

What judicial treatment for the Guantanamo detainees?

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SPECIAL FORUM ISSUE: THE WORLD WE (INTERNATIONAL LAWYERS) ARE IN: LAW AND POLITICS ONE YEAR AFTER 9/11. A. Introduction

[1] The White House statement of February 7, 2002, according to which the Taliban and Al-Qaeda members detained in Camp X-Ray in Guantanamo Bay following the September 11, 2001, events had no right to prisoner of war (POW) status but were merely 'unlawful combatants' (1) had broad repercussions in the public opinion as well as among legal scholars. (2) The debate focused on the legal status and treatment of the persons held in Guantanamo Bay mainly in light of the Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War. (3) Comparatively little attention has been paid to the treatment due to the detainees in light of the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism issued by the US President on November 13, 2001 (Military Order). Also the treatment to which the detainees are entitled by virtue of the Fourth Geneva Convention of 1949 relative to the Protection of Civilians in Time of War (4) has been largely overlooked. This brief paper intends to contribute to remedying such lacunae but will be limited to an analysis of the provisions of the 1949 Geneva Conventions in light of the events of September 11th without reference to previous practice. (5) [2] The assumption of this paper is that the attacks on US territory created an international armed conflict between the US and Afghanistan, thus making the 1949 Conventions applicable. (6) **B. Prosecutorial Status of the Captured I. Those involved in the September 11 events may be prosecuted by the US also if qualify for POW status** [3] When a lawful combatant is captured or surrenders to the enemy, his or her status as a POW arises *ipso facto* regardless of the detaining power's evaluation. The captor can exercise no discretion as to the recognition of this status, which entails special treatment and conditions of detention in accordance with Geneva Convention III. However, POW status is no shield against personal liability that the captured combatant may incur for violations of the laws of war. (7) The POW status and that of a war criminal are not mutually exclusive. (8) On the contrary, POWs may be convicted for acts committed both prior to capture and during captivity. We shall dwell only on the first hypothesis, as it is the one in contention. [4] Assuming that at least some of those held in Camp X-Ray are entitled to POW status, (9) their prosecution "under the laws of the Detaining Power" for "acts committed prior to capture" is possible pursuant to Art. 85 of Geneva Convention III. (10) At the Diplomatic Conference leading to the elaboration of the four 1949 Geneva Conventions, the consequences attached to the type of acts for which a POW may be prosecuted yielded substantial controversy between the Western and Socialist blocs. According to the former, a POW remained under the protection of the Convention regardless of the type of act for which he or she was convicted by the detaining power. The Socialist countries, relying on the World War II practice, insisted that a POW was entitled to the Convention protection only so long as he was not convicted on the basis of the principles applied at Nuremberg (i. e., war crimes, crimes against humanity and crimes against peace). In the latter case the prisoner should "receive the same treatment as that which the Detaining Power applied to criminals under its Common Law" and not POW status. (11) This position was taken by thirteen states that made reservations to this effect. (12) [5] Such a questionable interpretation reflects a common misunderstanding between the concepts of unlawful combatant and war criminal. (13) A lawful combatant does not forfeit his primary status for the mere fact of having committed a war crime prior to capture. (14) The commission of a war crime will make him liable to prosecution but has no effect on his combatant status. The combatant status may be affected exclusively if the prisoner is a member of a regular army, a militia or volunteer corps which, collectively, does not respect the requirement of abiding by the laws of war as prescribed in Art. 4 A (2) of Geneva Convention III. On the contrary, a war criminal does not always qualify as a lawful combatant. For instance, a civilian who takes up arms individually and participates actively in the hostilities killing other civilians may be prosecuted for war crimes despite the fact that he did not meet the requirements for lawful belligerency, at least in the terms of Geneva Convention III. (15) [6] Most countries have accepted that Art. 85 of Geneva Convention III applies also in the event of conviction for war crimes. In particular, the US Military Manual correctly specifies that Art. 85 is applicable to 'personnel who are entitled to treatment as prisoners of war, including prisoners accused of war crimes under international or national law.' (16) This means that, under Geneva Convention III, those detained in Guantanamo Bay can be prosecuted for war crimes should their involvement in the events of September 11th be proven. On the basis of Art. 85, should a case against the detainees be brought, they could not be deprived of POW status and the special treatment attached to it even if found guilty. POW status is inalienable under any circumstance, even on account of the seriousness of the crime the prisoner may have committed prior to capture. (17) This provision was justified by the principle that "anyone who breaks the law remains, without prejudice to his punishment, under the benefit of such legislation," (18) namely international law. **II. The judicial guarantees due to POWs** [7] The fact that POWs enjoy the judicial guarantees of Geneva Convention III has consequences both for the proceedings leading to and the modality of internment. These safeguards represent a minimum judicial standard found in the legislation of most countries, such as the *ne bis in idem* principle (Art. 86); the *nullum crimen sine lege* principle (Art. 87), prohibition of coercion to admit guilt (Art. 99); rights to and means of defence (Art. 105); right of appeal or petition (Art. 106); and execution of penalties (Art. 88). [8] In addition, Geneva Convention III provides for safeguards linked specifically to POW status such as the notification to the protecting power of the commencement of proceedings (Art. 104) and trial conclusion (Art. 107); safeguards

