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Detainee Policy Sharply Divides Bush Officials

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WASHINGTON, Nov. 1 - The Bush administration is embroiled in a sharp internal debate over whether a new set of Defense Department standards for handling terror suspects should adopt language from the Geneva Conventions prohibiting "cruel," "humiliating" and "degrading" treatment, administration officials say.

Advocates of that approach, who include some Defense and State Department officials and senior military lawyers, contend that moving the military's detention policies closer to international law would prevent further abuses and build support overseas for the fight against Islamic extremists, officials said.

Their opponents, who include aides to Vice President Dick Cheney and some senior Pentagon officials, have argued strongly that the proposed language is vague, would tie the government's hands in combating terrorists and still would not satisfy America's critics, officials said.

The debate has delayed the publication of a second major Pentagon directive on interrogations, along with a new Army interrogations manual that was largely completed months ago, military officials said. It also underscores a broader struggle among senior officials over whether to scale back detention policies that have drawn strong opposition even from close American allies.

Since Mr. Bush's second term began, several officials said, factions within the administration have clashed over the revision of rules for the military tribunals to be held at Guantánamo Bay, Cuba, the transfer of some prisoners held there, and aspects of the United States' detention operations in Afghanistan and Iraq.

"It goes back to the question of how you want to fight the war on terror," said a senior administration official who has advocated changes but, like others, would discuss the internal deliberations only on the condition of anonymity. "We think you do that most successfully by creating alliances."

The document under discussion, known as Department of Defense Directive 23.10, would provide broad guidance from Defense Secretary Donald H. Rumsfeld; while it would not spell out specific detention and interrogation techniques, officials said, those procedures would have to conform to its standards. It would not cover the treatment of detainees held by the Central Intelligence Agency.

The behind-the-scenes debate over the Pentagon directive comes more than three years after President Bush decided that the Geneva Conventions did not apply to the fight against terrorism. It mirrors a public battle between the Bush administration and Senator John McCain, Republican of Arizona, who is pressing a separate legislative effort to ban the "cruel, inhuman or degrading treatment" of any detainee in United States custody.

After a 90-to-9 vote in the Senate last month in favor of Mr. McCain's amendment to a \$445 billion defense spending bill, the White House moved to exempt clandestine C.I.A. activities from the provision. A House-Senate conference committee is expected to consider the issue this week.

Mr. Cheney and some of his aides have spearheaded the administration's opposition to Senator McCain's amendment; they were also quick to oppose a draft of the detention directive, which began to circulate in the Pentagon in mid-September, officials said.

A central player in the fight over the directive is David S. Addington, who was the vice president's counsel until he was named on Monday to succeed I. Lewis Libby Jr. as Mr. Cheney's chief of staff. According to several officials, Mr. Addington verbally assailed a Pentagon aide who was called to brief him and Mr. Libby on the draft, objecting to its use of language drawn from Article 3 of the Geneva Conventions.

"He left bruised and bloody," one Defense Department official said of the Pentagon aide, Matthew C. Waxman, Mr. Rumsfeld's chief adviser on detainee issues. "He tried to champion Article 3, and Addington just ate him for lunch."

Despite his vehemence, Mr. Addington did not necessarily win the argument, officials said. They predicted that it would be settled by Mr. Rumsfeld after consultation with other agencies.

But while advocates of change within the administration have prevailed in a few skirmishes, some of those officials acknowledged privately that proponents of the status quo still dominate the issue - partly because of the bureaucratic difficulty of overturning policies that have been in place for several years and, in some cases, were either approved by Justice Department lawyers or upheld by the federal courts.

"A lot of the decisions that have been made are now difficult to get out of," one senior administration official said.

A spokesman for the vice president, Stephen E. Schmidt, said Mr. Addington would have no comment on his reported role in the policy debates. A Defense Department spokesman, Bryan Whitman, also would not discuss Mr. Waxman's role except to say it was "certainly an exaggeration" to characterize him as having been bloodied by Mr. Addington.

Mr. Whitman confirmed that the Pentagon officials were revising four major documents - including the two high-level directives on detention operations and interrogations and the Army interrogations manual - as part of its response to the 12 major investigations and policy reviews that followed the Abu Ghraib abuse scandal.

The four documents "are nearing completion or are either undergoing final editing or are in some stage of final coordination," Mr. Whitman said. But he would not comment on their contents or on the internal discussions, beyond saying it was important "to allow and encourage a wide variety of views to come to the surface."

