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U.S. Mishandled Prisoner Policy, Ex-Adviser Says

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WASHINGTON -- The Bush administration mishandled its treatment of enemy prisoners in the war on terrorism, holding some men by mistake and failing to prevent the abuse of others because it didn't follow principles of international law, the State Department's former top lawyer said.

William H. Taft IV, who stepped down as the department's legal adviser last month, said in a speech after he left office that decisions early in the war on terrorism to discount the Geneva Conventions and deny legal rights to prisoners held at Guantanamo Bay, Cuba, and other overseas locations had cost the U.S. public support at home and abroad.

State Department spokeswoman Nancy Beck said "Mr. Taft is entitled to his opinions," but declined to comment further.

Mr. Taft noted that the International Committee of the Red Cross, which monitors compliance with the Geneva Conventions, has alleged that the U.S. is hiding prisoners from its delegations, operating undisclosed prisons and illegally transferring prisoners to third countries.

Mr. Taft didn't confirm that these acts took place, but as a senior State Department official he was involved in dealings with the Red Cross and foreign governments over prisoner issues.

"There is no basis in the law of war, criminal law or human-rights law for such practices," he said. "Nor is it tenable after the Supreme Court's rulings last summer to assert that detainees have no legal rights of any kind, that they may not contest with the assistance of competent counsel of their own choosing the legal basis of their detention, that the government has complete discretion to determine the conditions of their detention, or that whether they are treated humanely or not is a question only of policy," he said. "How our government treats people should never, at bottom, be a matter merely of policy, but a matter of law."

Mr. Taft, who served as acting secretary of defense in the George H.W. Bush administration, has long been a critic of the current administration's legal policies in the war on terrorism. According to internal memorandums later made public, in late 2001 and early 2002 he argued against abandoning Washington's longstanding practice of treating enemy prisoners, such as Viet Cong guerrillas, in accord with the Geneva Conventions, regardless of their legal status.

President Bush, backed by Alberto Gonzales, then the White House counsel before his appointment as attorney general, sided with the Justice Department and decided that suspected al Qaeda and Taliban prisoners weren't entitled to legal protections. In later opinions -- some of which have since been revised -- Justice Department lawyers concluded it was permissible to inflict pain on prisoners and use other coercive methods to extract intelligence. Although the administration repeatedly has emphasized that its policy is to treat prisoners humanely, critics argue that such views trickled through the government and contributed to abuses at Guantanamo, Iraq and elsewhere.

In his speech, delivered last month at a conference at American University's law school, Mr. Taft said senior military officials agreed that the treaty should be followed "without qualification," but Justice Department lawyers insisted on ruling that the Geneva Conventions "did not apply to al

Qaeda as a matter of law and to qualify the commitment to apply them as a matter of policy to situations where this was `appropriate' and `consistent with military necessity.' "