concerning death penalty cases (Arts. 100-1); role of the protecting power in ensuring the fairness of the proceedings (Art. 105, paragraphs 2 and 5); right held by the delegates of the protecting power or the International Committee of the Red Cross (ICRC) to visitation, and other provisions concerning the treatment. [9] Art. 102 deserves closer scrutiny in light of the US Presidential Military Order of November 13, 2001. The Article governs the validity of a sentence pronounced against a POW in the following terms: *A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.* [10] According to the interpretation of this Article in the US Military Manual, "[p]risoners of war, including those accused of war crimes against whom judicial proceedings are instituted, are subject to the jurisdiction of United States courts-martial and military commissions. They are entitled to the same procedural safeguards accorded to military personnel of the United States who are tried by courts-martial under the Uniform Code of Military Justice or by other military tribunals under the laws of war (See UCMJ, arts. 2.9, 18, 21)." (19) [11] In addition to this, Art. 87, par. 1, states that: *Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.* (20) [12] By combining Art. 102 and Art. 87 of the Geneva Convention III, and viewing them in light of the US interpretation of those provisions, it is possible to derive the rule that a POW in US hands could be tried and sentenced by military commissions (21) but only insofar as the substantive and procedural law applied is the same as in the case of the armed forces of the detaining power. The military commissions established by the November 13 Order explicitly flout this rule by providing that only an "individual who is not a United States citizen" (22) be subject to it. Moreover, the Order violates the provisions of Geneva Conventions III where it affirms that: "it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts." [13] Similar positions are clearly dictated by the devastating emotional shock caused by the events of September 11th but are not grounded in the law. [14] A minority of legal scholars attempted to argue that a lower fair trial standard should apply to Al-Qaeda and Taliban members than the one normally provided for in the US. The justification offered is that exceptional events call for exceptional measures. These are clearly *contra legem* arguments which conflict with the direct object and purpose of the Geneva Conventions: to protect individuals from any abuse power of the state in time of war. (25) Moreover, such positions contravene Art. 84, par. 2, of Geneva Convention III according to which "[i]n no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105" (emphasis added). No circumstances, even those as brutal and unique as the events of September 11th justify a departure from Art. 105 judicial guarantees. [15] Without dwelling on the compliance of the Military Order and subsequent rules of procedure (26) with Art. 105 judicial guarantees, we may also recall *ad abundantiam* the ICRC Commentary's explanation that one of the aims of the provision is to rule out "special *ad hoc* legislation" for the conduct of proceedings against alleged war criminals. (27) The Military Order constitutes the type of legislation that the judicial guarantees contained in Geneva Convention III wanted to proscribe. (28) [16] Finally, POWs may be interned for the duration of the conflict without charge or following acquittal. (29) However, they must be repatriated without delay upon termination of "active hostilities." (30) In case of pending proceedings or conviction a POW may be repatriated, at the latest, after the end of the proceedings or upon completion of the punishment. (31) **III. What judicial treatment for the 'unlawful combatants'?** [17] If we concur with the White House determination that the Guantanamo detainees do not qualify as POWs but are "unlawful combatants," (32) namely fighters who do not respect the combatant requirements and hence have no right to POW status, it does not mean that those persons can be held indefinitely without charge. Any person captured in connection with an international armed conflict has a status protected under humanitarian law. If he or she does not qualify as a POW, he or she would then be a "civilian person" according to the provisions of Geneva Convention IV. (33) Moreover, no person loses the status of a civilian on account of his or her active participation in the hostilities. At the same time the civilian status does not grant immunity from jurisdiction for violations of the laws of war. On the contrary, Geneva Convention IV codifies the customary norm whereby a detaining power has the duty to prosecute the civilian who is suspected of having committed a breach of the laws and customs of war. [18] Distinct rules concerning the deprivation of freedom of civilians in time of war have been established depending on the existence of a state of occupation at the moment of apprehension. In the case of occupation, protected persons may be arrested and prosecuted by the occupying power for breaches of the laws and customs of war committed both before and during the occupation. (34) The military courts of the occupying state may adjudicate such persons on condition that they "sit in the occupied country." (35) Following this provision, the Military Commissions provided for by the Presidential Order of November 13, 2001, will have to sit in that portion of Afghan territory which is under occupation and before the occupation comes to an end. At the end of the occupation those protected persons who are accused or convicted by courts in the occupied territories shall be handed over, together with the relevant judicial records, to the authorities of the liberated territory. (36) In the case under examination the documents and detainees should have been handed over to the interim Afghan government in place after December 22, 2001. Besides the doubts as to the existence of a state of occupation of the relevant part of the Afghan territory at the time of capture of the Guantanamo detainees, any claim about the state of occupation of portions of the Afghan territory would probably have to be rejected after the formation of the provisional government following the Bonn

