

1-1-2005

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Recommended Citation

Rona, Gabor (2005) "Legal Frameworks to Combat Terrorism: An Abundant Inventory of Existing Tools," *Chicago Journal of International Law*: Vol. 5: No. 2, Article 10.

Available at: <http://chicagounbound.uchicago.edu/cjil/vol5/iss2/10>

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Legal Frameworks to Combat Terrorism: An Abundant Inventory of Existing Tools

Gabor Rona*

I want to thank the American Enterprise Institute for having invited me and for being solicitous of the view from the international perspective of humanitarian protection, of which the law of armed conflict and the International Committee of the Red Cross (“ICRC”) are related and integral parts.

I want to address the big issues suggested by the title of our panel—“Developing a Legal Framework to Combat Terrorism”—which assumes the need to fill a large void. While there will always be room for tinkering around the margins of any legal framework, the implication that a new one needs to be developed specifically to combat terrorism is doubtful. At the very least, we should be sceptical of the view that the complementary frameworks of criminal law, human rights law, the web of multilateral and bilateral arrangements for interstate cooperation in police work and judicial assistance, and the law of armed conflict fail to provide tools necessary to combat terrorism. Critics of the status quo seem to have honed in on the law of armed conflict—historically referred to as the laws of war and now known as international humanitarian law, or IHL¹—as the weak link in this chain. In reality, for many of the same reasons

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¹ See International Committee of the Red Cross, *International Humanitarian Law*, available online at <<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/ihl>> (visited Oct 28, 2004) (defining “international humanitarian law” as “the body of rules, which, in wartime, protects people who are not or are no longer participating in the hostilities. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules are to be observed not only by governments and their armed forces, but also by armed opposition groups and any other parties to a conflict. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of humanitarian law.”).

that truth is said to be the first casualty in war, humanitarian law is increasingly misapplied, misinterpreted, misunderstood, and maligned. Let me offer a view on what humanitarian law actually does and does not cover, permit, and prohibit; and in so doing, lay a foundation for understanding why that body of law is worthy of our respect.

I propose to divide this discussion into two points. The more obvious one might be entitled, “Apply humanitarian law correctly where it belongs.” But the more elusive and, in my mind, more important point is, “Don’t assert humanitarian law where it does not belong.” I will, therefore, start with point two following a brief introduction to the nature and scope of application of international humanitarian law.

I. THE EXISTENCE AND FIELDS OF APPLICATION OF HUMANITARIAN LAW: INTERNATIONAL AND NONINTERNATIONAL ARMED CONFLICT

As we know, the world is a complicated place, made no less so by law and lawyers. The collected wisdom of my professional ancestors has, over the course of human history, described (rather than invented—so don’t blame the lawyers) a number of constructs by which we govern our affairs: criminal and civil law, domestic and international law, laws of war and laws applicable in peace, etc. These constructs are not alternatives to be chosen at will, like the dishes in alternative columns of a Chinese restaurant menu. Rather, I prefer the analogy of tectonic plates, sometimes bordering upon each other, sometimes overlapping, forever in motion. The existence and applicability of these constructs is not subject to, and their utility should not be made subject to, shifting concepts of momentary taste or convenience.

It is unfortunate that I need to defend the very existence of humanitarian law, but there are those who have recently questioned whether such a thing exists. Let me put that question to rest quickly and firmly. Humanitarian law, the law of armed conflict, has existed ever since man first decided against a scorched earth policy or fighting to the death. More recently, it has been codified into international treaties, only the most prominent of which are the Geneva Conventions. It has also been incorporated into domestic laws that, for example, criminalize the prohibitions contained in the Geneva Conventions—thus we have war crimes under national law.² And it is reflected in the universally acknowledged body of customary law—that which binds states even in the

² See, for example, United States War Crimes Act of 1996, 18 USC § 2441 (2000).

absence of international or domestic codification, and which has been described as what states do out of a sense of legal obligation.³

