DOWNLOAD PDF THE INTERNATIONAL HUMANITARIAN LAW CLASSIFICATION OF ARMED CONFLICTS IN IRAQ SINCE 2003 DAVID TURNS

Chapter 1 : ICC Legal Tools: Browse

VI The International Humanitarian Law Classification of Armed Conflicts in Iraq since David Turns A Introduction: Review of the Timeline of Events in Iraq n armed conflict, within the meaning of international humanitarian law.*

Before , international law only regulated armed conflicts between states or sovereigns. NIAC, 1 on the other hand, were not regulated under international law. Throughout the historical review, it is shown that states have always accepted that there is a fundamental difference between international wars and internal wars. The main reason for that difference was that states regarded internal wars as an inherently internal matter, on the basis that non-state groups were tantamount to criminal groups having no right, legal or moral, to fight against their rulers. Nevertheless, one point has not changed: The basic theological principle was that Christians deserve better treatment than heathens. This principle was based on a passage from Romans, where Paul pronounced the divine right of the authorities, 13 and was developed throughout the years by Christian scholars. It was then crucial, for Catholics and Protestants alike, to find a theological justification for rebellion against a prince with the opposite faith. Accordingly, the Catholic Church claimed that rebelling against a Protestant prince is justified since it entails obedience to a higher law and the punishment of the rebel prince. The main reason behind the distinction between internal and international wars was based on the religious view that rulers had a divine right to rule and therefore rebels did not have the right to use force; they were to be considered heathens or simple criminals. Nevertheless, the idea that only states had a right to use force internally as well as externally continued to be dominant under international law. However, in contrast to the period before , the idea that humanitarian norms should protect victims of internal wars had begun to grow. The secular idea that only states have a right to use force on the one hand, and that some humanitarian norms should apply even in NIAC on the other hand, has roots in different theories of the social contract of that time. First, states derive their authority from the consent of their subjects. Rebels, on the other hand, did not have any legitimate right to use force. Since rebellions against the sovereign were considered internal matters and as hampering the security and order of society, 33 the sovereign was free from constraints in suppressing rebellion. However, Vattel argued that the law of war should apply to internal wars in the form of civil wars that resemble international wars for example where the state is divided into two parties without any legitimate sovereign. This development, as we shall see below, became part of international law from the nineteenth century through the adoption of CA3 of the Geneva Conventions. International wars were regulated under international law and internal wars, in general, were not. The application of international law to internal wars, in practice, only happened in those limited situations where states recognised the rebels as belligerents the so-called doctrine of belligerency. The legal justification for the distinction between international wars and internal wars was based on the principle of sovereignty. Behind the legal justification, however, stood a practical and indeed much simpler reason: Nevertheless, the idea that states need to apply humanitarian norms to internal wars, without recognising the status of the non-state group, had continued to develop. Until the adoption of the Geneva Conventions, then, internal wars were classified into three groups: The first two groups were not considered to be regulated under international law. Group c , however, was considered to be regulated under the same law that applied between states. Put simply, rebellion was defined as a short or sporadic insurrection against the authority of the state. The main rationale behind differentiating between rebellion and insurgency was based both on practical self-interest of states and on humanitarian interest. As states were reluctant to grant any rights or legitimacy to non-state groups, recognition of insurgency allowed states to apply humanitarian norms without granting belligerency rights to the non-state group members. Third states were also entitled to recognise situations of insurgency. Such recognition allowed third states to formulate relations with the insurgents, without violating the existing prohibitions on assisting rebels on the

