

Paras 146 to 170

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *Inter-American Commission on Human Rights*, Report No. 55/97, Case No. 11.137: Argentina, OEA/ Ser/L/V/II.98, Doc. 38, December 6 rev., 1997; footnotes partially omitted. Available on <http://www.cidh.org> ^[2]]

[...]

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Approved by the Commission on November 18, 1997

[...]

IV. ANALYSIS

146. In order to facilitate the analysis of key events and issues raised in this case, this report will examine those events and issues under the following three headings: the attack on and the recovery of the military base; the events that followed the surrender of the attackers and the arrest of their alleged accomplices; and the trial of those same persons for the crime of rebellion in the *Abella* case.

A. THE ATTACK AND RECAPTURE OF THE MILITARY BASE

147. In their complaint, petitioners invoke various rules of International Humanitarian Law, i.e. the law of armed conflict, in support of their allegations that state agents used excessive force and illegal means in their efforts to recapture the Tablada military base. For its part, the Argentine State, while rejecting the applicability of interstate armed conflict rules to the events in question, nonetheless have in their submissions to the Commission characterized the decision to retake the Tablada base by force as a military operation. The State also has cited the use of arms by the attackers to justify their prosecution for the crime of rebellion as defined in Law 23.077. Both the Argentine State and petitioners are in agreement that on the 23 and 24 of January 1989 an armed confrontation took place at the Tablada base between attackers and Argentine armed forces for approximately 30 hours.

148. The Commission believes that before it can properly evaluate the merits of petitioners claims concerning the recapture of the Tablada base by the Argentine military, it must first determine whether the armed confrontation at the base was merely an example of an internal disturbance or tensions or whether it constituted a non-international or internal armed conflict within the meaning of Article 3 common to the four 1949 Geneva conventions (Common Article 3). Because the legal rules governing an internal armed conflict vary significantly from those governing situations of internal disturbances or tensions, a proper characterization of the events at the Tablada

military base on January 23 and 24, 1989 is necessary to determine the sources of applicable law. This, in turn, requires the Commission to examine the characteristics that differentiate such situations from Common Article 3 armed conflicts in light of the particular circumstances surrounding the incident at the Tablada base.

i. Internal disturbances and tensions

149. The notion of internal disturbances and tensions has been studied and elaborated on most particularly by the International Committee of the Red Cross (ICRC). In its 1973 Commentary on the Draft Additional Protocols to the Geneva Conventions, the ICRC defined, albeit not exhaustively, such situations by way of the following three examples:
- riots, that is to say, all disturbances *which from the start are not directed by a leader and have no concerted intent*;
 - isolated and sporadic acts of violence, as *distinct from military operations carried out by armed forces or organized armed groups*;
 - other acts of a similar nature which incur, in particular, mass arrests of persons because of their behavior or political opinion (Emphasis supplied.)
150. According to the ICRC, what principally distinguishes situations of serious tension from internal disturbances is the level of violence involved. While tensions can be sequels of an armed conflict or internal disturbance, the latter are
- ... situations in which there is no non-international armed conflict as such, but there exists a confrontation within a country, which is characterized by a certain seriousness or duration and which involves acts of violence. . . In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order.
151. Situations of internal disturbances and tensions are expressly excluded from the scope of international humanitarian law as not being armed conflicts. Instead, they are governed by domestic law and relevant rules of international human rights law.

ii. **Non-international armed conflicts under humanitarian law**

152. In contrast to these situations of domestic violence, the concept of armed conflict, in principle, requires the existence of organized armed groups that are capable of and actually do engage in combat and other military actions against each other. In this regard, Common Article 3 simply refers to, but does not actually define an armed conflict of a non-international character. However, Common Article 3 is generally understood to apply to low intensity and open armed confrontations between relatively organized armed forces or groups that take place within the territory of a particular state.

[Footnote 16 reads: A Commission of Experts convened by the International Committee of the Red Cross made the following pertinent observation: “The existence of an armed conflict is undeniable, in the sense of Article 3, if hostile action against a lawful government assumes a collective character and a minimum of organization.” See, ICRC, *Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflict: Report Submitted to the XXIst Conference of the Red Cross, Istanbul at p.99 (1969).*]

Thus, Common Article 3 does not apply to riots, mere acts of banditry or an unorganized and short-lived rebellion. Article 3 armed conflicts typically involve armed strife between governmental armed forces and organized armed insurgents. It also governs situations where two or more armed factions confront one another without the intervention of governmental forces where, for example, the established government has dissolved or is too weak to intervene. It is important to understand that application of Common Article 3 does not require the existence of large-scale and generalized hostilities or a situation comparable to a civil war in which dissident armed groups exercise control over parts of national territory. The Commission notes that the ICRC's authoritative Commentary on the 1949 Geneva Conventions, indicates that, despite the ambiguity in its threshold of application, Common Article 3 should be applied as widely as possible.