Humanitarian law envisions and covers two types of armed conflict. The first, international armed conflict, involves the use of armed force between states.⁴ Since the frequency, duration, and degree of violence are not relevant, international armed conflict is relatively easy to discern. The second type, noninternational or internal armed conflict, involves rebels fighting against a state or against other rebels within a state, or such conflict spilling over borders into other states.⁵ By contrast with international armed conflict, questions of means and methods, frequency, duration, and degrees of violence are critical to determining the existence of internal armed conflict.⁶ In the internal context, these threshold issues are the only means of distinguishing peacetime, which might include crime, riots, and sporadic acts of violence that may or may not be organized to varying degrees, from war.⁷ Identification of parties—a given in international armed conflict—is also an essential, though sometimes elusive, requisite of internal armed conflict.⁸

II. DO NOT APPLY HUMANITARIAN LAW WHERE IT DOES NOT BELONG

To distinguish between the realms to which humanitarian law does and does not belong is to distinguish between war and peace or, to be more precise,

³ Jack L. Goldsmith and Eric A. Posner, *A Theory of Customary International Law*, 66 U Chi L Rev 1113, 1116–17 (1999).

⁴ See Common Article 2 of Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949), 6 UST 3114 (1956) (hereinafter Geneva Convention I); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949), 6 UST 3217 (1956) (hereinafter Geneva Convention II); Geneva Convention (III) relative to the Treatment of Prisoners of War (1949), 6 UST 3316 (1956) (hereinafter Geneva Convention III); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949), 6 UST 3516 (1956) (hereinafter Geneva Convention IV). See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 16 ILM 1391 (1977) (hereinafter Protocol I).

⁵ See Lindsay Moir, *The Law of Internal Armed Conflict* 33–34 (Cambridge 2002). See also Common Article 3 of Geneva Convention I (cited in note 4); Geneva Convention II (cited in note 4); Geneva Convention III (cited in note 4); Geneva Convention IV (cited in note 4); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art 1, 16 ILM 1442 (1977) (hereinafter Protocol II).

⁶ Moir, *Internal Armed Conflict* at 34–42 (cited in note 5).

⁷ See Protocol II, art 1 (cited in note 5).

⁸ See Moir, *Internal Armed Conflict* at 36–38 (cited in note 5).

between the existence and absence of armed conflict. Why is it important that the law of armed conflict be restricted in application to that which is truly armed conflict? In peacetime, criminal laws and human rights laws prohibit extrajudicial killing and generally require that persons detained be entitled to contest their detention in a meaningful fashion that involves due process of law—what are otherwise known as judicial guarantees.⁹ In war, the law of armed conflict overrides some aspects of criminal law and human rights law. That is, it is permitted, within certain limits, to target enemy soldiers and even civilians who take part in hostilities. It is permitted to intern POWs—soldiers who fight for the enemy—without trial. And it is permitted to detain without trial civilians who take part in hostilities or who pose a security risk even without taking part in hostilities.¹⁰ But these exceptional legal prerogatives must remain just that—exceptional. What is the exception? War.

When terrorism and counterterrorism occur beyond the scope of war, it is true that alleged terrorists may not be subjected to lethal force and detention, except to the extent permitted by domestic and international criminal and human rights law. This is perhaps why some critics of humanitarian law and of the ICRC claim that the traditional humanitarian law structure of international and noninternational armed conflict must now give way to recognition of a new type of war, in which transnational armed groups attack civilians in an effort to undermine state structures.¹¹ These critics contend that the right to target persons and to detain them without trial—the hallmarks of the traditional law of armed conflict—must now be made applicable to this new type of conflict, since traditional peacetime tools of criminal law and interstate police and judicial cooperation are not sufficient to the task.¹²

This is, of course, a judgment call. I think those who would upset the finely-tuned balance between applicable legal regimes, a balance that reflects a delicate compromise between the interests of state security and individual liberty, must bear a heavy burden of proof. I question the concept of a zero-sum tradeoff between liberty and security. Rather, I am convinced that expanding the right to kill people and detain them without trial to situations beyond those

⁹ See, for example, Universal Declaration of Human Rights, arts 3, 9–11, General Assembly Res No 217A (III), UN Doc A/810 at 136–37 (1948); International Covenant on Civil and Political Rights (1966), arts 6, 9, 14, 6 ILM 368, 370–73 (1967); American Convention on Human Rights (1969), arts 4, 7, 8, 1144 UN Treaty Ser 123, 145–46, 147–48 (1979).

