

The U.S. Hypocrisy of ‘Human Rights’

Long before President Trump, the U.S. government had made a mockery of “human rights,” condemning abuses by adversary states but silent when crimes were committed by U.S. agents or U.S. allies, explains Todd E. Pierce.

By Todd E. Pierce

Secretary of State Rex Tillerson is reportedly considering closing the Office of Global Criminal Justice, a tiny agency with a meager budget of \$3 million a year, located within the State Department.

According to its website, the office “advises the Secretary of State . . . on issues related to war crimes, crimes against humanity, and genocide.” It “also coordinates U.S. Government positions relating to the international and hybrid courts currently prosecuting persons responsible for genocide, war crimes, and crimes against humanity – not only for such crimes committed in the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia – but also in Kenya, Libya, Côte d’Ivoire, Guatemala, and elsewhere in the world.”

Furthermore, it deploys “a range of diplomatic, legal, economic, military, and intelligence tools to help expose the truth, judge those responsible, protect and assist victims, enable reconciliation, deter atrocities, and build the rule of law.”

The *New York Times* reported that human rights advocates saw the proposal as an example of “the Trump administration’s indifference to human rights outside North Korea, Iran and Cuba.” Human rights activists also said that shutting the Office “would hamper efforts to publicize atrocities and bring war criminals to justice.” *Newsweek* reported, however, that the Obama administration also reportedly considered downgrading the office and merging it with another agency.

According to the *Newsweek* article, the office offered rewards for information on “war criminals, and has inveighed against brutal dictators, including Sudanese President Omar al-Bashir and Syrian President Bashar al-Assad.” But the article also noted it “has not criticized Saudi Arabia or other American allies with dismal human rights records.”

The same *Newsweek* piece explained that the office was formed following the 1996 passage of the War Crimes Act. That Act defined a war crime as a “grave breach” of the Geneva Conventions. The War Crimes Act, codified as 18 U.S. Code § 2441, makes it an offense, “whether inside or outside the United States,” to commit a war crime, if one is a member of the Armed Forces of the United States or a

national of the United States. *Newsweek* writer Nina Burleigh correctly noted that when “the CIA began using torture early in the Iraq War and, later, jailing people indefinitely and without trial in Guantanamo, the U.S. was in open breach of the conventions.” As noted above, the Office of Global Criminal Justice has inveighed against Syrian President Bashar al-Assad. But it seemed to have had no problem with the Syrian government when CIA officials outsourced torture to the Syrian government earlier in the so-called Global War on Terror.

A Symbol of Hypocrisy

So, if there was ever a U.S. government agency standing as a symbol for U.S. hypocrisy, the Office of Global Criminal Justice is it. It is not hard to see in decoding their mission statement that “elsewhere in the world” does not mean leaders of any U.S.-allied nations.

But even more hypocritical is having a U.S. government agency charged with tasks to “help expose the truth, judge those responsible, protect and assist victims, enable reconciliation, deter atrocities, and build the rule of law,” when the U.S. Department of Justice is doing the exact opposite in enforcing the War Crime Act itself.

That hypocrisy is seen in a series of cases beginning in 2006 with the decision in *Rasul v. Rumsfeld*, by the D.C. District Court. As law professor Steve Vladeck explained, when asked of that case in [a 2006 article](#), “Is torture or other forms of cruel, inhuman, or degrading treatment (CIDT) within the scope of government employment? At least somewhat surprisingly, . . . the answer to that question is ‘yes.’”

Since 2006, the principle in the decision of *Rasul v. Rumsfeld* that Vladeck referred to has become a time-honored principle of U.S. jurisprudence, and a symbol of U.S. hypocrisy when compared to other U.S. pronouncements on torture and war crimes, as seen in a long series of cases down to the present day.

The manner that those decisions are written eliminates all illusions that the United States government is opposed to war crimes when done by “a member of the Armed Forces of the United States or a national of the United States” – they have been granted impunity under the law to offend. Famously, that was expressed by President Obama when he stated that those CIA officials guilty of torture would not be held criminally accountable for acts that are defined as “war crimes,” that is, torture. Little wonder that Donald Trump could so readily say he believed torture worked, since that is what many CIA officials continue to say.

Failing to prosecute war crimes is in itself a war crime under international

law, and, to use the words of the “Office of Global Criminal Justice,” the opposite of its mission to “expose the truth,” and “judge those responsible.” But taking matters a step further, the U.S. government has designed a legal procedure to deny protection and assistance to victims. This is exactly what leaders of countries that are in line for U.S.-sponsored regime change are routinely accused of doing by the Office of Global Criminal Justice.

Shielding Torturers

The issue in a series of lawsuits involving the war crime of torture is whether former Guantanamo prisoners who were victims of U.S. government officials could sue the officials for civil damages. The courts have held, however, that government officials were entitled to immunity for the acts they had committed and were being sued for torture, as it was “within the scope of their employment.” These decisions are based on procedures based on the Westfall Act, which is too convoluted to explain here, but it serves to nullify the War Crimes Act.

Typical of the language in the court’s decisions is: “several detainees were subjected to abuse – including ‘forced grooming, solitary confinement, sleep deprivation, forced medication, transport in ‘shackles and chains, blackened goggles, and ear coverings,’ and the disruption of ... religious practices” – even after a CSRT had determined that there were not enemy combatants... The court held that the defendants’ actions were ‘of the kind’ [they were] employed to perform,” even though the mistreatment occurred when several of the plaintiffs “had no intelligence value.”

The court noted that “[t]hrough the intelligence rationale has dissipated, the need to maintain an orderly detention environment remained after CSRT clearance.” The court continued: “Authorized or not, the conduct was certainly foreseeable because maintaining peace, security, and safety at a place like Guantanamo Bay is a stern and difficult business.”

That was what German military and Gestapo officers said of the prisons they worked in when they went on trial for war crimes at Nuremberg. Most common as their legal defense against war crime charges was that the defendants were only following “superior orders,” in German, “Befehl ist Befehl” (“orders are orders”) – a tactic now known as the Nuremberg defense. In other words, the earlier generation of war criminals effectively claimed their actions were “within their scope of employment.” That defense didn’t work at Nuremberg for Germans, but it works now for U.S. officials in U.S. courts.

The closing the Office of Global Criminal Justice just makes official what has been U.S. policy since 9/11. If it is true that hypocrisy is the tribute that

vice pays to virtue, then the U.S. government has showered tribute upon vice with the hypocrisy of the Office of Global Criminal Justice. If it closes, it means we won't even pay tribute anymore to virtue, preferring to fully embrace vice in a display of our "authenticity." And that may be the one example where the "Office of Global Criminal Justice" fulfills its mission to "expose the truth."

(Ret.) Maj. Todd E. Pierce is a former Army judge advocate general defense attorney at Guantanamo Bay detention center, Cuba. This article originally appeared at The American Conservative at <http://www.theamericanconservative.com/articles/tillerson-mulls-closing-of-war-crimes-office/>]
