

Retroactive War Crime Protection Proposed

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The Bush administration drafted amendments to the War Crimes Act that would retroactively protect policymakers from possible criminal charges for authorizing any humiliating and degrading treatment of detainees, according to lawyers who have seen the proposal. The move by the administration is the latest effort to deal with treatment of those taken into custody in the war on terror.

At issue are interrogations carried out by the CIA, and the degree to which harsh tactics such as water-boarding were authorized by administration officials. A separate law, the Uniform Code of Military Justice, applies to the military.

The Washington Post first reported on the War Crimes Act amendments Wednesday.

One section of the draft would outlaw torture and inhuman or cruel treatment, but it does not contain prohibitions from Article 3 of the Geneva Conventions against “outrages upon personal dignity, in particular humiliating and degrading treatment.” A copy of the section of the draft was obtained by The Associated Press.

The White House, without elaboration, said in a statement that the bill “will apply to any conduct by any U.S. personnel, whether committed before or after the law is enacted.”

Two attorneys said that the draft is in the revision stage but that the administration seems intent on pushing forward the draft’s major points in Congress after Labor Day. The two attorneys spoke on condition of anonymity because their sources did not authorize them to release the information.

“I think what this bill can do is in effect immunize past crimes. That’s why it’s so dangerous,” said a third attorney, Eugene Fidell, president of the National Institute of Military Justice.

Fidell said the initiative is “not just protection of political appointees, but also CIA personnel who led interrogations.”

Interrogation practices “follow from policies that were formed at the highest levels of the administration,” said a fourth attorney, Scott Horton, who has followed detainee issues closely. “The administration is trying to insulate policymakers under the War Crimes Act.”

The Bush administration contends Common Article 3 of the Geneva Conventions includes a number of vague terms that are susceptible to different interpretations.

Extreme interrogation practices have been a flash point for criticism of the administration.

When interrogators engage in waterboarding, prisoners are strapped to a plank and dunked in water until nearly drowning.

Sen. Lindsey Graham, R-S.C., said Congress “is aware of the dilemma we face, how to make sure the CIA and others are not unfairly prosecuted.”

He said that at the same time, Congress “will not allow political appointees to waive the law.”

Larry Cox, Amnesty International USA’s executive director, said that “President Bush is looking to limit the War Crimes Act through legislation” now that the Supreme Court has embraced Article 3 of the Geneva Conventions. In June, the court ruled that Bush’s plan to try Guantanamo Bay detainees in military tribunals violates Article 3.

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