¹⁰ See Geneva Convention IV, arts 42, 43 (cited in note 4).

¹¹ See, for example, James R. Schlesinger, et al, *Final Report of the Independent Panel to Review DoD Detention Operations*, 86–87, 92 (2004), available online at <<http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>> (visited Oct 8, 2004).

¹² See id at 27–31.

envisaged by the law of armed conflict will, in fact, ultimately weaken both liberty and security.

But there are those who declare that the global war against terrorism is just that: war. War, however, does not exist merely by virtue of being declared. It exists, and the laws of war apply, when facts on the ground establish the existence of armed conflict, regardless of any declaration or lack thereof.¹³ Thus, the allied military interventions in Afghanistan and Iraq are, or were, wars to which the international law of international armed conflict applies. And the conflicts in Colombia, Congo, and Sri Lanka are, or were, wars to which the international law of noninternational armed conflict applies. While these true armed conflicts and the so-called “global war against terror” may—or may not—overlap, the law of armed conflict can only be applied to that which is truly armed conflict.¹⁴ That which is not truly armed conflict remains, and should remain, governed by domestic and international criminal and human rights laws.

There are other good reasons for this division of legal labor besides the desire to limit extrajudicial killing and to prevent indefinite detention and the withholding of judicial guarantees. The law of armed conflict affords rights and imposes responsibilities on warring parties. Because of the exceptional legal consequences of armed conflict, it is essential that the beginnings, ends, and thus, the duration of armed conflict be identifiable. For these reasons, “terror” or “terrorism” cannot be a party to an armed conflict. This is why, despite a publicized “war on drugs,” the law provides for suspected drug dealers to be arrested and put on trial, rather than summarily executed or detained without charge.

III. APPLY HUMANITARIAN LAW CORRECTLY WHERE IT BELONGS

In this portion of my presentation, I want to highlight the debate on three criticisms of humanitarian law.

A. CRITICISM: TREATING TERRORIST SUSPECTS AS LAWFUL COMBATANTS OR CIVILIANS UNDER THE LAW OF ARMED CONFLICT IS INFEASIBLE

The Geneva Conventions stipulate that if you are detained by an enemy state at war with your state, then you will fall into one of two categories: POW

¹³ Gabor Rona, *Interesting Times for International Humanitarian Law: Challenges from the “War on Terror”*, 27:2 Fletcher F World Aff 55, 55 (2003).

¹⁴ For a discussion of factual elements of armed conflict, see *id.*

or civilian internee.¹⁵ Pursuant to the belief that detainees in the “war on terror” should not be entitled to any legal protections that the law of armed conflict might provide them, a new, third status that essentially places detainees outside the framework of humanitarian law has been proposed. The designation of such persons as “enemy combatants” is used to displace both POW and civilian internee status. At the same time, individual protections under criminal and human rights law are denied on the basis that those laws do not apply in armed conflict.¹⁶ Thus, detainees are rendered into the infamous “legal black hole.”

It is absolutely correct that persons who are not members of armed forces or assimilated militias, and whose hostile acts violate the most fundamental principle of humanitarian law—namely, that civilians may not be attacked—are not entitled to be designated POWs, a status reserved for lawful combatants.¹⁷ In that event, they default into the legal status of persons covered by the Fourth Geneva Convention.¹⁸ As such, and unlike lawful combatants, they can be prosecuted for the mere fact of having taken part in hostilities.¹⁹ Like lawful combatants, they can also be prosecuted for war crimes, such as the targeting of civilians.²⁰

Then what is to be gained by depriving terrorist suspects of coverage by the Geneva Conventions in armed conflict? In war, soldiers may be targeted whenever doing so creates a military advantage—in other words, almost always. Civilians, on the other hand, may not be targeted unless they are taking an active part in hostilities.²¹ Since terrorists are likely to be civilians, they can benefit from the fact that it is unlawful to target them whenever they are not actively engaged in hostile behavior. The attack by a missile reportedly launched from a CIA-operated drone on an SUV containing al Qaeda suspects in Yemen highlighted the debate on this point. It was argued that the civilian legal framework of arrest,

¹⁵ Jean Pictet, *Commentary of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War* 51 (ICRC 1958) (“Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or again, a member of the medical personnel of the armed forces who is covered by the First Convention. *There is no intermediate status; nobody in enemy hands can be outside the law.*”) (emphasis in original).

