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RELEASED IN FULL

PRESENTATION BY EDWARD CUMMINGS:**THE WAR AGAINST TERRORISM AND COMBATANTS**

IT IS A PLEASURE TO BE HERE TODAY AND TO SPEAK ON THIS ISSUE OF COMBATANTS AND THE WAR AGAINST TERRORISM. WHILE I AM SPEAKING IN A PERSONAL CAPACITY, I WILL TRY TO EXPLAIN THE VIEWS TAKEN BY THE UNITED STATES ON SEVERAL KEY LEGAL ISSUES DEALING WITH THE WAR AGAINST TERRORISM. THIS INCLUDES THE CHARACTERIZATION OF THE CONFLICT, THE APPLICABILITY OF THE LAWS OF ARMED CONFLICT, AND THE STATUS OF INDIVIDUALS DETAINED BY THE UNITED STATES.

IMMEDIATELY AFTER THE ATTACKS OF SEPTEMBER 11, MANY OF US IN THE LEGAL PROFESSION AND IN GOVERNMENT SERVICE IN MANY COUNTRIES TRIED TO FIGURE OUT WHAT HAD HAPPENED AND SPECULATED ON WHETHER AN ARMED ATTACK HAD OCCURRED FOR PURPOSES OF INTERNATIONAL LAW, INCLUDING THE LAW OF WAR. AFTER ALL, MORE PEOPLE DIED IN THE UNITED STATES ON THAT DATE THAN ANY SINGLE DAY OF COMBAT IN UNITED STATES HISTORY, WITH THE EXCEPTION OF THE BATTLE OF ANTIETAM DURING THE AMERICAN CIVIL WAR ON SEPTEMBER 17, 1862. I REMEMBER ATTENDING THE

COMMEMORATION OF THAT BATTLE A FEW DAYS AFTER THE SEPTEMBER 11 ATTACKS, AND THE PAINFUL ANALOGIES MADE BY MANY TO THE TWO BLOODIEST DAYS IN AMERICAN HISTORY.

THE PRESIDENT OF THE UNITED STATES MADE IT VERY CLEAR FROM THE OUTSET THAT HE BELIEVED THAT THE SEPTEMBER 11 ATTACKS WERE ACTS OF WAR AND THAT UNITED STATES WAS INVOLVED IN A UNIQUE WAR AS A RESULT OF THE ATTACKS. AS IS WELL KNOWN, THE SECRETARY GENERAL OF NATO LATER REPORTED THAT THE ATTACKS WOULD BE REGARDED AS ACTION COVERED BY ARTICLE 5 OF THE NATO TREATY, WHICH PROVIDES THAT AN ARMED ATTACK ON ONE OR MORE OF THE ALLIES SHALL BE CONSIDERED AN ATTACK AGAINST THEM ALL.

AS PRESIDENT BUSH STATED IN A MILITARY ORDER ON NOVEMBER 13, 2001, INTERNATIONAL TERRORISTS, INCLUDING AL QAIDA, HAD CARRIED OUT ATTACKS "...ON A SCALE THAT HAS CREATED A STATE OF ARMED CONFLICT THAT REQUIRES THE USE OF THE UNITED STATES ARMED FORCES." HE MADE IT CLEAR THAT THOSE RESPONSIBLE WOULD BE SUBJECT TO PROSECUTION FOR VIOLATIONS OF THE LAW OF WAR.

THE DECISION TO APPLY THE LAWS OF ARMED CONFLICT IS CONSISTENT WITH INTERNATIONAL AND UNITED STATES PRACTICE. AS THE INTERNATIONAL CRIMINAL COURT FOR THE FORMER YUGOSLAVIA