one hand, and, on the other hand, without invoking the relevant rules of belligerency, which would have required them either to maintain neutrality or to formally support the non-state group and thus involve declaring war on the territorial state. If it is used to protect economic and private interests of nationals and to acknowledge political facts arising from partial successes by insurgents in an internal war, then it can adjust relative rights and duties without amounting to a mode of illegal intervention in internal affairs. In such cases very much the minority of all civil wars , the distinction between internal wars and international wars would be supplanted and the internal war would be regulated according to the law that applies between states. Belligerency, then, unlike insurgency, entailed the full application of international law. The rationale behind the full application of law can be examined from two perspectives: While it is undisputed that sovereignty-oriented perceptions were a dominant factor behind the distinction between insurgency and belligerency, it is important to understand that the existing law gave limited tools to territorial states that actually wanted to extend humanitarian protection. In this period, states had to choose between full application of the law in the form of belligerency, which would have invoked humanitarian protection but also belligerency rights to the members of the non-state groups, 74 and flexible application of humanitarian norms through recognition of insurgency, which did not include belligerency rights. Considering that even today states are usually not willing to pay the price of granting POW status to non-state group members, it is understandable that states preferred to abstain from the recognition of belligerency. Moreover, recognition of belligerency entailed the legal right of non-state groups to obtain credit abroad. Indeed, the high price of recognition may explain the fact that recognition of belligerency by territorial states has become so rare. We can thus understand the creation of the law of NIAC in the context of the ongoing willingness of states to extend humanitarian protection on the one hand, and to deny POW status to non-state group members and prohibit foreign involvement on the other hand. As we shall see below, as much as the law has developed, states still, in general, regard non-state group members as criminals and still justify this approach under arguments of state sovereignty and national security. The horrors and the suffering that the war created in general, and the atrocities perpetrated by the Nazi regime in particular, yielded a consensus between states that humanitarian norms should be more securely applied in the conduct of hostilities â€" both in IAC and in NIAC. The Article embodies the realisation of the willingness of states to extend humanitarian norms to NIAC without granting POW status to members of non-state groups. As we will see, in line with the development examined in the period from the s to , from the earlier attempts to regulate NIAC through the preparatory work to the drafting of CA3, the willingness of the majority of states to extend humanitarian norms to NIAC without granting POW status to members of non-state groups stayed consistent. The position that states took with regard to non-state groups was mainly based on the principle of state sovereignty and the perception that non-state groups do not have belligerency rights. Although governmental representatives participated in the Sixteenth Conference of the Red Cross, the resolution only addressed the National Societies of the Red Cross and had no binding effect on the way that states should conduct their wars with non-state groups. Moreover, the resolution was adopted in the midst of the Spanish civil war, which was highly intense and involved international intervention. This would mean that non-state groups would be entitled to POW status â€" a proposition that is unlikely to be accepted even today. The proposal also obliterated the traditional distinction between different internal armed conflicts, and presented a new concept: Nevertheless, the proposal still emphasised that the application of law was contingent on the willingness of states to apply the law. In case of civil war, in any part of the home or colonial territory of a Contracting Party, the principles of the Convention shall be equally applied by the said Party, subject to the adverse Party also conforming thereto. Hence, it could be interpreted as a proposal that does not entail the application of POW status to NIAC and the legitimisation of non-state groups; second, the emphasis was on the reciprocal behaviour of the two sides and not on their precise announcements. In all cases of armed conflict which are not of an international character, especially

cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more of the High Contracting Parties, the implementing of the principles of the present Convention shall be obligatory on each of the adversaries. The application of the Convention in these circumstances shall in nowise depend on the legal status of the parties to the conflict and shall have no effect on that status. Thus, we can understand that under this proposal, non-state group members would not be entitled to POW status. The Convention shall be applicable in those circumstances, whatever the legal status of the Parties to the conflict and without prejudice thereto. Second, a provision on reciprocity was added only to the draft of the Third and the Fourth Conventions. This change would still be considered radical even today, and caused heated discussions in the Diplomatic Conference between the different states. It was said that it [the Article] would cover all forms of insurrections, rebellion, and the break-up of States, and even plain brigandage. Attempts to protect individuals might well prove to be at the expense of the equally legitimate protection of the State. To compel the Government of a State in the throes of internal conflict to apply to such a conflict the whole of the provisions of a Convention expressly concluded to cover the case of war would mean giving its enemies, who might be no more than a handful of rebels or common brigands, the status of belligerents, and possibly even a certain degree of legal recognition. Any such proposals giving insurgents a legal status, and consequently support, would hamper the Government in its measures of legitimate repression. Thus, in correlation to the above historical analysis of the nineteenth century, the main reason behind the distinction between IAC and NIAC was the status of non-state group members and the right of states to quell rebellions. The advocates of the Stockholm draft, on the other hand, regarded the proposed text as an act of courage. Insurgents, said some, are not all brigands. It sometimes happens in a civil war that those who are regarded as rebels are in actual fact patriots struggling for the independence and the dignity of their country. It was argued, moreover, that the behaviour of the insurgents in the field would show whether they were in fact mere felons, or, on the contrary, real combatants who deserved to receive protection under the Conventions, Again, it was pointed out that the inclusion of the reciprocity clause in all four Conventions would be sufficient to allay the apprehensions of the opponents of the Stockholm proposals. Finally, the adoption of the Stockholm proposals would not in any way prevent a de jure Government from taking measures under its own laws for the repression of acts considered by it to be dangerous to the order and security of the State. Thus, by request of the chairman Plinio Bolla of Switzerland , the Special Committee voted, by ten votes to one, with one abstention, in favour of the principle of extension of the Convention to NIAC. After the two votes, the Special Committee realised that in order to deal with the wishes of states, it could either limit the application of the Convention to specific types of NIAC or limit the norms that would apply in NIAC. Three proposals were made by three Working Parties but none received the support of the Special Committee, so it was decided to submit the three proposals to the Joint Committee. Between these two opposed approaches, states articulated different concerns regarding the proposed provision. The arguments raised by Burma can be summarised as follows: The USSR on the other hand, following the same line of reasoning that was presented in the Joint Committee meetings, argued for the inclusion of more humanitarian norms: When, in case of non-international armed conflict, one or the other party, or both, benefits from the assistance of operational armed forces afforded by a third state, the parties to the conflict shall apply the whole of the international humanitarian law applicable in international armed conflicts. If the ICRC proposal were adopted, then as soon as a foreign State sent its troops over the border to help the rebels, thereby trespassing to begin with on the territorial rights of the neighbouring State, the State which suffered such aggression would have to treat its own rebels as prisoners of war and its local population as that of an occupied territory. Consequently all that would be needed to legitimize the activities of the rebels and to qualify them as prisoners of war, should they be taken, would be a perfect synchronization of the activities of the foreign State with those of the rebel movement or even simply the despatch of a small detachment of its troops over the border. No government could accept that. Furthermore, it would put a