¹⁶ See Schlesinger, *Final Report* at 81–82 (cited in note 11).

¹⁷ Geneva Convention III, art 4 (cited in note 4).

¹⁸ Pictet, *Commentary of the IV Geneva Convention* at 51 (cited in note 15).

¹⁹ See Protocol I, art 43 (granting a lawful combatant’s privilege and, by necessary implication, excluding civilians from this privilege) (cited in note 4).

²⁰ Geneva Convention I, arts 49–50 (cited in note 4); Geneva Convention II, arts 50–51 (cited in note 4); Geneva Convention III, arts 129–130 (cited in note 4); Geneva Convention IV, arts 146–147 (cited in note 4).

²¹ Protocol I, art 51, §§ 2–3 (cited in note 4).

criminal charges, and trials is simply impractical in dealing with terrorist groups of global organization and reach.²²

But where does that claim lead? It leads to O'Hare International Airport in Chicago, where US citizen Jose Padilla was arrested and ultimately designated an enemy combatant, now having been held essentially incommunicado, in indefinite detention without trial or even without charge, for two years in a military brig.²³ And it leads not only to such detentions, but also to the potential for targeted killings, either in the deserts of Yemen or the streets of Chicago. When asked whether, consistent with the laws of war, terrorist suspects could be targeted, the US Department of Defense Deputy General Counsel for International Affairs, Charles Allen, said they could.²⁴ I would agree, but with two critical caveats: one, only if it is truly in the context of armed conflict, and two, only if the suspects are actively engaged in hostilities. And I understand that this second caveat frustratingly permits terrorists to play a kind of "peek-a-boo" game with the authorities. But I also believe that limiting the circumstances in which targeted killing is lawful, even in war, is a valid tradeoff when the alternative is a permanent, global free-fire zone against an amorphous enemy. It is well to remember, too, that even if you cannot target individuals, you can still potentially detain them for the duration of the armed conflict, with, or possibly even without, putting them on trial.²⁵ And if you do put them on trial, they can be sentenced to prison terms beyond the end of the conflict and even to death if the domestic legal system permits.²⁶

Some have asserted that the reason al Qaeda and Taliban fighters are ineligible for the protections of the Geneva Conventions is that they do not, themselves, obey the rules.²⁷ Leaving aside the question of whether they do or don't (although in the case of al Qaeda it is rather clear that they do not), it is

²² *CLA Drones; Attack on Car in Yemen was Justified*, Dallas Morning News 16A (Nov 13, 2002).

²³ Gina Holland, *Supreme Court to Rule on New Terrorism Case Involving U.S.-born 'Dirty Bomb' Suspect*, AP (Feb 20, 2004).

²⁴

. . . Charles Allen made it clear that the U.S. military saw the same rules governing this conflict [global war with al Qaeda] as traditional, "battlefield" wars: "When we have a lawful military target that the commander determines needs to be taken out, there is by no means a requirement under the law of armed conflict that we must send a warning to these people, and say, 'You may surrender rather than be targeted.'"

Anthony Dworkin, *Law and the Campaign against Terrorism: The View from the Pentagon* (Dec 16, 2002), available online at <<http://www.crimesofwar.org/onnews/news-pentagon.html>> (visited Oct 7, 2004).

²⁵ See Geneva Convention IV, arts 42–43 (detention) and arts 132–133 (trial) (cited in note 4).

²⁶ Id, arts 132–133. As to the possibility of the death penalty, see id, art 75.