POINTED OUT IN ONE CASE, "... AN ARMED CONFLICT EXISTS WHENEVER THERE IS A RESORT TO ARMED FORCE BETWEEN STATES OR PROTRACTED ARMED VIOLENCE BETWEEN GOVERNMENTAL AUTHORITIES AND ORGANIZED ARMED GROUPS OR BETWEEN SUCH GROUPS WITHIN A STATE." PROFESSOR ROBERT GOLDMAN AND OTHERS, IN COMMENTING ON RESPONSES TO THE SEPTEMBER 11 ATTACKS, HAVE DOCUMENTED MANY CASES WHERE A STATE HAS BEEN AT WAR AND ENGAGED IN HOSTILITIES AGAINST NON-STATE ACTORS. AS THE PICTET/INTERNATIONAL COMMITTEE OF THE RED CROSS COMMENTARIES ON THE GENEVA CONVENTIONS POINTED OUT MANY YEARS AGO, WHETHER THERE IS AN ARMED CONFLICT FOR PURPOSES OF HUMANITARIAN LAW IS INFLUENCED BY VARIOUS FACTORS, INCLUDING WHETHER A COUNTRY HAS TO RESORT TO USING ITS MILITARY FORCES WITH RESPECT TO INTERNAL ARMED GROUPS AND WHETHER THE SECURITY COUNCIL OF THE UNITED NATIONS IS DEALING WITH THE CONFLICT AS INVOLVING A THREAT TO INTERNATIONAL PEACE AND SECURITY. THESE ARE CONDITIONS WHICH CLEARLY EXISTED AFTER SEPTEMBER 11. THIS INCLUDES THE RESOLUTIONS ADOPTED BY THE SECURITY COUNCIL IN RESPONSE TO THE ATTACKS UNDER THE AUTHORITY OF CHAPTER VII OF THE UN CHARTER, WHICH DEALS WITH THREATS TO INTERNATIONAL PEACE AND SECURITY.

HOWEVER, AS INDICATED BY PROFESSOR ADAM ROBERTS, " A WAR THAT HAS AS A FUNDAMENTAL PURPOSE THE PURSUIT AND BRINGING TO JUSTICE OF PEOPLE DEEMED TO BE CRIMINALS INVOLVES MANY AWKWARD ISSUES FOR WHICH THE EXISTING LAWS OF WAR ARE NOT A PERFECT FIT." AS HE ALSO POINTED OUT, IN ANTI-TERRORIST MILITARY OPERATIONS, CERTAIN PHASES AND SITUATIONS MAY WELL BE DIFFERENT FROM WHAT WAS ENVISAGED IN THE MAIN TREATIES OF THE LAWS OF WAR. NONETHELESS, HE URGED WHAT MANY OF US BELIEVE IS THE CORRECT POSITION: THAT IS, DESPITE THE DIFFICULTIES IN APPLYING THE INTERNATIONAL RULES IN THE SPECIAL CIRCUMSTANCES OF ANTI-TERRORIST WARS, "THE ATTEMPT CAN AND SHOULD BE MADE TO APPLY THE LAW OF WAR TO THE MAXIMUM EXTENT POSSIBLE."

THIS BRINGS ME TO THE ISSUE OF THE APPLICABILITY OF THE GENEVA CONVENTIONS AND THE CUSTOMARY LAW OF WAR ON THE STATUS OF INDIVIDUALS DETAINED AS A RESULT OF HOSTILITIES.

THIS IS AN ISSUE THAT RECEIVED A CONSIDERABLE AMOUNT OF ATTENTION EARLIER THIS YEAR. IT ULTIMATELY WAS DECIDED BY THE PRESIDENT AFTER CONSULTING HIS MOST SENIOR ADVISERS, INCLUDING THE SECRETARY OF STATE, THE SECRETARY OF DEFENSE, AND THE ATTORNEY GENERAL.

ON FEBRUARY 7, THE PRESIDENT MADE DECISIONS REGARDING THE STATUS OF AL-QAIDA AND TALIBAN. IN EXPLAINING THE PRESIDENT'S CONCLUSIONS, MR. ARI FLIESCHER, THE PRESIDENT'S PRESS SECRETARY STATED THAT "THE [PRESIDENT BELIEVES IN THE PRINCIPLES AND THE LAW OF THE GENEVA CONVENTION; HE BELIEVES THAT [IT] PLAYS A ROLE EVEN IN TODAY'S MODERN WORLD WHERE THE APPLICABILITY GETS MORE COMPLICATED AS A RESULT OF AN INTERNATIONAL TERRORIST ORGANIZATION THAT DOESN'T WEAR UNIFORMS OR INSIGNIA."

