wedge not only between the US and the Muslim world but also much of Europe, Latin America and Asia. The military conquests of the US in Afghanistan and Iraq have left the victors with little glory.

Even worse, however, is the US indulgence in the legal subterfuge of 'enemy combatants', which has left the 700 prisoners in Guantanamo Bay with no rights under any law except the rules laid down for their trial by military commissions.

After 9/11, the US sought not justice but vengeance. In this they have acted contrary to international law and their own national laws, to say nothing of the established human rights and morality.

The US has admitted that its military authorities had to secure convictions and could not do so under ordinary laws. For this reason the Presidential Executive Order of November 2001 stated that it was 'not practicable to apply...principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States'. Accordingly, the procedure for military commissions was devised.

To this day, after nearly 18 months in many cases, no charges have been framed against the 700 prisoners. Moreover, some of the procedures have still not been clarified and finalized. Nevertheless, President Bush has announced that six of these 'bad men' are to be put on trial.

information in the case itself, these rules hardly permit open and free discussion with the counsel.

Moreover, the rules provide that the military authorities must approve all lawyers' contacts with the media, which effectively eliminates the possibility of any complaint by lawyers to the media.

Then again, no appeals are allowed to courts outside the chain of military command. The lawyers for the detainees are required to agree specifically to make no effort to move the US courts, as has been done in the past.

Thus, not only is the prisoner to be tried by the military, but any appeal must also be heard by the military. This is the same military against whom the accused have waged war and whose commander-in-chief has already condemned them as 'bad men'.

Just as modern technology has refashioned war, so has it become a new tool for dissemination of information and ideology. The world cannot be saved by an unending spiral of violence and arbitrary and unaccountable action. The US should not, in the name of the war against terrorism, sacrifice what they have long held dear, that is, civil liberty and the due process of law.

In these proposed trials, a totally different standard of evidence is allowed before the military commissions. Instead of the normal high standards set for admissible evidence in criminal cases, these commissions can accept evidence which is merely of 'probative value to a reasonable person'. This would, for example, make acceptable as evidence documents whose origins are not properly verified, and what would otherwise be rejected as rumour or hearsay evidence.

The procedures fly in the face of a cardinal principle of criminal justice, which normally allows the accused full access to witnesses and to evidence against them. Even the lawyers, paid for by the accused, can be denied access to secret or sensitive information by the military commissions.

The importance of this last point has surfaced in the trial before a Virginia district court of Zacarias Moussaoui, the so-called 9/11 hijacker who was on the ground. The Pentagon has refused to make available depositions from another Al Qaeda suspect who is also under US detention. The court has ruled that the prosecution must make available to the accused what the Pentagon terms classified information. The government is appealing on this issue, and has announced that it will abandon the trial and declare Moussaoui an 'enemy combatant' if the appeal fails.

Though some of these points may at first sight appear somewhat technical and legal,

It has also been announced that, as far as the British prisoners are concerned, they will not face the death penalty if found guilty. This 'concession' was granted after the British public mounted a concerted campaign in support of its Muslim nationals. The death penalty is not countenanced in the UK and other European countries. But the situation remains otherwise far from satisfactory.

For the rest, there has been little progress. It appears that the US has at the moment no plans to charge most of the 700 prisoners. Not less worrying is that there is no indication as to where the prisoners will be incarcerated when found guilty. If the plan is to keep the prisoners in Guantanamo after conviction in order to ensure that they indulge in no further mischief, then the prisoners will remain without proper contact with their families for many years.

If the US and its allies think they will end terrorism by these means, then they should think again. Just as modern technology has refashioned war, so has it become a new tool for dissemination of information and ideology. The world cannot be saved by an unending spiral of violence and arbitrary and unaccountable action.

There are many American individuals, institutions and organizations that still cherish the real values of the founding fathers of that great country. It would take a considerable collective effort by all of them to garner further support and

improve the situation.

The US should not, in the name of the war against terrorism, sacrifice what they have long held dear, that is, civil liberty and the due process of law. Celebrated actresses like Susan Sarandon and her actor husband Tim Robbins should not be vilified and boycotted for upholding such values.

The Americans have been shocked and mesmerized by their own feeling of insecurity post-9/11. While to some extent this may be understandable, they nevertheless need to wake up. They must work positively to avoid a situation where the provocative 1993 thesis by a Harvard professor about the clash of civilizations becomes a reality.

Both the US and the leaders of the Muslim world should endeavour to prevent the growing prejudice against the Muslims becoming an all-consuming reality. Muslim leaders should play a positive role in the manner of Prime Minister Mahathir of Malaysia. They are as much to blame for the present situation as the neo-conservatives behind the Bush administration.

If there had not been a million marchers in London protesting about the war in Iraq, then, notwithstanding all the precautions of armoured vehicles at Heathrow airport, there could well have been some sort of attack in the UK. In fact, the head of British intelligence has publicly stated her concern that this might happen. The people of London can thank those marchers for pro-

are to be put on trial.

From the patchwork of procedures that have so far been put forward, a grotesque picture has emerged. This has resulted in the 11,000-strong National Association of Criminal Defence Lawyers of the US maintaining, 'In view of the extraordinary restrictions on counsel, with considerable regret, we cannot advise any of our members to act as civilian counsel at Guantanamo'. According to the head of the Association, every barrier has been raised to prevent effective representation.

Under the procedures laid down, the military authorities can monitor all client-lawyer discussions in order to secure intelligence. Although the prosecution cannot use such

sight appear somewhat technical and 'legal-speak', it does not take too much to understand that justice is not being done, nor being seen to be done. The head of the US Association of Criminal Defence Lawyers has reportedly stated, 'I personally would not want to dignify what in my opinion is not a legitimate court'.

Some one dozen prisoners have recently been released and returned to Pakistan from Guantanamo Bay. Presumably, despite all the ease of trial procedures, there was no evidence or case against them. Yet, neither the US nor Pakistan has done anything to compensate them. One former prisoner has recently filed an independent claim for \$10 million.

that this might happen. The people of London can thank those marchers for preventing such an attack so far, despite Prime Minister Blair playing a junior partner to President Bush.

Worldwide protests calling for justice for Muslim prisoners in Guantanamo Bay, and demands for an equitable solution to the Middle East, offer more protection and promote greater security than the feats of Schwarzenegger's Terminator.

The world cannot be secured by force alone. History has repeatedly shown this and also that no empire or power lasts forever. The US should pay heed to these elementary lessons of history, and play its due role as the great builder, not the great bully of the new world.