Agreement. (37) Therefore, trials of civilians after that date would have to be carried out by the Afghan authorities. [19] The persons protected by Geneva Convention IV may also be deprived of freedom by the occupying power for imperative reasons of security. (38) In this case they may not be put under arrest but, at the most, be interned or subject to assigned residence. Although no express provision prevents civilians from being interned in places outside the occupied country (provided that they are not in areas "particularly exposed to the dangers of war" such a prohibition derives from the imperative ban on "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or that of any other country," regardless of the motive. (39) As indicated in the ICRC Commentary to the Convention, this prohibition "is absolute and allows of no exceptions" (40) (except for the limited ones contained in Art. 49, par. 2) and thus justifies application to cases which are not expressly regulated by the Convention's provisions. Therefore, Geneva Convention IV, even if on suspicion of terrorism, prohibits the transfer of civilians to Camp X-Ray. [20] Internment has to take place according to set procedures and afford treatment (41) which have not been applied by the US authorities in the relation to the Guantanamo detainees. (42) For instance, internees may be kept in camps without charge or after acquittal only so long as the security reasons that led to the safety measure persist or else upon termination of the state of occupation or conflict. [21] Apart from cases where a state of occupation is in place, a party to the conflict may intern enemy aliens found on its territory "only if the security of the Detaining Power makes it absolutely necessary." (43) Internment in such cases has to be carried out according to detailed procedures similar to those applicable to people interned in occupied countries. (44) [22] It is evident that, in the hypothesis that a state of occupation is not found to be existing at the time and place of apprehension of a civilian in Afghanistan, the latter may still be detained and prosecuted by the US only upon extradition from the country where he finds himself according to the *aut dedere aut iudicare* principle. (45) This obviously entails the existence of an efficient judicial administration in the Afghan territory. Geneva Convention IV prohibits any other form of transfer of civilians from the Afghan territory.

