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“Senator John McCain: Protecting Prisoners – Theirs and Ours”

To the credit of their nation, no fewer than ninety members of the United States Senate -- including 46 Republicans -- voted this month to write into law America's longstanding commitment under a United Nations treaty not to inflict “cruel, inhuman or degrading treatment” on prisoners, whoever and wherever they may be.

The overwhelming bipartisan support came on an amendment sponsored by Senator John McCain. It would ban such mistreatment of any person held “in the custody or under the physical control of the United States Government, regardless of nationality or physical location.” It would also require that prisoners held by the Department of Defense be interrogated only by techniques authorized by the Army Field Manual.

McCain's amendment ought to be no more controversial than apple pie. It merely restates in law what we agreed to when we joined the UN treaty against torture a decade ago. It is publicly supported by such senior retired military officers as Colin Powell and former chairman of the joint chiefs General John Shalikashvili.

Yet the Bush Administration threatens to veto it. Don't tie the President's hands in the war against terrorism, argues the White House. Even before reaching the President, the McCain amendment must go to a conference committee of the Senate and the House, where its fate is uncertain.

McCain's amendment deserves to be enacted into law. As he explains, mistreating prisoners “would not only offend our values as Americans, but undermine our war effort, because abuse of prisoners harms – not helps – us in the war on terror.”

Abusing prisoners, he explains, leads to bad intelligence, because prisoners will say anything to make the pain stop. Prisoner abuse also “endangers U.S. troops who might be captured by the enemy – if not in this war, then in the next.” As a former prisoner of war in Vietnam, McCain knows whereof he speaks.

Finally, he adds, prisoner abuses “exact on us a terrible toll in the war of ideas.” No, we do not engage in public beheadings. But when we abuse and humiliate countless prisoners – contributing to the scores who have died in our custody – we blur what ought to be a clear difference between our humanity and Al Qaeda's brutality.

Undeterred, Vice President Dick Cheney met last week with Senator McCain in an effort to persuade him to back down. Accompanied by CIA director Porter Goss, Cheney asked McCain to exempt CIA counterterrorism interrogations from his ban, so long as they are conducted

overseas against prisoners who are not US citizens, whenever the President determines that the operations are “vital” in the war against terrorism.

Cheney’s proposed exception would poke an enormous loophole through the McCain amendment. It would free the CIA to abuse foreign prisoners in Iraq, Afghanistan and elsewhere overseas. It would write into law a presidential prerogative to authorize mistreatment of prisoners. No other country claims such a right. McCain rightly rebuffed Cheney’s proposal, which would make the amendment worse than no legislation at all.

Cheney did offer a fig leaf: he proposed to ban treatment of foreign prisoners abroad in ways that violate the US Constitution, laws or treaties. But since the Administration maintains that foreign prisoners abroad have no rights at all under our Constitution, laws or treaties, that seeming concession amounts to nothing.

Cheney also objects to the US Army Field Manual as too confining for interrogations of alleged terrorists in military custody. As McCain points out, however, the Field Manual is regularly updated. New interrogation techniques can be added, so long as they do not amount to torture or to cruel, inhuman or degrading treatment.

By requiring military interrogators – and CIA interrogators in military prisons – to follow the field manual, McCain would provide much-needed clarity. No longer would field commanders or prison guards need to guess which techniques are allowed, on pain of being court-martialed if they guess wrong. All they would need to do is to consult the field manual.

McCain’s amendment is in our national interest and consistent with our national values. The Vice President and his allies in the Administration still do not understand that abusing prisoners has already cost us dearly in the war against terror. We have alienated much of the world, and managed the seemingly impossible feat of arousing sympathy for Al Qaeda prisoners.

Even so, enactment of the McCain amendment into law is far from certain. The chief Senate conferee, Senator Ted Stevens of Alaska, is one of the few Senators who oppose it. And since the House did not vote on any similar amendment, House conferees are free to reject it. If McCain’s amendment is to become law, it will need a clear showing of public support.

Doug Cassel’s commentaries are broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM. All views expressed are the personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.