

## Obama must shift focus off Guantánamo

The new White House should use the president's credibility abroad, while he still has it, to focus attention on the underlying questions related to detention and terrorism prevention.

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Washington —

As the Obama administration's self-imposed deadline to close the prison at Guantánamo Bay nears, the United States could have a new mess of its own making to clean up.

Come Jan. 2010, if Guantánamo remains open, and this looks increasingly likely, the president's credibility among Congress, the American people, and the international community would be weakened.

Even worse, the legal and policy questions surrounding how to hold detainees legitimately in the war on Al Qaeda and its allies — a formulation the president uses intentionally — would remain muddled. The international focus would remain on the closure of Guantánamo.

The president's commitment to close Guantánamo by Jan. 22 without fully understanding both the dangerousness of most of the remaining detainees and the legal and diplomatic complications of detention policies surrounding Guantánamo was a mistake.

Failing to have a plan and to work with Congress to transfer the remaining detainees further hamstrung the administration's efforts.

But it's not too late to reshape the nature of the domestic and international debate about detention of Al Qaeda-related terrorists. The Bush administration tried but lacked the credibility to redirect the world's focus.

Instead of focusing attention on closing Guantánamo, the new White House should use the president's credibility abroad to focus attention on the underlying legal and policy questions related to detention and terrorism prevention, for which Guantánamo is only a symptom.

There remains no consensus about how to hold suspected terrorists and insurgents in a seemingly endless global conflict, in which the theaters of conflict range from recognized war zones and ungoverned havens to city centers and suburban neighborhoods.

Neither the laws of war nor criminal legal principles fit the challenges presented by an amorphous transnational enemy wearing no uniform and intending to inspire a religiously motivated movement to commit catastrophic atrocities.

This is a hybrid conflict still in need of legal and policy innovation.

In May, President Obama formally announced a preventive detention system, admitting that there are some individuals too dangerous to release. This is an important decision that reflects the reality of the threats the president rightly perceives and the inadequacies of the current legal systems to deal with such threats. It is also a decision that disappoints the left, which expected that Obama would rely wholly on criminal trials to hold terrorist suspects or let them go free.

The president should now explain this decision to the world and reshape the nature of the Guantánamo debate.

By doing so, he can reclaim the high ground for the US. He can use themes from his recent UN address and the mantle of his Nobel

Peace Prize to challenge the international community to a constructive dialogue on detention of terrorist suspects. But he must defend his decision forcefully based on principle and national security interests.

The president and Congress should also examine alternative systems or procedures to detain suspected terrorists preventively and obtain intelligence while ensuring individual rights.

Several promising models have been put forward in this debate already – such as a new national security court – and elements from other systems around the world could prove useful, including rehabilitation programs as "half-way houses" for less dangerous violent extremists.

Whatever form this takes, the US needs to establish transparent rules for justifying continued detention while protecting basic individual rights, and it will need to gain some degree of international legitimacy. This can only be achieved if the president commits his own credibility to explaining the balance he has drawn.

This will be difficult. Any such discussion will pour salt in the wound of those who question the need for the continuity of Bush-era policies. It will be more difficult internationally. Much of the president's legitimacy – as articulated by the Nobel Peace Prize Committee – is built precisely on the perception that he has abandoned the policies of the past that have struck a balance in favor of US security to the detriment of international law.

The establishment of a preventive detention system, while Washington agonizes over the closure of Guantánamo, will force this issue. The president may find that this shift in focus will be the best way for him to preserve his credibility at home and abroad. And then he can begin to defend America's security decisions instead of apologizing for them.

In many ways, Obama is the ideal leader to clean up this mess and shape, along with Congress and international partners, a legitimate, long-term legal framework for preventively detaining terrorist suspects across the globe.

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