premium on foreign intervention on the side of rebels. Consequently, regardless of whether a foreign State intervened or not, the relations between the rebels and the legitimate government would have to continue to be subject to Article 3, while Article 2 would of course apply to relations between government forces and those of the foreign State. Therefore, as we examine various doctrines in the next chapters, we should bear in mind that it is reasonable to assume that territorial states would be reluctant to support any legal doctrine which would undermine their right to prosecute non-state entities or their members who fought against them. At the second session of the Conference of Government Experts in , the ICRC tried to propose an amended draft, according to which NIAC would become IAC only in cases where the territorial state or the territorial state and the non-state groups received military assistance from a foreign state but not in cases where the non-state group received help alone from a foreign state.

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Chapter 2 : "The International Humanitarian Law Classification of Armed Conflicts i" by David Turns

By David Turns, Published on 12/08/ Article Title. The International Humanitarian Law Classification of Armed Conflicts in Iraq since

It offers two systems of protection: The rules applicable in a specific situation will therefore depend on the classification of the armed conflict. An armed conflict between a State and an international organization is also classified as an IAC. Wars of national liberation, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, are classified as IACs under certain conditions See Article 1, paragraph 4, and Article 96, paragraph 3, of Additional Protocol I. An NIAC is an armed conflict in which hostilities are taking place between the armed forces of a State and organized non-State armed groups, or between such groups. For hostilities to be considered an NIAC, they must reach a certain level of intensity and the groups involved must be sufficiently organized. NIACs may occur between State armed forces and organized non-State armed groups or only between such groups. Unlike common Article 3, Additional Protocol II does not apply to armed conflicts between organized non-State armed groups. This means that this restrictive definition is relevant only for the application of Additional Protocol II; it does not extend to the law of NIAC in general. Simultaneous existence of IAC and NIAC In certain situations, several armed conflicts may be taking place at the same time and within the same territory. In such instances, the classification of the armed conflict and, consequently, the applicable law will depend on the relationships between the belligerents. Consider this hypothetical example. State B directly intervenes on the side of the organized non-State armed group. State A and State B would then be involved in an IAC, but the armed conflict between State A and the organized armed group would remain non-international in character. For instance, there is no combatant or prisoner-of-war status in the rules governing NIACs. That is because States have not been willing to grant members of organized non-State armed groups immunity from prosecution under domestic law for taking up arms. It should be noted however that the important gap between treaty rules applying in IACs and those applying in NIACs is gradually being filled by customary law rules, which are often the same for all types of armed conflict. What law applies to internal disturbances and tensions? Internal disturbances and tensions such as riots and isolated and sporadic acts of violence are characterized by acts that disrupt public order without amounting to armed conflict; they cannot be regarded as armed conflicts because the level of violence is not sufficiently high or because the persons resorting to violence are not organized as an armed group. IHL does not apply to situations of violence that do not amount to armed conflict. Cases of this type are governed by the provisions of human rights law and domestic legislation. Its presence became permanent in the aftermath of the war. The organization focuses on the protection of civilians and the welfare of detainees held in Israeli and Palestinian places of detention, and helps the most vulnerable.

