

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
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OPENING STATEMENT OF SENATOR BENJAMIN L. CARDIN
ON LEGAL RIGHTS OF GUANTANAMO DETAINEES
SENATE JUDICIARY COMMITTEE HEARING
DECEMBER 11, 2007

Chairman Feinstein, let me commend you for holding today's hearing on the legal rights of the Guantanamo detainees. It is time for Congress to assert its own constitutional prerogatives on this issue.

Congress has an obligation under the Constitution to enact legislation that creates fair trials for accused terrorists that will be upheld by the courts. We also have an obligation to protect our troops that fall into enemy hands, and to uphold American values and the rule of law. Even during wartime, the President must work with Congress and the courts to uphold our Constitution. Last year, the Supreme Court in *Hamdan v. Rumsfeld* struck down the President's military commissions, since they violated the Uniform Code of Military Justice and the Geneva Conventions. The Court noted that Congress, not the president, has the authority under Article I, Section 8 of the Constitution to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." Congress also has the authority to "constitute tribunals".

The Supreme Court held additional arguments last week regarding the right of federal courts to entertain habeas corpus petitions from detainees. I have co-sponsored legislation offered by Chairman Leahy and Ranking Member Specter, S. 185, the Habeas Restoration Act, to restore the right of habeas corpus for accused terrorists to petition for a court hearing before an independent judge and challenge their detention.

I voted against the Military Commission Act last year as a member of the House of Representatives. I do not believe it is sound legislation, and I think it is susceptible to challenge in the courts. It is inexcusable that the United States has held detainees for over five years without proper charge or trial. We should be bringing terrorists to justice quickly, and we must create a system that meets basic rule of law standards.

I am privileged to serve as the Senate Co-Chairman of the U.S. Helsinki Commission. In June we held a hearing on this issue, and the implications of Guantanamo for U.S. human rights leadership. The credibility of the United States demands that we answer our critics when they raise human right issues with us, just as we hope representatives of other countries will respond seriously and substantively when we raise concerns with them.

In all the years that I have served as a member of the Helsinki Commission, there is no other concern that has been raised with the United States by our colleagues in Europe as often - and in earnest - as the situation in Guantánamo. As a member of the U.S. Delegation to meetings of the OSCE Parliamentary Assembly, this has been a subject of constant debate.

The damage done to the United States goes beyond undermining our status as a global leader on human rights. Our policies and practices regarding Guantanamo and other aspects of our detainee policies have undermined our authority to engage in the effective counter-terrorism measures that are necessary for the very security of this country.

This view was echoed by former National Security Advisor Brent Scowcroft, who stated "that the international

community no longer trusts our motives is a new phenomenon, and I see it as one of many warning signs of a possible lasting realignment of global power. [. . .] I don't think were there yet, but it's certainly possible that we've created such a menace, and alienated so much of the world that we can never go back to where we were at the end of the Cold War. At that time, the United States was considered the indispensable ingredient in any attempt to make the world better." Or, as Phillip Zelikow, a former Bush administration official recently argued, "Sliding into habits of growing non-cooperation and alienation is not just a problem of world opinion. It will eventually interfere - and interfere very concretely -with the conduct of worldwide operations." This is not just a sad or even tragic commentary on how fast and how far we have fallen in the eyes of the world. It is a dangerous situation for our country if we cannot build and maintain effective global alliances.

To be clear, I do not mean to suggest that America should hold its finger to the wind of international opinion and make policy accordingly. The fact is, sometimes being a global leader means bearing the burden of persuasion, the burden of bringing other countries around to our position. In fact, there have been many times when the United States has been almost a lone voice on critical human rights issues. When our policies are just ones, then that is a burden we should be prepared to carry. But I think the question here is: are our underlying policies upholding the rule of law or attempting to circumvent it? Are our positions really defensible at home and abroad?

I am disappointed that the Administration, more than 6 years after the 9/11 terrorist attacks, has failed to reach out to our allies on this issue. The 9/11 Commission recommended that "the United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists. New principles might draw upon Article 3 of the Geneva Conventions Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the [U.S.] government will need."

I look forward to working with my colleagues in the Senate Judiciary Committee on this critical issue of importance to the United States and its national security.