

ICRC PRESIDENT VISITS OBAMA, BRENNAN, HAGEL REGARDING “INTERNATIONAL HUMANITARIAN LAW”



ICRC President Peter
Maurer (Wikimedia Commons)

Peter Maurer, President of the International Committee of the Red Cross, yesterday completed four days of meetings with US officials in Washington. According to the blog site for the ICRC, Maurer met with President Barack Obama, senior members of Congress and a number of high-ranking government figures, including “Secretary of Defense Chuck Hagel, Secretary of Homeland Security Janet Napolitano, Director of National Intelligence James Clapper, Director of the Central Intelligence Agency John Brennan, Deputy Secretary of State William Burns, and Deputy Attorney General James Cole.”

It is perhaps not surprising that since there is a widespread hunger strike at Guantanamo (and since the ICRC visited Guantanamo earlier this month), detention issues were high on the list of topics for the meetings:

A focus of Mr Maurer’s visit was detention-related matters. “The United States, including its Congress, must urgently find a way to resolve all pending humanitarian, legal and policy issues relating to the detention of persons held at Guantanamo Bay, including those deemed to no longer represent a threat that justifies their continued detention there,” said Mr Maurer.

But Guantanamo was not the only topic. It comes as a welcome development to me that Maurer would widen the scope of discussion with key figures such as Obama, Brennan and Hagel to remind them of their duties under international humanitarian law:

“We enjoy a robust and multi-faceted dialogue with the United States, and my visit was an opportunity to discuss issues and contexts of mutual concern such as Syria and Afghanistan,” said Mr Maurer. “The United States values the mandate, positions and input of the ICRC and I am confident that this interaction will continue to bring concrete results, notably in terms of implementation of and respect for international humanitarian law in current and future battlefields.”

Especially when it comes to Obama and Brennan, it is striking that this statement can be construed as saying that the US needs to implement international humanitarian laws and to respect them. Although not stated outright, it is impossible to come to any other conclusion than to believe that the ICRC now believes that the US does not abide by international humanitarian law. I would think that the US practice of targeted killings, which is viewed by the UN as an issue for international law (and where the UN has called “double tap” drone strikes war crimes) would likely have been a topic for Maurer when talking with Brennan, who has played a key role in ordering drone strikes.

Sadly, I don’t share the ICRC’s optimism regarding our government’s respect for the “mandate, positions and input of the ICRC”. We need look no further than the sad news out of Guantanamo yesterday where it now appears that hundreds of thousands of confidential files and communications belonging to Guantanamo defense lawyers have been provided to the prosecution. In addition, a number of key files seem to have disappeared. From Carol Rosenberg:

At issue has been the disappearance recently of certain defense documents off what was thought to be a secure hard drive at the Office of Military Commissions. Technicians were creating a mirror of the war court's server, so lawyers could work on their documents between the Pentagon region and the crude war court compound at the remote Navy base in Cuba, and documents on both the Cole and Sept. 11 death penalty cases simply vanished.

"I honestly don't know how bad it is. All I know is that the information systems have been impacted, corrupted, lost," Mayberry said, describing the lost work product by 9/11 defense lawyers as of a greater magnitude than the Cole case.

There is more from the New York Times:

The latest delay traces back to an effort by Pentagon technical staff to find records about plea negotiations in another tribunal case. The records had been requested by a military commissions appeals court, according to several military officials. But when prosecutors began going through the records, they discovered that they included confidential e-mails between defense lawyers. Prosecutors alerted the defense and the court to the problem, but several additional searches continued to sweep up confidential records.

The problem brought to light the potential accessibility of confidential lawyer-client e-mails to outsiders. As a result, the chief military commissions defense lawyer ordered all military defense lawyers not to use their e-mail system until it can be made secure.

"We need to try to get some idea of the scope of the intrusions, and the second piece of it is how do they get fixed,"

said Richard Kammen, a civilian defense lawyer for Mr. Nashiri. "It's not realistic to practice law in an environment where outside agencies can come in and look at attorney-client or work product materials."

But it is in the Washington Post where we get a feel for the true scope of the problem:

The military justice system at Guantanamo Bay, Cuba, which has been dogged by charges of secret monitoring of proceedings and defense communications, became embroiled in a fresh controversy Thursday when it was revealed that hundreds of thousands of defense e-mails were turned over to the prosecution.

Wow. Hundreds of thousands of defense emails turned over to the prosecution, and yet there is still an effort to claim that this was not an intentional breach? I think I agree with defense attorney James Connell:

"Is there any security for defense attorney information?" said James Connell, attorney for Ali Abdul Aziz Ali, one of the Sept. 11 defendants. "This new disclosure is simply the latest in a series of revelations of courtroom monitoring, hidden surveillance devices and legal-bin searches."

Recall also the actions of OCA (Original Classification Authority) in censoring courtroom transmissions without the consent of the presiding judge. Guantanamo is clearly spiraling out of control as it moves further and further into lawlessness. Recall also that just as the ICRC was visiting Guantanamo, the issue of drinking water came up. Prisoners complained that their supply of bottled water was cut off and they were advised by guards to drink the tap

water. Despite claims by authorities at Guantanamo that the tap water is safe, defense attorneys maintain that Guantanamo's tap water has always been considered not to be potable. Further support for that position came yesterday when Jason Leopold posted this tweet:

re:water situation at GTMO, which
officials say is safe to drink, here's a
pic from @clivessmith that says
otherwise twitter.com/JasonLeopold/s...

— Jason Leopold (@JasonLeopold) April
11, 2013

It's a good thing someone is lecturing the Obama administration on humanitarian law, because right now they seem to be ignoring it on a number of fronts.