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Chapter 3 : Combatants and POWs | How does law protect in war? - Online casebook

International Humanitarian Law in the Iraq Conflict Measures in Law and Practice, Speeches and Proceedings of the Red Cross Symposium, ,

But in mid there were reports that some aspects of the armed conflict had risen to unexpected heights of contemporary sophistication, with the apparent use of cyberspace as a domain for hostilities. These manifestations included reports of computer hacking to gather intelligence, malware attack programmes to subvert and exercise remote control over hostile computer networks, the use of booby-trapped messages on email, and the use of social media to spread fear in specifically-targeted sectors of the population. The moment is therefore opportune to consider the application of international humanitarian law IHL to cyber hostilities in non-international armed conflicts NIAC generally, as well as the legality of certain specific acts allegedly occurring in the present situation in Iraq. Some Generalities There is no treaty of IHL that specifically regulates the conduct of hostilities or the protection of victims of armed conflict in the cyber context; nor is there clear evidence of normative customary international law on point in the form of state practice and opinio juris. States are wary, for a variety of reasons, of making express pronouncements on their views of the existence or content of any specific customary law of cyber operations; nor is there any appetite on the part of states for the kind of multilateral law-making exercise that would be necessary for the adoption of a new treaty on the topic. In the absence of primary sources of law, the commentaries of scholars have become paramount as evidence of lex lataâ€"the widely agreed default position being that the existing corpus of IHL applies, mutatis mutandis, to hostilities in the cyber domain. It unequivocally accepts that doctrinally the rules of IHL applicable in NIAC are capable of application also in the event of non-international cyber hostilities, provided they meet the relevant threshold for scope of application. These topics are, however, extensively dealt with in the law relating to international armed conflicts IAC , and the ICRC hasâ€"not without controversyâ€"suggested that very many of the same rules are equally applicable in NIAC. By the same token, enforcement will present a serious problem: Iraq has never become a state party to the International Criminal Court, either. Specific cyber activities reported recently in Iraq that might raise questions under IHL involve the use of social media to rally supporters and spread propaganda, the use of hackers to gather intelligence, the subversion of routers in order to obtain remote control of networks by the malware programme Njrat, and the deception of users with the result that they open booby-trapped attachments or access web pages that exploit vulnerabilities in their Internet browsers. The use of social media such as Facebook and YouTube would not seem to violate any rules of IHL as long as it is only for the purposes of rallying supporters, spreading propaganda or obtaining intelligence, or alternatively as a permitted ruse: By the same token, information-gathering by whatever means is not prohibited in situations of armed conflict [20] and may indeed constitute only computer network exploitation CNE , rather than rising to the level of cyber espionage. A final point of interest here concerns the legal status of persons engaged in cyber hostilities in connection with the armed conflict in Iraq. Although the formal category of combatant does not as such exist in NIAC, the concept of civilians who directly participate in hostilities does, and has the same effect as in international armed conflicts: Opinions are stated in a private capacity and do not represent any official position of the Armed Forces, Ministry of Defence or Government of the United Kingdom. The Role of the Cyber Attacks in the Conflict, , available at http: Red Cross , â€" An updated and revised version, Tallinn Manual 2. Red Cross Educational and news media copying is permitted with due acknowledgement. Caitlin Behles serves as the managing editor. Please click the button below to get started.