153. The most difficult problem regarding the application of Common Article 3 is not at the upper end of the spectrum of domestic violence, but rather at the lower end. The line separating an especially violent situation of internal disturbances from the lowest level Article 3 armed conflict may sometimes be blurred and, thus, not easily determined. When faced with making such a determination, what is required in the final analysis is a good faith and objective analysis of the facts in each particular case.

iii. Characterization of the events at the Tablada base

154. Based on a careful appreciation of the facts, the Commission does not believe that the violent acts at the Tablada military base on January 23 and 24, 1989 can be properly characterized as a situation of internal disturbances. What happened there was not equivalent to large scale violent demonstrations, students throwing stones at the police, bandits holding persons hostage for ransom, or the assassination of government officials for political reasons – all forms of domestic violence not qualifying as armed conflicts.

155. What differentiates the events at the Tablada base from these situations are the concerted nature of the hostile acts undertaken by the attackers, the direct involvement of governmental armed forces, and the nature and level of the violence attending the events in question. More particularly, the attackers involved carefully planned, coordinated and executed an armed attack, i.e., a military operation, against a quintessential military objective – a military base. The officer in charge of the Tablada base sought, as was his duty, to repulse the attackers, and President Alfonsín, exercising his constitutional authority as Commander-in-Chief of the armed forces, ordered that military action be taken to recapture the base and subdue the attackers.

156. The Commission concludes therefore that, despite its brief duration, the violent clash between the attackers and members of the Argentine armed forces triggered application of the provisions of Common Article 3, as well as other rules relevant to the conduct of internal hostilities.

iv. The Commission's competence to apply international humanitarian law

157. Before addressing petitioners specific claims, the Commission thinks it useful to

clarify the reasons why it has deemed it necessary at times to apply directly rules of international humanitarian law or to inform its interpretations of relevant provisions of the American Convention by reference to these rules. A basic understanding of the interrelationship of these two branches of international law – human rights and humanitarian law – is instructive in this regard.

158. The American Convention, as well as other universal and regional human rights instruments, and the 1949 Geneva Conventions share a common nucleus of non-derogable rights and a common purpose of protecting human life and dignity. These human rights treaties apply both in peacetime, and during situations of armed conflict. Although one of their purposes is to prevent warfare, none of these human rights instruments was designed to regulate such situations and, thus, they contain no rules governing the means and methods of warfare.
159. In contrast, international humanitarian law generally does not apply in peacetime, and its fundamental purpose is to place restraints on the conduct of warfare in order to diminish the effects of hostilities. It is understandable therefore that the provisions of conventional and customary humanitarian law generally afford victims of armed conflicts greater or more specific protections than do the more generally phrased guarantees in the American Convention and other human rights instruments.
160. It is, moreover, during situations of internal armed conflict that these two branches of international law most converge and reinforce each other. Indeed, the authors of one of the authoritative commentaries on the two 1977 Protocols Additional to the 1949 Geneva Conventions state in this regard:

Though it is true that every legal instrument specifies its own field of application, it cannot be denied that the general rules contained in international instruments relating to human rights apply to non-international armed conflicts as well as the more specific rules of humanitarian law.

[Footnote 21 reads: M. Bothe, K. Partsch & W. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the two 1977 Protocols Additional to the Geneva Conventions of 1949*, 619 (1982) [hereinafter “New Rules”].]

161. For example, both Common Article 3 and Article 4 of the American Convention protect the right to life and, thus, prohibit, *inter alia*, summary executions in all circumstances. Claims alleging arbitrary deprivations of the right to life attributable to state agents are clearly within the Commissions jurisdiction. But the Commissions ability to resolve claimed violations of this non-derogable right arising out of an armed conflict may not be possible in many cases by reference to Article 4 of the American Convention alone. This is because the American Convention contains no rules that either define or distinguish civilians from combatants and other military targets, much less, specify when a civilian can be lawfully attacked or when civilian casualties are a lawful consequence of military operations. Therefore, the Commission must necessarily look to and apply definitional standards and relevant rules of humanitarian law as sources of authoritative guidance in its resolution of this and other kinds of claims alleging violations of the American Convention in combat situations. To do otherwise would mean that the Commission would have to decline to exercise its jurisdiction in many cases involving indiscriminate attacks by state agents resulting in a considerable number of civilian casualties. Such a result would be manifestly absurd in light of the underlying object and purposes of both the American Convention and humanitarian law treaties.
162. Apart from these considerations, the Commissions competence to apply humanitarian law rules is supported by the text of the American Convention, by its own case law, as well as the jurisprudence of the Inter-American Court of Human Rights. Virtually every OAS member state that is a State Party to The American Convention has also ratified one or more of the 1949 Geneva Conventions and/or other humanitarian law instruments. As States Parties to the Geneva Conventions, they are obliged as a matter of customary international law to observe these treaties in good faith and to bring their domestic law into compliance with these instruments. Moreover, they have assumed a solemn duty to respect and to ensure respect of these Conventions in all circumstances, most particularly, during situations of interstate or internal hostilities.
163. In addition, as States Parties to the American Convention, these same states are also expressly required under Article 25 of the American Convention to provide an internal legal remedy to persons for violations by state agents of their fundamental rights recognized by *the constitution or laws* of the state concerned or by this

