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## **Guantanamo Trial Is Ruled Unlawful**

Judge says that detainee was denied due process, and that Pentagon tribunals are invalid.

By John Hendren  
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WASHINGTON The first military commission trial at Guantanamo Bay, Cuba, was halted Monday after a federal judge here ruled the proceedings invalid under U.S. and international law dealing a blow to the legal process set up by the Bush administration to handle accused terrorists.

The case against Salim Ahmed Hamdan was suspended after U.S. District Judge James Robertson ruled that the Yemeni man had been denied due process.

The ruling affects all of the nearly 500 detainees from Afghanistan at Guantanamo.

"The practical outcome of this is that the government is not going to be able to maintain this system," said Eric M. Freedman, a Hofstra University law school professor who has challenged the military commissions in court on behalf of two detainees.

Robertson ruled that the Bush administration had not followed a lawful procedure in declaring Hamdan an "enemy combatant" who was not entitled to protections and privileges under the Geneva Convention. The "combatant status review tribunals" used by the Pentagon to decide whether to hold detainees are not a "competent" court to make such a determination, Robertson said. And the military commission process, which prosecutes detainees using secret evidence and unnamed witnesses, "could not be countenanced in any American court," the judge ruled.

"The government has asserted a position starkly different from the positions and behavior of the United States in previous conflicts, one that can only weaken the United States' own ability to demand application of the Geneva Conventions to Americans captured during armed conflicts abroad," wrote Robertson, who served as a lieutenant in the Navy between 1959 and 1964 and was appointed a judge in 1994 by President Clinton.

To correct the system, Robertson said, the government must recognize the detainees as prisoners of war under the Geneva Convention until it has a legally valid way to declare they are not.

In order to comply with Robertson's ruling, the government would have to grant Hamdan access to all commission sessions, witnesses and evidence against him. The judge said the government could try detainees in courts-martial, used for crimes involving the military and those held under military control.

The Justice Department, which is handling the administration's case, said it would appeal the ruling. Spokesman Mark Corallo said lawyers would apply for an emergency stay.

The government said Robertson's ruling ran counter to the established war powers of the president and that President Bush had properly determined that the Geneva Convention did not apply to a terrorist organization such as Al Qaeda.

"The process struck down by the district court today was carefully crafted to protect America from terrorists while affording those charged with violations of the laws of war with fair process, and the department will make every effort to have this process restored through appeal," Corallo said.

Hamdan, captured in Afghanistan in late 2001, was one of Al Qaeda leader Osama bin Laden's drivers. He was sent to the U.S. naval base at Guantanamo Bay in 2002, and contested his detention earlier this year.

Civil rights groups and defendants' lawyers have opposed both forms of justice devised by the administration. The combatant status review tribunals have been widely criticized because they deny the prisoners access to lawyers and use as evidence Bush's determination that all detainees at Guantanamo are enemy combatants.

"The president," Robertson wrote in his opinion, "is not a 'tribunal,' however."

Defense lawyers have complained that the military commission trials allow the use of hearsay evidence not permitted in other courts, and allow the use of secret evidence against defendants.

Some of them predicted that the administration would be forced to alter the system.

"Their practical options are limited to appealing this ruling or abolishing the system of military commissions that they have established to date," Freedman said. "Otherwise we're going to be litigating against them for the next 50 years."

Robertson's ruling added to a growing chorus of judges dissenting from the Bush administration's stance, said Eugene R. Fidell, a Harvard Law School instructor.

"It's potentially a very serious challenge to military commissions," said Fidell, who also is president of the National Assn. of Military Justice, a nonprofit group of lawyers working within the military justice system. "What it is, in fact, is kind of a slow-motion revolt on the part of the district judges. One after another, the district judges have shown impatience with the kinds of positions the government has taken."

Prior to Monday's ruling, the Bush administration's once-ambitious plans to try the detainees already had bogged down.

Fifteen detainees were part of the first group designated to face tribunals; authorities so far have dealt with only four cases.

After the first set of preliminary hearings in August, chief prosecutor Army Col. Robert Swann had predicted charges would be filed against high-profile terrorists.

But those charges — presumably against figures such as Khalid Shaikh Mohammed, the alleged planner of the Sept. 11 attacks, or Ramzi Binalshibh, the Yemeni who allegedly was his accomplice — never materialized.

The process has encountered problems ranging from legal challenges to simple translation difficulties.

The military commission consists of five members and an alternate who serve as both judge and jury.

However, three of the panel members were removed last month after defense lawyers challenged them over apparent conflicts of interest.

Now, proceedings that have faced increasingly intense criticism from human rights groups and U.S. allies such as Britain and Australia have again been sent back to the drawing board.

A number of advocacy groups praised the ruling.

"Today's decision sends a clear message that the fight against terrorism does not give the government license to disregard domestic and international law," said Anthony D. Romero, executive director of the American Civil Liberties Union.

Jamie Fellner, director of the U.S. program of Human Rights Watch, agreed.

"This ruling should put the final nail into the coffin of the military commissions," Fellner said. "They should never have been created in the first place, and their implementation has been a disaster."