

By John Yoo

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Ownership of the disastrous decision to try al-Qaeda leaders in New York City federal court is the one clear thing to emerge so far from the Obama administration.

The call was not made "on the whims or the desires of Khalid Sheikh Mohammed," the mastermind of the Sept. 11, 2001, attacks, Attorney General Eric H. Holder Jr. told the Senate last week. Mohammed "will not select the prosecution venue," Holder testified. "I will. And I have."

By contrast, the positive benefits remain obscure to the point of vanishing. All that is known for certain are the heavy costs:

Giving Mohammed and his fellow terrorists the same constitutional rights as any U.S. citizen accused of a crime risks our nation's most vital intelligence secrets. Mohammed can demand that the government turn over all of its information on him and tell him how it was acquired or it risks a mistrial or acquittal. Soviet moles like Aldrich Ames and Robert Hanssen used the same tactic to bargain the government down from the death penalty. Ordinarily, such information does not harm the public because the crime has already been committed. But the release of intelligence during hostilities can be disastrous when it informs the enemy of our knowledge, capabilities, and intentions.

Soldiers and intelligence agents in the field will have to follow law enforcement rules for catching criminals, not the laws of war, if they believe al-Qaeda operatives will be tried in civilian courts. Distorting the nature of the war against al-Qaeda by imposing civilian criminal-justice rules on military and intelligence operations overseas that protect our national security could be far more harmful than an acquittal of Mohammed.

Al-Qaeda will have even more reason to attack the United States, and not just because the trial venue will renew New York's attractiveness as a target. At the same time it made the decision about where to try Mohammed, the Justice Department announced that four other al-Qaeda operatives will be tried by military commissions (I was one of many in the Bush administration who worked on their creation). What's the difference? The second group participated in the October 2000 attack on a military target overseas, the USS Cole in Yemen. The message is, terrorists who commit the gravest war crimes - deliberately attacking civilian targets like the World Trade Center - will receive all of the protections of the Bill of Rights. Those who attack military targets abroad will not. Thus, the United States becomes the safest place for terrorists to operate.

The administration claims that critics of its decision fear what Mohammed will say on the public platform provided by a civilian trial. "I have every confidence that the nation and the world will see him for the coward that he is," Holder said. "I'm not scared of what Khalid Sheikh Mohammed has to say at trial, and no one else needs to be, either."

This red herring distracts from the administration's failure to explain why the benefits of using civilian courts outweigh the costs to the war effort. It certainly doesn't help those who are already protected by the Bill of Rights and can be tried in civilian courts. If anything, their rights are at risk, not just by a failure to convict terrorists who killed almost 3,000 people, but by the inevitable judicial compromises that must balance the requirements of a fair public trial with the demands of protecting wartime secrets. Those compromises will no longer be limited to the special context of military courts in wartime, but will become part of the law that governs all Americans.

The only benefit of the trials mentioned, usually by unidentified administration sources, is improving America's international image. But America's place in the world did not suffer after World War II when President Harry S. Truman used military commissions throughout occupied Germany and Japan, or during the Civil War when President Abraham Lincoln used them to try Confederate spies and saboteurs. America's victories in those wars, sometimes against prevailing opinion, were far more important to its world standing. Defeating al-Qaeda will do far more for the United States' image than trying Mohammed in civilian court.

Even if the world overwhelmingly applauded the decision, so what? It is the actions of states, not foreign opinion, that matters. During trips abroad, officials of the Obama administration have apologized for alleged American misdeeds. The administration has declared it will close the U.S. military prison at Guantanamo Bay and leave Iraq swiftly. It has promised to reduce industrial activity so as to cut pollution, and it reneged on agreements to build a missile shield in

Eastern Europe.

The tangible benefits of this kowtowing to the opinions of the international community have been elusive, to say the least. Our NATO allies are racing for the exits in Afghanistan. Russia and China have provided little help in stopping Iran from building its nuclear-weapons program. China keeps stalling progress on the threat posed by North Korea's growing nuclear arsenal. Much of Europe gets a free ride on American efforts to defeat al-Qaeda and other global terrorist networks that threaten the West.

Striving for international popularity does not translate into the power needed to persuade allies or rivals to cooperate with our policies. Charles de Gaulle is reported to have said that nations do not have friends, only interests. It is time President Obama paid more attention to the national interest than to making friends abroad.

John Yoo (jyoo@law.berkeley.edu), a former Justice Department official in the administration of George W. Bush, teaches law at the University of California, Berkeley, and is a visiting scholar at the American Enterprise Institute.