²⁷ Schlesinger, *Final Report* at 82 (cited in note 11).

well settled that the obligations imposed by the Geneva Conventions are not subject to reciprocity, so long as both parties to the conflict are also parties to the Conventions.²⁸ It is true that expectations of reciprocal treatment for my soldiers detained by my enemy create a strong incentive for me to obey the rules. But remember that the purposes of humanitarian law are just that, humanitarian. In contract law, if I fail to deliver the widgets, you are excused from paying for them. But in war, my failure to obey the law does not, and cannot, provide you with license to do likewise. Were it otherwise, the rules would likely never be obeyed. The argument that adherence to rules that terrorists ignore somehow puts them at an unfair advantage is questionable. We have graphically seen what little is gained and how much is lost by sidestepping legal constraints. And so, while such persons may be killed in battle, detained without trial for the duration of the armed conflict, or tried and sentenced for their terrorist acts, they may not be held outside of any legal framework. The Geneva Conventions are constructed so as to provide for no gaps in its coverage of enemy soldiers and civilians. The notion that someone who fails to qualify for POW status is therefore beyond the coverage of the Geneva Conventions is incorrect. An enemy national is either a POW covered by the Third Geneva Convention, or a civilian covered by the Fourth.²⁹

B. CRITICISM: APPLYING THE CONVENTIONS TO THE LETTER WOULD GRANT PRIVILEGED POW STATUS TO PEOPLE WHO DO NOT DESERVE IT

This criticism is based on the inconsistent assumptions that firstly, POW status is reserved for lawful combatants who may not be prosecuted for merely, lawfully, taking part in hostilities (which is true), and that secondly, the Conventions require everyone in enemy hands to be deemed a POW (which is false). To qualify for POW status, you must fulfill the relevant conditions of the Third Geneva Convention.³⁰ Soldiers who do not meet these conditions, as well as civilians detained either because they have unlawfully taken part in hostilities, or because they are deemed a security risk, do not qualify for POW status.³¹

²⁸ Common Article 1 of Geneva Convention I (cited in note 4); Geneva Convention II (cited in note 4); Geneva Convention III (cited in note 4); Geneva Convention IV (cited in note 4) (“The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”).

²⁹ Pictet, *Commentary of the IV Geneva Convention* at 51 (cited in note 15).

³⁰ Geneva Convention III, art 4 (cited in note 4).

³¹ *Id.*, arts 3, 4.

Several writers have accused the ICRC of claiming that all detainees are entitled to POW status,³² whereas, in fact, the ICRC claims only that detainees are entitled by the Conventions to an individualized determination of status in the event of doubt.³³ Failure to qualify for POW status is not only provided for by the Conventions, but—I repeat—those failing to qualify are also liable to prosecution should they unlawfully take part in hostilities or commit war crimes.³⁴

C. CRITICISM: STRICT ADHERENCE TO THE GENEVA CONVENTIONS PREVENTS THE “SERIOUS” INTERROGATION OF DETAINEES BECAUSE OF PROTECTIONS AFFORDED TO POWS

This criticism is incorrect for two reasons. First, it misconstrues the distinction between POWs and civilian internees. The essential difference between the two is that since the law of armed conflict allows the taking of life, regular soldiers and assimilated militia are exempt in wartime from the operation of otherwise applicable criminal laws that prohibit and punish killings, so long as the victim is a legitimate military objective. Civilians, on the other hand, possess no such right and continue to be subject to criminal laws for their hostile acts in wartime, as in peacetime. This is an essential complement to the most fundamental principle of the law of armed conflict, the principle of distinction, which provides that only military objectives may be targeted and that the civilian population may not be targeted.³⁵ To protect civilians who take no part in hostilities from becoming targets, it is essential that civilians who do unlawfully take part thus lose their immunity from targeting and are liable to criminal punishment. While both soldiers and civilians may be tried and punished for war crimes, soldiers entitled to POW status are otherwise deprived of their liberty

³² See, for example, Schlesinger, *Final Report* at 86, 87 (cited in note 11).

³³ *International Humanitarian Law and Terrorism: Questions and Answers*, ICRC press release (May 5, 2001), available online at <<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E>> (visited Oct 8, 2004).

³⁴ See notes 19–20.