MR. FLIESHER WENT ON TO EXPLAIN THAT THE WAR AGAINST TERRORISM IS A WAR NOT ENVISAGED WHEN THE GENEVA CONVENTION WAS SIGNED IN 1949 AND THAT THE PRESIDENT HAD MAINTAINED THE UNITED STATE'S COMMITMENT TO THE PRINCIPLES OF THE GENEVA CONVENTION WHILE RECOGNIZING THAT THE CONVENTION "SIMPLY DOES NOT COVER EVERY SITUATION IN WHICH PEOPLE MAY BE CAPTURED OR DETAINED BY MILITARY FORCES, AS WE SEE IN AFGHANISTAN TODAY."

THIS APPROACH TAKEN BY THE PRESIDENT IS SIMILAR WITH THE LONGSTANDING VIEW EXPRESSED BY THE ICRC AND MANY OTHERS THAT "THE RULES FOR ARMED CONFLICT ARE NOT STATIC; ON THE CONTRARY, THEY MUST BE ADOPTED TO A CONSTANTLY CHANGING WORLD BY MEANS OF APPROPRIATE MODIFICATIONS." DESPITE THE LEGAL

AMBIGUITIES POINTED OUT BY MANY, THE PRESIDENT DECIDED TO APPLY THE TRADITIONAL GENEVA CONVENTION PRINCIPLES TO THE NEW AND DIFFICULT SET OF CIRCUMSTANCES IN THE WAR AGAINST TERRORISM. THAT WAR IS A NEW KIND OF WAR. IN THIS WAR, GLOBAL TERRORIST TRANSCEND NATIONAL BOUNDARIES, OWE NO LOYALTIES TO ANY ONE COUNTRY, AND INTENTIONALLY TARGET INNOCENT CIVILIANS BY PERFIDIOUS MEANS.

THE PRESIDENT DECIDED THAT THE GENEVA CONVENTION ON PRISONERS OR WAR APPLIED TO THE TALIBAN DETAINEES BECAUSE AFGHANISTAN IS A PARTY TO THE TREATY. IT DID NOT APPLY TO THE CONFLICT WITH AL QAIDA, WHICH IS NOT AND CANNOT BE A PARTY TO THE GENEVA CONVENTIONS. AT THE SAME TIME, THE UNITED STATES INDICATED THAT IT WOULD TREAT THE DETAINEES HUMANELY AND CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTIONS.

THE CONCLUSION WAS REACHED THAT NEITHER THE TALIBAN NOR AL QAIDA GROUPS MET THE EXPLICIT TERMS SPECIFIED IN THE GENEVA ACTIONS FOR ARMED GROUPS TO QUALIFY FOR PRISONER OF WAR STATUS. THIS INCLUDES MEETING THE FOUR TRADITIONAL CRITERIA THAT MUST BE MET BY ORGANIZATIONS SEEKING POW STATUS, INCLUDING HAVING AN ORGANIZED COMMAND STRUCTURE WITH A PERSON RESPONSIBLE FOR HIS SUBORDINATES AND OF CONDUCTING

THEIR OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR.

AS IS THE CASE IN PAST CONFLICTS, INCLUDING WORLD WAR II, THESE WERE GROUP CHARACTERIZATIONS. SINCE THE GROUPS DID NOT MEET THE STANDARDS REQUIRED, MEMBERS OF THE GROUP WOULD NOT BE ENTITLED TO POW STATUS. AS FAR AS THE UNITED STATES WAS CONCERNED, THERE WAS NO DOUBT ON THE STATUS OF THE GROUPS AND THEIR MEMBERS. INDIVIDUALS CAPTURED IN AFGHANISTAN WERE SCREENED AND SEVERAL HUNDRED TRANSFERRED TO GUANTANAMO. WE HAVE BEEN ASKED WHETHER WE WOULD REVIEW THE STATUS OF ANYONE IF DOUBT WERE TO ARISE. OUR PRESS SPOKESMAN, MR. BOUCHER, HAS PUBLICLY CONFIRMED THAT THAT IS THE CASE.

