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The Future of Guantánamo's Prison

OUR OPINION: BETTER DETENTION POLICY NEEDED FOR WAR ON TERROR

Editorial
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More than four years after the first terrorist suspects arrived at Guantánamo Bay, Cuba, there is still no answer to the question of how long the camp will remain open and under what circumstances.

Around the globe, the camp remains a lightning rod for those who complain about America's disregard for civil liberties. In this country, a number of court cases challenge the treatment of the Guantánamo inmates and their legal status. In Guantánamo, the detainees remain human guinea pigs in an experiment testing whether this nation can wage an effective battle against enemies who fly no flag except that of destruction. Given all this, how can we remain true to our fundamental principles of justice. When should this experiment be declared over?

Close it `sooner or later'

Even Prime Minister Tony Blair of Great Britain, a staunch administration supporter, conceded recently that the camp was an "anomaly" -- a departure from normal standards.

He was reacting to a recent U.N. report condemning the detention center, adding to the growing consensus in the international community that the Guantánamo camp must be closed. Secretary-General Kofi Annan said the camp would have to be closed "sooner or later," but he stopped short of endorsing the demand for an immediate shutdown. He also reaffirmed the basic point that prisoners cannot be held in perpetuity without being either released or charged and prosecuted.

Yet the report must be judged incomplete because it failed to say exactly what should happen to the inmates, particularly those deemed to be a continuing threat. That's taking the easy route. If the United Nations disapproves of the conditions at Guantánamo, it has an obligation to do something besides complain about it, perhaps even undertake to deal realistically with the detainees and the problems they pose. But no plan to shut down Guantánamo should be considered unless there are provisions to identify diehard terrorists and ensure that they will not be set free to commit new acts of destruction.

The camp was created in the immediate aftermath of 9/11, when the Bush administration was trying to define rules for a new kind of war. It was designed to be a place where the administration could treat detainees as it wanted, without interference from either courts or foreign governments. The U.S. Supreme Court, to its credit, rejected the argument that Guantánamo existed in some sort of extra-legal universe, beyond the reach of the law.

For a while, Guantánamo was useful as a short-term solution to a problem of enormous complexity -- how to deal with hundreds of stateless alleged terrorists from countries that can't be trusted to keep the guilty ones locked up. (Earlier this month, 23 convicted al Qaeda prisoners managed to escape from a jail in Yemen. They remain at large.)

Congress not helpful

But as the months have stretched into years and the stopgap plan turns into a long-term proposition, it becomes more untenable. The camp can't continue forever, but the administration

seems content to leave this problem on the White House doorstep to await the next chief executive.

Congress, for its part, has played a less than helpful role. Its main effort was to pass a law that severely restricts the access of inmates to the U.S. judicial system. That has only added to questions about the status and treatment of the detainees. But erecting a firewall between Guantánamo and the courts would only add to the legal isolation of the inmates without resolving the fundamental issues.

Instead, Congress should hold hearings and push the administration to say where it is going with this island prison. At the same time, Congress can help the architects of the battle against terror to design a detention policy that can withstand legal scrutiny and win international support.