³⁵ Hans-Peter Gasser, *International Humanitarian Law*, in Hans Haug, ed., *Humanity for All: The International Red Cross and Red Crescent Movement* 491, 504 (Haupt 1993) (“Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and property. Neither the civilian population nor civilian persons shall be the object of attack. Attack shall be directed solely against military objectives.”). See also Jean Pictet, *The Principles of International Humanitarian Law* 27–34 (International Committee of the Red Cross 1967) (discussing fundamental principles of humanitarian law).

not for reasons of culpability, but merely to prevent their return to battle.³⁶ Both, however, are equally protected from torture and cruel, inhuman, and degrading treatment by the Geneva Conventions;³⁷ by the customary laws of war applicable to both international and internal armed conflict;³⁸ and by international human rights law.³⁹

There is a second reason why it is, in my view, incorrect to suggest that the Geneva Conventions need to be reworked or ignored on the ground that they prohibit “serious” interrogation. This argument confuses what interrogators are allowed to ask, and how they are allowed to ask it, with what detainees are required to provide. In fact, there are no limits to what an interrogator may ask or what a detainee may volunteer, whether he or she is a POW or civilian. There are, however, limits on how information may be obtained.⁴⁰ The assertion that granting POW status would tie the hands of the investigator is merely a discreet way of suggesting that civilians may lawfully be subjected to interrogation techniques not available against POWs. This is incorrect. It is also a slippery slope that could lead to abuses.

IV. CONCLUSION

Let me conclude by returning to the title of this panel, which suggests that critics of humanitarian law and critics of humanitarian organizations like the ICRC have succeeded in one respect. They have succeeded in sowing seeds of doubts about the continued relevance of the Geneva Conventions. But in fact, it now seems that it is because the Conventions are *all too* relevant—for example, to the extent their application triggers criminal responsibility for grave breaches,

³⁶ See Gasser, *International Humanitarian Law* at 524 (cited in note 35) (“Being a prisoner of war is in no way a form of punishment.”).

³⁷ Common Article 3 of Geneva Convention I (cited in note 4); Geneva Convention II (cited in note 4); Geneva Convention III (cited in note 4); Geneva Convention IV (cited in note 4). See also Geneva Convention I, arts 12, 50; Geneva Convention II, arts 12, 51; Geneva Convention III, arts 13, 14, 17, 52, 130; Geneva Convention IV, arts 27, 32, 147.

³⁸ *Military and Paramilitary Activities (Nicar v US)*, 1986 ICJ 113–14, ¶ 218 (June 27, 1986). See also *Prosecutor v Anto Furundzija*, 38 ILM 317, ¶¶ 153–57 (ICTY 1998) (The International Criminal Tribunal for the Former Yugoslavia also considered the prohibition of torture as belonging to *jus cogens*).

³⁹ International Covenant on Civil and Political Rights, art 5 (cited in note 9); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts 2, 4, 23 ILM 1027, 1028 (1984).

⁴⁰ See International Committee of the Red Cross, *ICRC Reactions to the Schlesinger Panel Report* (Aug 9, 2004), available online at <<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/64MHS7?OpenDocument>> (visited Oct 3, 2004).

that is, war crimes—that their application is being denied.⁴¹ It is also on this level that the debate must be joined.

At stake are not merely the rights of persons in any single nation's custody and that nation's reputation for fair dealing. What of the ability and credibility of great powers to exert moral authority on others? What of the practices, and excuses put forth by, violators of the law around the globe? Why shouldn't any accused before the Yugoslavian or other tribunals now claim exemption from the limits imposed by international law, including the Geneva Conventions? How does one now respond to the accusation that a double standard is no standard at all?

These are the questions that must be addressed before we rush to the conclusion that there is a need to develop a new legal framework to combat terrorism, or that the present framework is inadequate and so may be ignored. The proper frameworks already exist. One of them is the law of armed conflict, or international humanitarian law, and it will do the job it was designed to do, namely to strike a proper balance between the interests of state security and individual liberty, but only if we resist applying it where it does not belong and properly apply it where it does belong.

⁴¹ See, for example, Memorandum from John Yoo, Deputy Assistant Attorney General and Robert J. Delahunty, Special Counsel, United States Department of Justice, to William J. Haynes II, General Counsel, Department of Defense (Jan 9, 2002), available online at <<http://www.msnbc.msn.com/id/5025040/site/newsweek/>> (visited Sept 2, 2004).