Convention (emphasis supplied). Thus, when the claimed violation is not redressed on the domestic level and the source of the right is a guarantee set forth in the Geneva Conventions, which the State Party concerned has made operative as domestic law, a complaint asserting such a violation, can be lodged with and decided by the Commission under Article 44 of the American Convention. Thus, the American Convention itself authorizes the Commission to address questions of humanitarian law in cases involving alleged violations of Article 25.

164. The Commission believes that in those situations where the American Convention and humanitarian law instruments apply concurrently, Article 29(b) of the American Convention necessarily require it to take due notice of and, where appropriate, give legal effect to applicable humanitarian law rules. Article 29(b) – the so-called “most-favorable-to-the-individual-clause” – provides that no provision of the American Convention shall be interpreted as “restricting the enforcement or exercise of any right or freedom recognized by virtue of the laws of any State Party of another convention which one of the said states is a party.”
165. The purpose of this Article is to prevent States Parties from relying on the American Convention as a ground for limiting more favorable or less restrictive rights to which an individual is otherwise entitled under either national or international law. Thus, where there are differences between legal standards governing the same or comparable rights in the American Convention and a humanitarian law instrument, the Commission is duty bound to give legal effort to the provision(s) of that treaty with the higher standard(s) applicable to the right(s) or freedom(s) in question. If that higher standard is a rule of humanitarian law, the Commission should apply it.
166. Properly viewed, the close interrelationship between human rights law and humanitarian law also supports the Commission’s authority under Article 29(b) to apply humanitarian law, where it is relevant. In this regard, the authors of the New Rules make the following pertinent point regarding the reciprocal relationship between Protocol II and the Covenant on Civil and Political Rights:

Protocol II should not be interpreted as remaining behind the basic standard established in the Covenant. On the contrary, when Protocol II in its more detailed provisions establishes a higher standard than the Covenant, this higher standard

prevails, on the basis of the fact that the Protocol is “*lex specialis*” in relation to the Covenant. On the other hand, provisions of the Covenant which have not been reproduced in the Protocol which provide for a higher standard of protection than the Protocol should be regarded as applicable irrespective of the relative times at which the two instruments came into force for the respective State. It is a general rule for the application of concurrent instruments of Human Rights – and Part II “Humane Treatment” [of Protocol II] is such an instrument – that they implement and complete each other instead of forming a basis for limitations.

167. Their point is equally valid concerning the mutual relationship between the American Convention and Protocol II and other relevant sources of humanitarian law, such as Common Article 3.
168. In addition, the Commission believes that a proper understanding of the relationship between applicable humanitarian law treaties and Article 27(1), the derogation clause of the American Convention, is relevant to this discussion. This Article permits a State Party to the American Convention to temporarily derogate, i.e., suspend, certain Convention based guarantees during genuine emergency situations. But, Article 27(1) requires that any suspension of guarantees not be “inconsistent with that state’s other obligations under international law”. Thus, while it cannot be interpreted as incorporating by reference into the American Convention all of a state’s other international legal obligations, Article 27(1) does prevent a state from adopting derogation measures that would violate its other obligations under conventional or customary international law. [...]
170. [...] [W]hen reviewing the legality of derogation measures taken by a State Party to the American Convention by virtue of the existence of an armed conflict to which both the American Convention and humanitarian law treaties apply, the Commission should not resolve this question solely by reference to the text of Article 27 of the American Convention. Rather, it must also determine whether the rights affected by these measures are similarly guaranteed under applicable humanitarian law treaties. If it finds that the rights in question are not subject to suspension under these humanitarian law instruments, the Commission should conclude that these derogation measures are in violation of the State Parties obligations under both the American Convention and the humanitarian law treaties concerned. [...]