IV. Consequences of an improper determination of POW status [23] If the Guantanamo detainees were to be detained by the US in absence of a judicial determination of their status, the US would violate Art. 5 of Geneva Convention III. (46) This would not amount to a "grave breach" of the convention but would in any case entail the international responsibility of the US for failure to comply with an international obligation. (47) [24] The trial of the Camp X-Ray detainees in accordance with the terms of the Presidential Order may constitute a grave breach of the Geneva Convention III if it allows for the wilful deprivation of a POW of the rights of fair and regular trial prescribed in the Convention. (48) Though the amended rules of procedure seem to comply with the judicial guarantees provided for in Art. 105 of the Convention, thus weakening the probability of a grave breach perpetration, it is surprising that little attention was paid to the possibility of such an occurrence. It should not be forgotten that the consequences of a violation of Art. 130 of Geneva Convention III are extremely serious. On the one hand, the US would incur international responsibility for violation of the Convention. (49) In this regard the silence of the other High Contracting Parties to the Geneva Conventions can be seen as an accomplice disengagement worth condemning because of the parties' obligation to "ensure respect" for the Conventions "in all circumstances" pursuant to Art. 1 common to all of the Conventions. (50) This obligation imposes action on the part of the contracting parties in the case of any violation of the Conventions and not only for grave breaches. (51) [25] On the other hand, those individuals who have committed a grave breach to the Convention are subject to the *aut dedere aut iudicare* principle contained in Art. 129 of Geneva Convention III. Each state may thus require their extradition provided that a *prima facie* case has been made and that the requested state does not proceed against the alleged criminal. [26] Furthermore, a grave breach would be committed by the US if the detainees in Camp X-Ray were found to be "unlawful combatants," and therefore protected persons under Geneva Conventions IV, by virtue of their "unlawful deportation or transfer" as spelled out in Art. 147 of Geneva Convention IV. The international responsibility of the transferring state would ensue pursuant to Art. 148 of the Convention.

C. Conclusion [27] After having distinguished the Guantanamo detainees in two categories, POWs and "unlawful combatants," their judicial treatment has been examined against the background of the Military Commissions created by the US Presidential Military Order of November 13, 2001. It was shown that those detainees who are entitled to POW status cannot be tried by the Military Commissions because, according to Geneva Convention III, they are to be subjected to the same courts and laws applicable to the armed forces of the detaining power. It is, however, to be stressed that POWs can be tried for any offence they have committed prior to capture, including the September 11 events, by the detaining power on its territory. [28] The qualification of Al-Qaeda and/or Taliban members as "unlawful combatants" does not deprive them of any protection under humanitarian law. On the contrary, this means that they are civilians protected by Geneva Convention IV. As civilians they may only be tried by courts sitting in the occupied territory. The absolute prohibition of transfer of civilians contained in Geneva Convention IV prevents the US from detaining and trying abroad persons which have been captured on Afghan soil. Moreover, even supposing that a state of occupation existed at the time of capture, thus warranting prosecutions for war crimes by courts of the occupying power, such courts had in any case to sit on the occupied territory. [29] In brief, any person apprehended in connection with the September 11 events has a status under international humanitarian law. He or she is either a POW, thus entitled to the treatment of Geneva Convention III, or a civilian and therefore covered by Geneva Convention IV. No "intermediate status" (52) exists such as that of unlawful combatant deprived of any international protection. It is clear that human rights norms continue to apply to alleged terrorists also in a time of armed conflict, in particular those amounting to *jus cogens*. (53)