WE HAVE OFTEN BEEN ASKED WHY THE UNITED STATES IS RELUCTANT TO PROVIDE POW STATUS AS SUCH TO THOSE IN DETENTION. AFTER ALL, THE UNITED STATES HAS HISTORICALLY PROVIDED POW TREATMENT IN THE PAST EVEN TO INDIVIDUALS WHO DO NOT QUALIFY FOR SUCH STATUS.

THE EASY ANSWER IS THAT THEY SIMPLY DO NOT QUALIFY.

HOWEVER, I THINK THAT IT BEARS EMPHASIZING THAT, ALMOST SINCE SINCE TIME IMMEMORIAL, PEOPLE ENTITLED TO POW STATUS ARE GENERALLY DEEMED TO HAVE IMMUNITY FROM PROSECUTION FOR LEGITIMATE ACTS OF WAR. THIS INCLUDES KILLING ENEMY SOLDIERS ON THE BATTLEFIELD AND DESTROYING ENEMY PROPERTY, PROVIDED OF COURSE THAT WAR CRIMES ARE NOT COMMITTED. THE CONCEPT OF COMBATANT IMMUNITY WAS ADDRESS IN DETAIL IN A FEDERAL COURT CASE INVOLVING THE PROSECUTION OF N AMERICAN CITIZEN, JOHN WALKER LINDH, WHO WAS CAPTURED IN AFGHANISTAN WITH THE TALIBAN. AS THE COURT INDICATED IN A WRITTEN OPINION LAST JULY, SUCH UNLAWFUL COMBATANTS CAN OF COURSE BE PROSECUTED FOR WAR CRIMES.

HOWEVER, TO USE A PHRASE FROM PROTOCOL I TO THE GENEVA CONVENTIONS, SUCH COMBATANTS HAVE A "RIGHT TO PARTICIPATE DIRECTLY IN HOSTILITIES."

HOWEVER, THIS RIGHT HAS HISTORICALLY BEEN GIVEN ONLY TO GROUPS THAT HAVE AT A MINIMUM A DECENT RESPECT FOR THE LAWS AND CUSTOMS OF WAR, INCLUDING A VERY BASIC COMMITMENT TO NOT ATTACKING WOMEN, CHILDREN, AND OTHER NON-COMBATANTS. ITS HAS BEEN GIVEN TO REGULAR ARMIES AND, STARTING WITH THE OXFORD MANUAL IN 1874 AND THE 1899 HAGUE REGULATIONS, TO AN EXPANDING

NUMBER OF CATEGORIES. THESE GROUPS HAVE A BASIC DUTY TO DISTINGUISH THEMSELVES FROM THE CIVILIAN POPULATION. THIS IS A BASIC AND FAIR PRICE TO BE PAID TO HAVE THE COMBATANTS STATUS AND IMMUNITY FROM PROSECUTION.

IN PRACTICE, STATES SEEM TO ACCORD A PRESUMPTION THAT REGULAR ARMED FORCES AND THEIR MEMBERS MEET THE FOUR CONDITIONS. IT HAS LONG BEEN RECOGNIZED THAT INDIVIDUAL MEMBERS OF THE REGULAR ARMED FORCES MIGHT FORFEIT POW STATUS UNDER CERTAIN CIRCUMSTANCES, SUCH AS SPYING DISGUISED AS A CIVILIAN OR IN ENEMY UNIFORM. WITH RESPECT TO IRREGULAR FORCES, HOWEVER, THE BURDEN IS ON THE GROUP TO ESTABLISH THAT IT MEETS THE REQUIREMENTS. THIS IS A POSITIVE INCENTIVE TO ENSURE THAT ANY ARMED GROUP COMMITS ITSELF TO DISTINGUISHING ITSELF FROM THE CIVILIAN POPULATION AND TO ENSURING THAT ITS MEMBERS RESPECT INTERNATIONAL HUMANITARIAN LAW.

