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U.S. conduct of terror war draws review in Congress

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ORLANDO, Fla. - (KRT) - A bipartisan panel of national-security experts is preparing to brief members of Congress on recommendations to bring order and law to the nation's war on terror.

The effort comes as rights groups at home and abroad grow more critical of the Bush administration's detention of terror suspects and the military's treatment of prisoners.

The United States, critics say, is flouting the Geneva Conventions, the international agreements that govern war. The White House has argued that the rise of global terrorism poses challenges not covered by the old rules.

This week, two events brought the issue into focus:

_The International Committee of the Red Cross has told U.S. officials that physical and psychological coercion of terror suspects imprisoned at a U.S. Navy base in Cuba is "tantamount to torture," The New York Times reported.

Although the Red Cross, custodian of the Geneva Conventions, would not confirm or deny the report, its chief spokeswoman, Antonella Notari, repeated concerns about "significant problems regarding the conditions of detention and the treatment of detainees in Guantanamo (Bay) that still have not been addressed by U.S. authorities."

_The New York-based Center for Constitutional Rights filed a criminal complaint in Germany calling for an investigation of alleged war crimes by the United States in the mistreatment of Iraqis at the Abu Ghraib prison near Baghdad.

The organization said it is taking advantage of a German law that allows the government there to prosecute human-rights abuses or war crimes no matter where they took place.

Since the terrorist attacks of Sept. 11, 2001, government officials, national-security specialists and lawyers have been trying to square the nation's fight against terrorism with the traditional rules of war.

But three years into the struggle - and with federal judges ruling that some of the measures taken by the Bush administration are illegal - the call is growing for new rules to guide the fight.

"There's a fairly wide consensus now that, in dealing with the threat of terrorism, the rules about law enforcement really don't work very well, and neither do the rules about war," said Stephen Dycus, an expert on national-security law at Vermont Law School.

"The challenge is to adapt from our experience with those two familiar bodies of rules some aspects of each that will enable us to be safe on the one hand but on the other not give up the bedrock American values that we fight to defend."

Convened by Harvard University's schools of law and government, the panel of current and former federal officials, judges and lawyers has proposed new rules on assassinations, surveillance, detentions, interrogations and military tribunals.

The proposals will be presented to members of Congress in coming weeks, said panel director Juliette Kayyem, a scholar at Harvard University's John F. Kennedy School of Government.

The effort comes more than half a century after the fourth Geneva Convention, the last in the series of international accords that addresses the conduct of war, the treatment of prisoners and the protection of civilians.

As White House counsel, Attorney General-nominee Alberto Gonzalez wrote in a memo that the war on terror had rendered some provisions of the conventions "quaint."

"This administration has said, 'Well, the old rules don't apply,' but it hasn't been very good at setting up what the new rules are," said Kayyem, a former adviser to then-Attorney General Janet Reno. "It's been three years, and Congress has legislated on almost none of these things, and put no rules.

"If we do believe that this threat of terrorism is going to last a long time, how do we figure out what the democratic legal structure should look like?"

The Harvard panel included Rand Beers, counterterrorism adviser to every president from Ronald Reagan to George W. Bush; retired Brig. Gen. Joseph Barnes, senior policy adviser to the Pentagon; Robert McNamara Jr., former general counsel to the CIA; and federal Judge Michael Chertoff, who headed the Justice Department's criminal division immediately after Sept. 11.

Panel members recommend authorizing the president to order the killing of a foreigner outside the United States on showing Congress evidence that it would prevent a greater, reasonably imminent danger to Americans.

Panel members would allow the president to order the "highly coercive interrogation" of an individual with information that could prevent an immediate threat. But they would end the use of military commissions, such as those introduced at Guantanamo Bay, to try terror suspects.

The report follows a series of legal setbacks for the administration. Last month, a federal judge in Washington ordered the Pentagon to stop proceedings against a driver for Osama bin Laden, saying the government had not proved that Salim Ahmed Hamdan of Yemen was not a prisoner of war entitled to the protections of the Geneva Conventions.

That followed rulings by the Supreme Court in June that U.S. citizen Yaser Esam Hamdi and the more than 550 foreigners held at Guantanamo Bay can challenge their detention in federal court.

The military, meanwhile, has drawn criticism for reports of abuse at the Abu Ghraib prison and television footage aired last month showing a Marine shooting an apparently wounded man in a mosque in Fallujah.

But in spite of the rulings and the scandals, since approving the USA Patriot Act in the weeks after Sept. 11, 2001, Congress has not developed new laws to guide the administration.

Kayyem said the report attempts to balance concerns about national security with protections for civil liberties. "The left won't be totally happy with this; the right won't be totally happy with this," she said, "but we have to figure out ways to compromise on this stuff."

Dycus, the national-security-law scholar, said the panel already has proved valuable in stirring needed discussion.

"One of the things that's marked the Bush administration so far has been its eagerness to adopt new protocols without public debate, without any action by Congress, but rather on the initiative of the president alone - and, indeed, in a lot of cases without public knowledge," he said.

"These are issues that touch all of us in the most intimate way. They affect our futures. We should talk about them."