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- (1) White House, special briefing by A. Fleischer, February 7, 2002.
- (2) Cf., e. g., Spencer, *X-Ray Inmates to Avoid "Military Courts"*, BBC News, 27 February 2002; John Cerone, *Status of Detainees in International Armed Conflict and their Protection in the course of Criminal Proceedings*, ASIL Insights, January 2002; Robert Cyer, *The Fine Art of Friendship: Jus in Bello in Afghanistan*, 7 *Journal of Conflict and Security Law* (2002), 71.
- (3) 75 UNTS 135 (Geneva Convention III).
- (4) 75 UNTS 287 (Geneva Convention IV).
- (5) The analysis will be limited to the Geneva Conventions of 1949 as neither the US nor Afghanistan are parties to the Protocol Additional to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts of 1977 (Protocol I).
- (6) That terrorist attacks, including those of September 11, 2001, created a state of armed conflict in which the US were involved is stated in the Military Order of November 13, 2001. Though it is not disputed that a state of armed conflict started on October 7, 2001, when the US commenced an armed operation against Al-Qaeda members and the Taliban in Afghanistan, it is questionable whether an armed conflict was caused by the terrorist attacks themselves. For the purpose of our analysis we consider that humanitarian law applies also to the attacks on US soil. If the main assumption of this paper was found to be flawed, the Guantanamo detainees would qualify as terrorists not entitled to the international protection granted by humanitarian law but would remain under the protection of the human rights *corpus iuris*. In this case the prisoners could legally challenge their unlawful arrest, having it taken place with the use of force on the territory of a sovereign state. Although some precedent exists concerning the abduction of a person in foreign territory for the purposes of criminal proceedings, the most notable of which is the Eichmann case, no uniform practice has yet developed to override the principles of territorial sovereignty and non-interference in internal affairs.
- (7) A POW may be prosecuted or suffer disciplinary sanctions for acts he has committed after capture. This occurrence is not analysed because it is irrelevant to the purpose of the study.
- (8) *United States v. Noriega*, 806 F. Supp. 791 (S. D. Fla. 1992), 799.
- (9) Most probably the detained Taliban qualify for POW status as they were members of a regular army at the moment of capture. The fact that the Taliban government was not recognized by the US is irrelevant by virtue of art. 2, par. 1, of Geneva Convention III.
- (10) The preparatory works indicate that the prosecutable acts referred to both acts covered by the national legislation and the treaties to which the state is a party, J. Pictet (ed.), *Commentary to the III Geneva Convention relative to the Treatment of Prisoners of War* (1960) (hereafter ICRC Commentary III), 416-17.
- (11) Final Record of the Diplomatic Conference of Geneva of 1949, Berne, 1950 (Final Record), II-A, 570.
- (12) This interpretation runs counter the very object and spirit of the Convention. It is surprising that the states parties did not object to it but asked only for clarification on the temporal validity of withdrawal of the Convention's safeguards.
- (13) See, e. g., the denial of POW status to captured US pilots by the North Vietnamese because guilty of bombing civil targets, Howard S. Levie, *Maltreatment of Prisoners of War in Vietnam*, 48 *Boston Univ L. Rev.* (1968), 323, reprinted in M. Schmitt and L. Green (eds.), *Levie on the Law of War*, *International Law Studies*, vol. 70, Naval War College 107-112 (1998). More generally on the issue cf. Yoram Dinstein, *The Distinction between Unlawful Combatants and War Criminals*, in Y. Dinstein and M. Tabory (eds.), *International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne*, 103 (1989).
- (14) The four requirements for lawful belligerency are set out in art. 4 (A) 2 of Geneva Convention III. For a detailed analysis of these conditions see Allan Rosas, *The Legal Status of Prisoners of War*, esp. 326-74 (1976).
- (15) Protocol I has considerably enlarged the categories of persons having right to combatant status, see in particular art. 44 of Protocol I.

(16) US Department of the Army, *The Law of Land Warfare, Field Manual No. 27-10*, chapter 3, par. 161 (b), (1956).

(17) Cf. art. 7 and art. 85, Geneva Convention III.

(18) Final Record, II-A, 571.

(19) Chapter 3, par. 178 (b).

(20) The US Military Manual rightly specifies that the above provision applies also to those POWs who are accused of war crimes, chapter 3, par. 163 (b).

(21) According to Gerald Draper, *The Red Cross Conventions*, 21 (1958), it is the 'employment of ad hoc national courts' for war crimes trials which the Convention precludes.

(22) Military Order, Sect. 2 (a).

(23) Military Order, Sect. 1 (f).

