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## US Alters Rules For War Crime Trials

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WASHINGTON, Aug. 31 - Pentagon officials announced procedural changes Wednesday to the military commissions created by the Bush administration to try terrorism suspects on war crimes charges at Guantanamo Bay, Cuba.

The officials said the changes would not only make the commissions more efficient but also respond to international criticism that the trials were unfair. Several critics, however, said the changes did not address some fundamental problems with the proceedings, which, given a favorable ruling in a case now before the Supreme Court, are likely to resume this fall.

Brig. Gen. Thomas L. Hemingway, the Air Force officer who serves as legal adviser to the military command that runs the commissions, said the most important revision involved changing the roles of their members, doing away with a system in which all of them acted as both judge and jury.

Contrary to earlier rules, the presiding officer, a military lawyer, will now decide questions of law. The other members, who will no longer play a role in most such decisions, will decide questions of fact including guilt or innocence; the presiding officer will no longer have a vote in these matters.

Among other changes is one altering the wording of a rule that during the proceedings, defendants "may be present to the extent consistent with the need to protect classified information." The new wording says defendants "shall be present to the extent consistent ... ."

But the revisions do not address some of the features that have attracted the most criticism. Evidence that might have been obtained by coercion or even torture can still be admitted at the discretion of the presiding officer, who may also allow other evidence that would normally be excluded from civilian courts, including hearsay, if he believes it tends to prove a particular position.

Eugene R. Fidell, a Washington lawyer who is president of the private National Institute of Military Justice, described the changes as "some tinkering around the periphery" and "not really significant or substantive."

Lt. Col. Sharon Shaffer, a military lawyer with the Air Force who is assigned to defend one of the four detainees so far charged with war crimes, said, "I don't think you could call the changes announced today major or significant."

John B. Bellinger III, the legal adviser at the State Department who worked on the changes, said he thought they would go a long way toward mitigating much of the criticism of the commissions.

Mr. Bellinger, former legal counsel to the National Security Council, also said that "we want the terrorists to be on trial, not the fairness of the U.S. military commissions." The critics should wait to see how the trials proceed, he said, before pronouncing on their fairness.

The war crimes proceedings were abruptly halted last November when a federal district judge ruled that they violated both domestic law and the nation's international treaty obligations. Under those obligations, the court said, the United States must treat the Guantanamo detainees as

prisoners of war unless a special tribunal described by the Geneva Conventions determines that they are not. As a P.O.W., a detainee charged with war crimes could be tried by court-martial - where rules protecting defendants are closer to those of civilian courts - but not by a military commission.

In July, an appellate panel of three judges, including John G. Roberts Jr., President Bush's nominee to the Supreme Court, unanimously overturned the district court's decision. Lawyers for the plaintiff, Salim Ahmed Hamdan, a driver for Osama bin Laden, have petitioned the Supreme Court for review.