WE SHOULD NOT REWARD GROUPS OR IN EFFECT RECOGNIZE THEIR LEGITIMACY IF THEY DO NOT FULFILL THESE CONDITIONS. I PERSONALLY BELIEVE THAT THE CREDIBILITY OF THE LAW OF WAR WOULD BE DIMINISHED IF WE WERE TO GIVE GROUPS (INCLUDING TERRORISTS SUCH AS THOSE IN AL QAIDA) IMMUNITY FROM PROSECUTION IF THEY KILL SOLDIERS UNLESS THEY CLEARLY MEET THE

BASIC REQUIREMENTS FOR POW STATUS, ESPECIALLY A BASIC RESPECT FOR THE LAWS AND CUSTOMS OF WAR.

LET ME USE AS AN EXAMPLE THE ATTACKS OF SEPTEMBER 1. IF WE GIVE THE HIJACKERS POW STATUS AS SUCH, THEN IT WOULD IN ESSENCE BE SAYING THAT INTERNATIONAL HUMANITARIAN LAW MAY CONFER A RIGHT ON SUCH PEOPLE TO ATTACK MILITARY PERSONNEL OR PROPERTY. AS WELL AS IMMUNITY FROM PROSECUTION FOR SOME OF THEIR ACTS. THAT COULD INCLUDE ATTACKS AGAINST THE PENTAGON OR AGAINST INDIVIDUAL SOLDIERS AT AIRPORTS. INTERNATIONAL HUMANITARIAN LAW WAS NOT DESIGNED TO GIVE SUCH TERRORISTS RIGHTS OR IMMUNITIES OF THIS KIND. IT IS ONE THING TO SAY THAT CAPTURED INDIVIDUALS SHOULD BE TREATED HUMANELY. IT IS ANOTHER TO SAY THAT THEY SHOULD NOT FACE CRIMINAL PROSECUTION:

MUCH HAS BEEN WRITTEN ABOUT WHAT THE PRECISE STATUS IS OF INDIVIDUALS WHO ARE NOT DEEMED TO BE PRISONERS OF WAR. FOR EXAMPLE, THERE CLEARLY ARE MANY WHO BELIEVE THAT ANYONE NOT COVERED BY THE THIRD GENEVA CONVENTION ON PRISONERS OF WAR IS AUTOMATICALLY A "PROTECTED PERSON" COVERED BY THE FOURTH CONVENTION ON CIVILIANS. THE TEXT OF THE GENEVA CONVENTIONS AND THE NEGOTIATING RECORD OF THE CONVENTIONS FROM THE DIPLOMATIC CONFERENCE OF 1949 IN OUR VIEW MAKES IT CLEAR THAT

THIS IS NOT THE CASE. THERE IS HOWEVER ONE ARTICLE IN PROTOCOL I TO THE GENEVA CONVENTIONS WHICH DOES DEAL WITH ALL PERSONS DETAINED AS A RESULT OF ARMED CONFLICT AND PROVIDES BASIC PROTECTIONS. ARTICLE 75, WHICH IS LARGELY BASED ON THE TERMS OF COMMON ARTICLE 3 OF THE 1949 GENEVA CONVENTIONS AND PROVISIONS IN THE COVENANT ON CIVIL AND POLITICAL RIGHTS, IS WIDELY VIEWED AS BEING PART OF CUSTOMARY INTERNATIONAL LAW. WHILE THE UNITED STATES IS NOT A PARTY TO PROTOCOL (DUE LARGELY TO CONCERNS THAT SOME TERRORISTS WOULD BE TREATED AS SOLDIERS), IT HAS SUPPORTED THIS PROVISION.

IT IS NOT IN MY VIEW SURPRISING THAT THE GENEVA CONVENTIONS OF 1949 DO NOT PROVIDE CLEAR STATUS FOR ANYONE DETAINED AS A RESULT OF AN ARMED CONFLICT. BEFORE 1949, THERE WAS NO GENEVA CONVENTIONS ON CIVILIANS. THE BENEFITS CONFERRED BY THE 1929 GENEVA CONVENTION ON PRISONERS OF WAR AND PRIOR TREATIES ON THIS MATTER CONFERRED RIGHTS AND BENEFITS ON A RELATIVELY NARROW CATEGORY OF INDIVIDUALS: MEMBERS OF ARMED FORCES AND OTHERS WHO WERE DEEMED TO BE WORTHY OF THE COMBATANTS' IMMUNITY.