(24) Ruth Wedgwood used these words in support of the Military Order: '... it would be a mistake to demand for Al Qaeda and the Taliban leadership the full protections accorded armies that respect the law of war. The military tribunals established by the presidential order are required to provide "full and fair" justice, but they should not be measured by a false standard. ... The extraordinary protections that we provide in domestic trials, including trials under the Uniform Code of Military Justice for disciplinary offenses, should not be granted to combatants who have trampled on the laws of war', *The Rules of War Can't Protect Al Qaeda*, available at www.NYTimes.com, 31 December 2001.

(25) ICRC Commentary III (note 10, *supra*), 23.

(26) Department of Defense, Military Commission Order No. 1, March 21, 2002.

(27) ICRC Commentary III (note 10, *supra*), 414.

(28) The rationale behind the Military Order seems to be to remove the detainees from the jurisdiction of federal courts, which are the only courts in the US competent to try terrorists.

(29) The statement of the Secretary of Defense that some detainees may be held till the end of the conflict even if acquitted is legally correct only in the case that the detainees are POWs or civilian internees, cf. US Department of Defense Briefing, March 28, 2002.

(30) According to art. 118 of Geneva Convention III, POWs 'shall be released and repatriated without delay after the cessation of active hostilities'. Protocol I regards any 'unjustifiable delay in the repatriation of prisoners of war' as a grave breach.

(31) Art. 119, par. 5, of Geneva Convention III.

(32) This status most probably applies to Al-Qaeda members.

(33) Cf. art. 4 of Geneva Convention IV and the limited exceptions therein contained. See also art. 8 on no-waiver of rights by protected persons.

(34) Art. 70, par. 1.

(35) Art. 66. See also art. 76.

(36) Cf. art. 77.

(37) December 5, 2001. Arguably a state of occupation continued to persist after the establishment of the provisional government because of the UN involvement in it.

(38) According to art. 78, par. 1, '[i]f the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment'.

(39) See art. 49, par. 1, of Geneva Convention IV.

(40) J. Pictet (ed.), *Commentary to Geneva Convention IV relative to the Protection of Civilian Persons in Time of War*, (1958), (hereafter ICRC Commentary IV), 279.

(41) Cf. articles 79-135.

(42) There is no indication that the Guantanamo detainees are held as internees.

(43) Cf. articles 41 and 42.

(44) See art. 43 and articles 79-135.

(45) On condition that a *prima facie* case for grave breach of the Convention has been made out by the requesting party, art. 146, par. 2.

(46) Art. 5 reads as follows: 'Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal'. In this regard see the position taken by the Inter-American Commission on Human Rights, *Detainees in Guantanamo Bay, Cuba, Request for Precautionary Measures*, March 13, 2002.

(47) The point is spelt out in art. 131 of Geneva Convention III. Note that according to art. 1 the articles on Responsibility of States for international wrongful acts adopted by the International Law Commission, "Every internationally wrongful act of a State entails the international responsibility of that State", Official Record of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp. IV.E.1, 2001. The UN General Assembly has 'taken note' of the articles in resolution 56/83 of 28 January 2002.

(48) Art. 130 of Geneva Convention III.

(49) Marco Sassoli, *State Responsibility for Violations of International Humanitarian Law*, 48 IRRIC (2002), 401.

(50) For an analysis of this provision see the well-known article by Luigi Condorelli and Laurence Boisson de Chazournes, *Quelques remarques à propos de l'obligation des Etats de 'respecter et faire respecter' le droit international humanitaire 'en toutes circonstances'*, in C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC, 18 (1984), and by the same authors, *Common Article 1 of the Geneva Conventions revisited: protecting collective interests*, 46 IRRIC (2000), 67.

(51) Robertson, *Britain Has a Duty to Ensure that the Geneva Conventions Are Upheld*, *The Independent*, 15 January 2002.

(52) ICRC Commentary IV (note 40, *supra*), 51.

(53) Torsten Stein, *How much Humanity Do Terrorists Deserve?*, in A. Delissen and G. Tanja (eds.), *Humanitarian Law of Armed Conflict, Challenges Ahead. Essays in Honour of Frits Kalshoven*, 567 (1991).