The administration's policies for the detention, interrogation and prosecution of terrorism suspects have long been a source of friction within the government.

Even some supporters of those policies have acknowledged that the tensions stem in part from the way they were pushed through after the Sept. 11 attacks, by a handful of administration lawyers who circumvented international-law experts, military lawyers and even some cabinet-level officials who might have objected.

Many officials said Mr. Addington, who helped create the legal framework after 9/11, remains a bulwark in support of those policies, deftly blocking or weakening proposed changes. Nonetheless, the internal politics of those issues have begun to shift in Mr. Bush's second term.

Several architects of the original policies have left the government. Some other senior officials, who had challenged aspects of the policy with limited success, have gained stronger voices in new posts.

Condoleezza Rice, who occasionally questioned the Pentagon's management of Guantánamo when she was national security adviser, has called more forcefully for a reconsideration of some detention policies as secretary of state, a stance generally backed by her successor at the White House, Stephen J. Hadley, administration officials said. The new deputy defense secretary, Gordon R. England, has also been an influential advocate for reviewing the detention policies within the Pentagon, officials said.

"The results may not be very different, but the discussions have changed," a senior military lawyer said. "And there are more discussions."

Since President Bush's decision in February 2002 to set aside the Geneva Conventions in fighting terrorists, government lawyers have debated what legal framework should apply to combatants in a struggle that the administration argues does not fit into the categories of international violence contemplated by the 1949 conventions.

Lawyers at the State Department raised the issue repeatedly, officials said. But because the department opposed the president's original decision to put aside the conventions, the efforts of its lawyers were largely dismissed as attempts to revive a question that had already been decided, they added.

Beginning late last year, Defense Department lawyers took up the issue as they revised Directive 23.10, the "DoD Program for Enemy Prisoners of War and Other Detainees." A roughly 12-page draft of the directive, which began circulating in the Pentagon in mid-September, received strong support from lawyers for the armed services, the military vice chiefs and some civilian defense officials, several officials said.

"The uniformed service lawyers are behind the rewrite because it brings the policy into line with Geneva," one senior defense official said. "Their concern was that we were losing our standing with allies as well as the moral high ground with the rest of the world."

Following one of the recommendations of the Sept. 11 commission, the draft, written by officials in Mr. Waxman's office and military lawyers, lifted directly from Article 3 of the Geneva accords in setting out new rules for the treatment of terrorism suspects, three officials who have reviewed the document said.

Common Article 3, as the provision is known, sets out minimum standards for the treatment of captured fighters and others in "armed conflicts not of an international character." Although President Bush determined in February 2002 that the article was not relevant to Al Qaeda or the Taliban because of its international focus, the Sept. 11 panel noted that it "was specifically designed for those cases in which the usual laws of war did not apply."

The draft Pentagon directive adopted the language of Common Article 3 "as a matter of policy rather than law," one defense official said. Even so, the Geneva reference was opposed by two senior Pentagon officials, Stephen A. Cambone, the under secretary of defense for intelligence policy, and, William J. Haynes, the department's general counsel, defense officials said.

Mr. Addington, who has been a close bureaucratic ally of both defense officials, soon called Mr. Waxman to the Old Executive Office Building to brief him and Mr. Libby on the directive. Two defense officials who were told about the meeting said Mr. Addington objected to phrases taken from Article 3 - which proscribes "cruel treatment and torture," and "outrages upon personal dignity, in particular murder of all kinds, mutilation, humiliating and degrading treatment" - as problematically vague.

"We may know what they mean in the United States," one senior administration official familiar with the debate said of the Geneva terms. "But views around the world may differ from ours."

Having a female interrogator even asking questions of a male might be humiliating to some parts of the Muslim faith."

Another official said Mr. Addington and others also argued that Mr. Bush had specifically rejected the Article 3 standard in 2002, setting out a different one when he ordered that military detainees "be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

Only when the dispute is resolved, defense officials said, would the Pentagon conclude the drafting of the second directive, known as 31.15, on the interrogation of prisoners including terrorism suspects. That document, in turn, would make possible the publication of a roughly 200-page Army manual for interrogations that was virtually completed last spring, officials said.

"If we don't resolve this soon," one defense official said, referring to the overlapping debate over Senator McCain's proposal, "Congress is going to do it for us."