

PRISON HANDOVER AGREEMENT BLOWS UP, AGAIN, DURING HAGEL'S FIRST VISIT TO AFGHANISTAN QUAGMIRE

Exactly one year ago today, I posted on the agreement in principle that would hand over the Detention Facility in Parwan, located near Bagram Air Base, to full Afghan control. I noted at the time however, that the “agreement” depended heavily on semantics and that the US was in fact doing its best retain as much control as possible:

The agreement appears to use semantics to say that the prisons are being handed over today, but with the reality being that there will be a gradual process taking six months. From the *New York Times*:

The memorandum of understanding would officially hand over control of detainees to an Afghan official as of Friday, but would also allow for a six-month period of transition to full Afghan control of the American-held detainees, American officials said.

As a practical matter, American officials are expected to maintain day-to-day control over the 3,200 detainees, most of them suspected Taliban insurgents.

During the six months, custody of the American-held prisoners would gradually transfer to

Afghan authority, with the first 500 prisoners to be transferred within 45 days, according to American military and diplomatic officials who spoke on condition of anonymity as a matter of policy.

The move is a major concession to the Afghans, but the Americans will retain ultimate veto authority over releases of any insurgent detainees as long as American troops are in Afghanistan, and will continue to monitor humane treatment of the prisoners, the American officials said.

With the US maintaining veto power over release of any prisoners, perhaps Senator Graham will have to hold off on throwing his next tantrum, as his major objection to the handover had been that the Afghans would release prisoners who would immediately attack US troops. It's not clear how the US will be monitoring humane treatment of the prisoners, since it is US training that put the torture methods in place to begin with.

The six month gradual handover phase has now been a full year, during which we have seen many rough patches. At the six month mark, I noted that the US balked on finalizing the handover because the Afghans refused to put into place a system for indefinite detention without trial. But throughout this process, the key really has been that the agreement itself has been a sham (just as with most of our agreements with Afghanistan) primarily because the US continues to maintain that it has final veto power on Afghan decisions to release prisoners.

On Wednesday of this week, the dispute over prisoner release came to a head, as Afghan

President Hamid Karzai announced to the Afghan parliament that the final handover of Parwan would take place today and that he would immediately release a number of prisoners he said are innocent. Unsurprisingly, the US today unilaterally cancelled the final handover ceremony, throwing the whole agreement into disarray. From the New York Times:

A ceremony in which the American military had planned to hand over full control of the Bagram Prison to Afghanistan was canceled Saturday, throwing into doubt an agreement between the two countries on custody of the remaining Afghan prisoners still being held by American forces.

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There was no official word on why the transfer was canceled, but American officials were known to be upset with Mr. Karzai over remarks he made in a speech on Wednesday in which he criticized the Americans' slowness on the detention issue and promised to release many of the prisoners as soon as the transfer was complete.

At AP, Kimberly Dozier and Rahim Faiez put this failed agreement into the broader perspective of the need to finalize the Status of Forces Agreement for the terms under which US forces can remain in Afghanistan beyond the planned NATO withdrawal:

The prison transfer, originally slated for 2009, has been repeatedly delayed because of disputes between the U.S. and Afghan governments about whether all detainees should have the right to a trial and who will have the ultimate authority over the release of prisoners the U.S. considers a threat.

The Afghan government has maintained that it needs full control over which

prisoners are released as a matter of national sovereignty. The issue has threatened to undermine ongoing negotiations for a bilateral security agreement that would govern the presence of U.S. forces in Afghanistan after the current combat mission ends in 2014.

I agree with the assessment there and would go further to state that the current breakdown reflects a level of distrust that seems impossible to overcome to the point that Afghanistan would grant the criminal immunity for US troops that the US seeks.

Oh, and be sure to read both the New York Times article and the AP article in full for the complete description of the other disasters ongoing in Afghanistan as newly sworn-in Secretary of Defense Chuck Hagel is there for his first visit in the midst of multiple suicide bombings and even a green on blue attack in which a large group of uniformed members of the Afghan National Army attacked a US base. And last but not least, Dozier and Faiez remind us that Monday is Karzai's deadline for US Special Operations Forces to leave Maidan Wardak province.

With all these Afghan disasters coming to a head at once, the folks charged with negotiating US immunity in the SOFA agreement are facing an impossible task. The primary remaining question for me is how the Obama administration and the Defense Department will be able to repeat their victory claims they made during the accelerated final full troop withdrawal from Iraq (when immunity was denied) as they attempt the same move in Afghanistan. Will they play this out until the end of 2014 as currently planned, or will they accelerate it since the outcome can be predicted so confidently now?