IN 1949, THE NEGOTIATORS EXPANDED THE CATEGORIES OF THOSE ENTITLED TO BE PRISONERS OF WAR. THEY ALSO DRAFTED A TREATY

THAT ADDRESSED CERTAIN PROBLEMS EXPERIENCED BY SOME BUT NOT ALL CIVILIANS IN WORLD WAR II. HOWEVER, THERE WAS NO INTENT TO COVER ALL CIVILIANS OR ALL CIVILIANS WHO COMMIT BELLIGERENT ACTS. THIS CAN BE SEEN, FOR EXAMPLE, IN THE DEFINITION OF "PROTECTED PERSONS" IN THE CIVILIANS CONVENTION, WHICH EXCLUDES MANY PEOPLE IN DETENTION BASED ON NATIONALITY (SUCH AS NATIONALS OF CO-BELLIGERENTS OR OF COUNTRIES WHICH MAINTAIN NORMAL DIPLOMATIC RELATIONS WITH THE COUNTRY DETAINING INDIVIDUALS).

SO HOW SHOULD WE DESCRIBE INDIVIDUALS WHO DO NOT MEET THE STANDARDS FOR POW STATUS AND YET WHO COMMIT BELLIGERENT ACTS?

MANY LAW OF WAR TREATISES, SCHOLARS, AND COURTS HAVE DESCRIBED SUCH INDIVIDUALS AS "UNLAWFUL COMBATANTS" OR "UNPRIVILEGED COMBATANTS." TRUE, THESE TERMS ARE NOT USED EXPRESSLY IN THE CONVENTIONS. HOWEVER, AS PROFESSOR ADAM ROBERTS HAS WRITTEN, "THE CONCEPT OF UNLAWFUL COMBATANT, OR SOMETHING VERY LIKE IT, IS IMPLICIT IN THE DEFINITIONS OF LAWFUL COMBATANTS THAT APPEAR IN THE KEY TREATIES."

IT IS A TERM USED BY THE UNITED STATES SUPREME COURT IN DESCRIBING CERTAIN SOLDIERS CAPTURED IN WORLD WAR II WHO WERE NOT IN UNIFORM WHEN CAPTURED. IT HAS BEEN USED TO DESCRIBE VARIOUS PRIVATE ARMIES, ARMED GROUPS, AND OTHER NON-STATE ACTORS THAT TOOK UP ARMS AGAINST THE MILITARY FORCES OF A STATE DURING THE 19TH CENTURY. ONE EXAMPLE GIVEN IN A RECENT LAW REVIEW ARTICLE IS THE FENIAN INVASION FORCE THAT CROSSED FROM NEW YORK INTO CANADA IN 1866. THE UNITED STATES HAS ALSO DESCRIBED MANY OF THOSE IN DETENTION AS A RESULT OF HOSTILITIES IN AFGHANISTAN AS UNLAWFUL COMBATANTS, AND AT TIMES SIMPLY AS ENEMY COMBATANTS.

IT IS CLEAR FROM THE NEGOTIATING RECORD THAT THE DRAFTERS KNEW THAT THERE WERE INDIVIDUALS WHO TOOK UP ARMS THAT WOULD NOT QUALIFY FOR STATUS AND THAT THEY KNEW ABOUT THE CONCEPT OF UNLAWFUL BELLIGERENCY.

FOR EXAMPLE, THE REPRESENTATIVES OF THE ICRC STATED DURING THE NEGOTIATIONS THAT THE 1949 DIPLOMATIC CONFERENCE WAS ENGAGED IN THE FRAMING OF ONE CONVENTION TO PROTECT MEMBERS OF THE ARMED FORCES AND SIMILAR CATEGORIES OF PERSONS, AND ANOTHER CONVENTION TO PROTECT CIVILIANS. THE ICRC REPRESENTATIVE POINTED OUT THAT "ALTHOUGH THE TWO CONVENTIONS MIGHT APPEAR

TO COVER ALL THE CATEGORIES CONCERNED, IRREGULAR BELLIGERENTS WERE NOT ACTUALLY PROTECTED.” INDEED HE POINTED OUT THAT “IT WAS AN OPEN QUESTION WHETHER IT WAS DESIRABLE TO GIVE PROTECTIONS TO PERSONS WHO DID NOT CONFORM TO THE LAWS AND CUSTOMS OF WAR....”

