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A combatant's rights

Editorial
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THE FEDERAL district judge in Washington, D.C., who ruled Monday that the Bush administration has violated US and international law in its handling of Afghan war detainees ought to be thanked by members of the US armed forces all over the world. If they are captured by the enemy, their chances of being treated in accord with the Geneva Conventions will be greater if the United States holds itself to that standard.

That "golden rule" point was made by Judge James Robertson in his ruling that the United States had not given Salim Ahmed Hamdan the opportunity he should have had under the Geneva Conventions to claim status as a prisoner of war. US officials had simply declared him and others detained in Afghanistan to be enemy combatants, denying them legal protections that POWs have. Moreover, because the government had not legally stripped Hamdan of POW status, Robertson found that it could not use a military commission to try him for conspiracy to commit war crimes, murder, and terrorism.

The judge also found fault with the ground rules under which the military commission planned to try Hamdan. The commission rules would allow Hamdan to see only unclassified evidence against him and would not permit him to confront all witnesses.

The Justice Department plans to seek an immediate stay of Robertson's ruling and appeal it.

The ruling follows upon the Supreme Court decision in June that first established that prisoners in Guantanamo had the right to challenge their detention in federal court. The government hurriedly organized combatant status review panels, which Robertson has now found to fall short of the standards set by the Geneva Conventions. In those panels, more than 300 cases have been reviewed, and only one detainee, a Pakistani, has been freed.

The judge pointed out that positions taken by the government in the Guantanamo cases are "starkly different" from US stances in previous conflicts. To demonstrate the risk that these Guantanamo precedents would pose to US soldiers captured in the future, the judge referred to the case of a US warrant officer detained by a Somali warlord in 1993. Washington asked the warlord to respect the Geneva Conventions in handling the soldier. Robertson, himself a former Navy officer, noted that if the conventions were applied as narrowly as the government has applied them in the case of the Afghan detainees, the US soldier's captors "would not be bound to follow the convention because they were not a `state.' "

This is what is at stake when the United States flouts US and international law in its handling of detainees. A nation whose armed forces are involved in as many dangerous situations as US forces are should be a stickler, not a scofflaw, when it comes to the Geneva Conventions.