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## **Analysis: Detainees rights questioned**

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Washington, DC -- Terrorist suspects detained in the U.S. naval base in Guantanamo Bay, Cuba, get lower standards of treatment than serial killers, said an attorney for 12 Kuwaiti men being held at the detention facility.

Kristine Huskey, the attorney, said detainees at Guantanamo were being held without charges and denied a fair trial. She called the situation a "legal black hole."

The Geneva Conventions, which governs the treatment of prisoners of war, are supposed to prevent a "legal void" like Guantanamo, she said.

The Kuwaitis Huskey represents were living in Pakistan when they were turned in by neighbors in exchange for a bounty offered by the U.S. military, Huskey said.

It's one thing to round up people and call them terrorists but as individuals they should be able to prove their innocence, she said.

Huskey's comments were made during a panel discussion March 24 at the American University law school about how the Geneva Conventions can address the rules of war after the attacks of Sept. 11, 2001, and the U.S.-led war on terror.

The panel of legal and human rights experts differed on whether suspected terrorists and insurgents qualify for the same treatment and legal rights as prisoners of war under the terms of the conventions. The Bush administration maintains they do not.

The administration has argued suspected terrorists are not prisoners of war and so are not protected under the treaty's terms.

The Pentagon has said it has categorized 540 detainees as enemy combatants by holding one-time hearings, called a Combatant Status Review Tribunal. Unless an annual review, referred to as an Administrative Review Board, shows they should be released, they can be held for the duration of the open-ended war.

The Geneva Conventions, however, provide basic legal guarantees such as the right to present evidence or call witnesses, even if those involved do not meet the treaty's definition of a prisoner of war, says the International Committee of the Red Cross, which works to protect those affected by armed conflicts.

The problem, said Neil Koslowe, who also represents the Kuwaiti prisoners, is that none of the 540 detainees got a fair trial and still haven't been charged. They could be kept at Guantanamo Bay indefinitely based on a hearing he called a "sham."

Koslowe said that during the CSRT hearings, the men were not told of charges made against them, and were not allowed to have a lawyer or witnesses, or present evidence on their own behalf.

In January 2005, Washington Federal Judge Joyce Green ruled the hearings were deficient and did not conform to judicial standards of due process, Koslowe said.

But the Pentagon has said the legal procedures were adequate. In addition, it has said the United States has the right to detain anyone it believes is a danger to U.S. national security.

Not everyone is entitled to the same treatment, said attorney David Rivkin, who is also a member of a U.N. Human Rights Commission.

"How you behave before capture should determine how you are treated afterward," he said.

Treating a suspected terrorist differently than a regular soldier sends a symbolic message that shows terrorism is not legitimate, he said, but that doesn't mean it's a "law-free zone," for how detainees can be treated.

The Geneva Conventions set the ground rules for the treatment and rights of people who are not actively fighting during combat. Four conventions and two protocols make up treaty.

The treaty was inspired by "A Memory of Solferino," written by French businessman Henri Dunant who when he was on his way to see Emperor Napoleon III on urgent business, saw masses of wounded soldiers abandoned on the field during the brutal 1859 battle of Solferino, in northern Italy. In the book, he called for organized groups to care for wounded soldiers.

The ICRC emerged out of his efforts, as did the first Geneva Convention in 1864. Two more conventions were written in 1929, dealing with the treatment of wounded and prisoners of war. In 1949, protection was expanded to civilians caught in armed conflict and all the conventions were condensed into the four articles commonly referred to now as the Geneva Conventions.

The terms of the treaty protect captured soldiers and civilians from inhumane treatment, torture and other forms of violence. It guarantees legal due process. But suspected terrorists and insurgents -- such as suspected al-Qaida operatives - are not considered prisoners of war because they don't fulfill the conventions' criteria, such as wearing uniforms and carrying weapons openly, and they are not civilians or personnel assisting in caring for the soldiers.

In the past, U.S. officials have expressed concern terrorists will manipulate the treaty's protections. In 2002, memos were leaked revealing an opinion by the Office of Legal Counsel in the Justice Department that was widely interpreted to mean interrogators could claim the war on terror justifies torturing suspected terrorists to obtain information, exempting interrogators from the treaty's terms and potential prosecution.

Eric Biel of Human Rights Watch said, however, White House concerns that the Convention's protections would limit interrogators ability to get information were "grossly overstated."

The terms for the treatment of prisoners do not stand in the way of getting information from them, he said. People should be skeptical of claims the Geneva Conventions do not apply to the war on terror, or that it cripples effective interrogations, he added.

And even if they are exempt from the conventions, they cannot be tortured, mistreated or held incommunicado, said John Sifton of Human Rights Watch.

In contrast, Rivkin said there would be little incentive for fighters to restrain themselves if the conventions included protection for suspected terrorists and insurgents.

However, the panelists agreed the treaty could be made more specific to meet post-9/11 problems.

Anthony Arend, a Georgetown University professor of international law, said the Convention should spell out how non-traditional fighters are classified and treated, as well as how long they can be detained. He suggested adding a convention that would deal with these issues.

For example, the Conventions allow prisoners to be held until the end of a conflict. But, said Arend, the war on terror will probably never end.

"So how long can we hold them?" he asked.