SIMILAR VIEWS WERE STATED BY SEVERAL DELEGATIONS. FOR EXAMPLE, THE REPRESENTATIVE OF THE UNITED KINGDOM STATED THAT “THE WHOLE CONCEPTION OF THE CIVILIANS CONVENTION WAS THE PROTECTION CIVILIAN VICTIMS OF WAR AND NOT THE PROTECTION OF ILLEGITIMATE BEARERS OF ARMS.” THE REPRESENTATIVE OF SWITZERLAND POINTED OUT THAT “IN REGARD TO THOSE WHO VIOLATED THE LAWS OF WAR, THE (CIVILIANS) CONVENTION COULD NOT OF COURSE COVER CRIMINALS OR SABOTEURS.” THE REPRESENTATIVE OF THE NETHERLANDS TOOK A SIMILAR VIEW. HE POINTED OUT THAT TO CONCLUDE THAT INDIVIDUALS WHO ARE NOT PRISONERS OF WAR UNDER ARTICLE 4 OF THE POW CONVENTION “ARE AUTOMATICALLY PROTECTED BY OTHER CONVENTIONS IS CERTAINLY UNTRUE. THE CIVILIANS CONVENTION, FOR INSTANCE, DEALS ONLY WITH CIVILIANS UNDER CERTAIN CIRCUMSTANCES; SUCH AS CIVILIANS IN AN OCCUPIED COUNTRY OR CIVILIANS WHO ARE LIVING IN A BELLIGERENT COUNTRY,

BUT IT CERTAINLY DOES NOT PROTECT CIVILIANS WHO ARE IN THE BATTLEFIELD, TAKING UP ARMS AGAINST THE ADVERSE PARTY.”

I AM REFERRING TO THESE STATEMENTS SIMPLY TO POINT OUT THAT THE DRAFTERS OF THE GENEVA CONVENTIONS KNEW THAT THEY WERE NOT COMPREHENSIVELY DEALING WITH ALL PEOPLE WHO COMMIT BELLIGERENT ACTS OR ALL CIVILIANS. THEY DID NOT PURPORT TO CLAIM THAT THEY ADDRESSING ALL POTENTIAL PROBLEMS DEALING WITH PERSONS CAPTURED OR OTHERWISE DETAINED AS A RESULT OF AN ARMED CONFLICT.

HOWEVER, THEY DID NEGOTIATE TREATIES WITH SOUND PROTECTIONS. THE PRINCIPLES OF THE CONVENTIONS CLEARLY REMAIN RELEVANT, EVEN TO CONFLICTS SUCH AS THE CURRENT WAR AGAINST TERRORISM THAT WERE NOT ANTICIPATED OR FORESEEN IN 1949. STILL, MANY NEW ISSUES HAVE ARISEN, AND SOME ARE CURRENTLY IN LITIGATION IN SEVERAL COURTS OF THE UNITED STATES. THESE INCLUDE THE STATUS OF AMERICAN CITIZENS WHO ARE MEMBERS OF THE TALIBAN OR AL QAIDA (I.E., THE HAMDY AND PADILLA CASES) AND WHO ARE DEEMED TO BE ENEMY COMBATANTS. OTHER ISSUES, SUCH AS WHEN PRISONERS SHOULD BE RELEASED, WILL BE THE SUBJECT OF CONSULTATIONS AMONG STATES, SUCH AS A MEETING OF GOVERNMENT EXPERTS THAT WILL BE CONVENED BY THE SWISS FEDERATION IN JANUARY OF 2003. OUR

HOPE IS THAT HUMANITARIAN LAW WILL EMERGE EVEN STRONGER AS
COUNTRIES CONTINUE TO APPLY IT TO NEW SITUATIONS.

THANK YOU.