Chapter 4 : Non-international armed conflict | How does law protect in war? - Online casebook

Turns D () The International Humanitarian Law Classification of Armed Conflicts in Iraq since , International Law Studies, 86 Turns D, Carnero Rojo E, McCausland JS & Bojovic A () International Criminal Courts round-up, Yearbook of International Humanitarian Law, 12

So while the former terms are well understood and clear under international law, the term "unlawful combatant" is not. As a compromise, the Russian delegate, F. Similar wording has been incorporated into many subsequent treaties that cover extensions to humanitarian law. A lawful combatant is a person who commits belligerent acts, and, when captured, is treated as a POW. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. Members of other militias and members of other volunteer corps, including those of organized resistance movements , belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied , provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions: Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents , supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model. Members of crews [of civil ships and aircraft], who do not benefit by more favourable treatment under any other provisions of international law. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war. The following shall likewise be treated as prisoners of war under the present Convention: Persons belonging, or having belonged, to the armed forces of the occupied country 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. These terms thus divide combatants in a war zone into two classes: The critical distinction is that a "lawful combatant" defined above cannot be held personally responsible for violations of civilian laws that are permissible under the laws and customs of war; and if captured, a lawful combatant must be treated as a prisoner of war by the enemy under the conditions laid down in the Third Geneva Convention. If there is any doubt about whether a detained alleged combatant is a "lawful combatant" then the combatant must be held as a prisoner of war until his or her status has been determined by "a competent tribunal". Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. If the individual fulfills the criteria as a protected person, they are entitled to all the protections mentioned in GCIV. It should be emphasised that, in a war zone, a national of a neutral state, with normal diplomatic representation, is not a protected person under GCIV. If a combatant does not qualify as a POW, then, if they qualify as a protected person, they receive all the rights which a non-combatant civilian receives

under GCIV, but the party to the conflict may invoke Articles of GCIV to curtail those rights. The relevant Articles are 5 and Where in occupied territory an individual protected person is detained as a spy or saboteur , or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention. In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be. Aliens in the territory of a party to the conflict The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary. In this case, the "unlawful combatant" does not have rights under the present Convention as granting them those rights would be prejudicial to the security of the concerned state. They do, however, retain the right " For those nations that have ratified Protocol I of the Geneva Conventions, are also bound by Article In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention. Article 3 1 Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. Combatants who do not qualify for prisoner of war status[edit] If the combatant is engaged in "armed conflict not of an international character" then under the Article 3 of the general provisions of the Geneva Conventions they should be "treated humanely", and if tried "sentences must He is regarded as guilty of a breach in the laws and customs of war, unless there are mitigating circumstances such as coercion by his state to break his parole. As with other combatants, he is still protected by the Third Geneva Convention GCIII , until a competent tribunal finds him in violation of his parole. The Geneva Convention made no mention of parole, but as it was supplemental to the Hague conventions, it relied on the wording of Hague to address this issue. The only safeguard available to a parole violatorâ€”who has been coerced into fighting, and who has been recaptured by the Power that detained him previouslyâ€—is contained in the procedural guarantees to which he is entitled, pursuant to Article 85 of GCIII. The Geneva Convention is less direct on the issue. A recaptured parole violator under the Convention would be afforded the opportunity to defend himself against charges of parole breaking. In the interim, the accused violator would be entitled to P[o]W status". In a briefing [25] for the 4th UN Security Council open debate on children and armed conflict by Human Rights Watch they state in their introduction that: In recent years progress has been made in developing a legal and policy framework for protecting children involved in armed conflict. The Optional Protocol to the Convention on the Rights of the Child on children in armed conflict , which came into force in February , prohibits the direct use of any child under the age of 18 in armed conflict and prohibits all use of unders by non-state armed groups. By mid-December , 67 states had ratified the Optional Protocol, including seven mentioned in this report The seven are: One issue is whether such a category could exist without violating the Geneva Conventions, and if such a category does exist, what steps the United States executive branch needs to take to comply with municipal laws as interpreted by the judicial branch of the United States government. By universal agreement and practice, the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts

which render their belligerency unlawful. The spy who secretly and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property, are familiar examples of belligerents who are generally deemed not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals. The validity of this case, as basis for denying prisoners in the War on Terrorism protection by the Geneva Conventions, has been disputed. The Quirin case, however, does not stand for the proposition that detainees may be held incommunicado and denied access to counsel; the defendants in Quirin were able to seek review and they were represented by counsel. Since the Supreme Court has decided that even enemy aliens not lawfully within the United States are entitled to review under the circumstances of Quirin, that right could hardly be denied to U. Supreme Court invalidated this premise, in Hamdan v. Rumsfeld , by ruling that Common Article Three of the Geneva Conventions applies to detainees in the War on Terror, and that the Military Tribunals used to try these suspects were in violation of U. Bush , that Guantanamo Bay captives were entitled to access the U. In this, Congress invoked the War Powers Resolution and stated: That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on 11 September , or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons. The order also specifies that the detainees are to be treated humanely. The length of time for which a detention of such individuals can continue before being tried by a military tribunal is not specified in the military order. The military order uses the term "detainees" to describe the individuals detained under the military order. State Department , which warned against ignoring the Geneva Conventions, the Bush administration thenceforth began holding such individuals captured in Afghanistan under the military order and not under the usual conditions of Prisoners of War. Most of the individuals detained by the U. The foreign detainees are held in the Guantanamo Bay detention camp established for the purpose at the Guantanamo Bay Naval Base , Cuba. Guantanamo was chosen because, although it is under the de facto control of the United States administration, it is not a sovereign territory of the United States, and a previous Supreme Court ruling Johnson v. Eisentrager in had ruled that U. Bush , the Supreme Court ruled that "the U. This ruling largely overturned the judicial advantage for the U. Eisentrager seemed to have conferred. Legal challenges[edit] There have been a number of legal challenges made on behalf of the detainees held in Guantanamo Bay detention camp and in other places. On 30 July , the U. District Court for the District of Columbia ruled in Rasul v. Bush, that it did not have jurisdiction because Guantanamo Bay Naval Base is not a sovereign territory of the United States. This decision was appealed to the D. Circuit Court of Appeals, which upheld the decision, along with a related case in March â€" see Al-Odah v. On 10 November , the United States Supreme Court announced that it would decide on appeals by Afghan war detainees who challenge their continued incarceration at Guantanamo Bay Naval Base as being unlawful, See Rasul v. On 28 June , the Supreme Court ruled in Rasul v. On 7 July , In response to the Supreme Court ruling, the Pentagon announced that cases would be reviewed by military tribunals, in compliance with Article 5 of the Third Geneva Convention. Hamdan was to be the first Guantanamo detainee tried before a military commission. Judge James Robertson of the U. District Court for the District of Columbia ruled in Hamdan v. Rumsfeld [44] that no competent tribunal had found that Hamdan was not a prisoner of war under the Geneva Conventions. The hearings resulted in the release of 38 detainees, and confirmed the enemy combatant status of detainees. On 23 September , the United States Justice Department agreed to release Hamdi to Saudi Arabia , where he is also a citizen, on the condition that he gave up his U. The deal also bars Hamdi from visiting certain countries and to inform Saudi officials if he plans to leave the kingdom. He was a party to a Supreme Court decision Hamdi v. Rumsfeld which issued a decision

on 28 June , repudiating the U. The Court recognized the power of the government to detain unlawful combatants, but ruled that detainees must have the ability to challenge their detention before an impartial judge. Though no single opinion of the Court commanded a majority, eight of the nine justices of the Court agreed that the Executive Branch does not have the power to hold indefinitely a U. The order justified the detention by leaning on the AUMF which authorized the President to "use all necessary force against those nations, organizations, or persons" and in the opinion of the administration a U. The 13 November , Military Order, mentioned above, exempts U. The Supreme Court heard the case, Rumsfeld v. Padilla , in April , but on 28 June it was thrown out on a technicality. The court declared that New York State, where the case was originally filed, was an improper venue and that the case should have been filed in South Carolina, where Padilla was being held. Their ruling, decided 9 September , was that "the President does possess such authority pursuant to the Authorization for Use of Military Force Joint Resolution enacted by Congress in the wake of the attacks on the United States of September 11, Accordingly, the judgment of the district court is reversed". Rumsfeld 29 June the U.

Chapter 5 : United Kingdom | Rulac

Since , the ongoing conflict in Iraq has been offering unique insight into the issue of characterization of conflict, for it has evolved linearly from international armed conflict, though a period of belligerent occupation, to non-.

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Chapter 8 : International Law Reporter: New Volume: International Law Studies (Blue Book) Series

TURNS David, "At the 'Vanishing Point' of International Humanitarian Law: Methods and Means of Warfare in Non-International Armed Conflicts", German Yearbook of International Law = Jahrbuch fÃ¼r Internationales Recht, Vol. 45, , pp.

Chapter 9 : Unlawful combatant - Wikipedia

/ Andru E. Wall --Legal bases for coalition combat operations in Iraq, May Present / Alexandra Perina --The international humanitarian law classification of armed conflicts in Iraq since / David Turns --Legal considerations in relation to maritime operations against Iraq / Neil Brown --Come the revolution: a legal perspective on air.