Paras 172 to 189

v. Petitioners' claims

172. Petitioners do not dispute the fact that some MTP members planned, initiated and participated in the attack on the military base. They contend, however, that the reason or motive for the attack – to stop a rumored military coup against the Alfonsín government – was legally justified by Article 21 of the National Constitution which obliged citizens to take up arms in defense of the Constitution. Consequently, they assert that their prosecutions for the crime of rebellion was violative of the American Convention. In addition, petitioners argue that because their cause was just and lawful, the State, by virtue of its excessive and unlawful use of force in retaking the military base, must bear full legal and moral responsibility for *all* the loss of life and material damage occasioned by its actions.
173. The Commission believes that petitioners arguments reflect certain fundamental misconceptions concerning the nature of international humanitarian law. It should be understood that neither application of Common Article 3, nor of any other humanitarian law rules relevant to the hostilities at the Tablada base, can be interpreted as recognizing the legitimacy of the reasons or the cause for which the members of the MTP took up arms. Most importantly, application of the law is not conditioned by the causes of the conflict. This basic tenant of humanitarian law is enshrined in the preamble of Additional Protocol I which states in pertinent part:

Reaffirming further that the provisions of the Geneva Conventions of August 12, 1949 . . . must be fully applied in all circumstances . . . *without any adverse distinction based on the nature or origin off [sic] the armed conflict or on the causes espoused by or attributed to the Parties of the Conflict.* (Emphasis supplied)

174. Unlike human rights law which generally restrains only the abusive practices of state agents, Common Article 3's mandatory provisions expressly bind and apply *equally* to both parties to internal conflicts, i.e., government and dissident forces. Moreover,

the obligation to apply Common Article 3 is absolute for both parties and independent of the obligation of the other. [Footnote 27 reads: A breach of Article 3 by one party, such as an illegal method of combat, could not be invoked by the other party as a ground for its non-compliance with the Article's obligatory provisions. See generally, Vienna Convention on the Law of Treaties, Art. 60.] Therefore, both the MTP attackers and the Argentine armed forces had the same duties under humanitarian law, and neither party could be held responsible for the acts of the other.

[...]

vi. Application of Humanitarian Law

176. Common Article 3's basic purpose is to have certain minimum legal rules apply during hostilities for the protection of persons who do *not* or *no longer* take a *direct or active* part in the hostilities. Persons entitled to Common Article 3's mandatory protection include members of both State and dissident forces who surrender, are captured or are *hors de combat*. Individual civilians are similarly covered by Common Article 3's safeguards when they are captured by or otherwise subjected to the power of an adverse party, even if they had fought for the opposing party.

177. In addition to Common Article 3, customary law principles applicable to all armed conflicts require the contending parties to refrain from directly attacking the civilian population and individual civilians and to distinguish in their targeting between civilians and combatants and other lawful military objectives.

[Footnote 29 reads: These principles are set forth in U.N. General Assembly Resolution 2444, "Respect for Human Rights in Armed Conflicts", 23 U.N. GAOR Supp. (No. 18) at 164, which states in pertinent part: [T]he following principles for observance by all governmental and other authorities for action in armed conflicts:

- a. That the right of the parties to a conflict to adopt means of injuring the enemy in [sic] not unlimited;
- b. That it is prohibited to launch attacks against the civilian population as such;
- c. That distinction must be made at all time between persons taking part in the hostilities and members of the civilian population to the effect that the latter be

spared as much as possible...

See also U.N. General Assembly Resolution 2675, U.N. GAOR Supp. No. 28 U.N. Doc. A/8028 (1970) which elaborates on and strengthens the principles in Resolution 2444.] In order to spare civilians from the effects of hostilities, other customary law principles require the attacking party to take precautions so as to avoid or minimize loss of civilian life or damage to civilian property incidental or collateral to attacks on military targets.

178. The Commission believes that petitioners misperceive the practical and legal consequences that ensued with respect to the application of these rules to those MTP members who participated in the Tablada attack. Specifically, when civilians, such as those who attacked the Tablada base, assume the role of combatants by directly taking part in fighting, whether singly or as a member of a group, they thereby become legitimate military targets. As such, they are subject to direct individualized attack to the *same extent as combatants*. Thus, by virtue of their hostile acts, the Tablada attackers lost the benefits of the above-mentioned precautions in attack and against the effects of indiscriminate or disproportionate attacks pertaining to *peaceable* civilians. In contrast, these humanitarian law rules continued to apply in full force with respect to those peaceable civilians present or living in the vicinity of the Tablada base at the time of the hostilities. The Commission notes parenthetically that it has received no petition lodged by any such persons against the state of Argentina alleging that they or their property sustained damage as a result of the hostilities at the base.
179. When they attacked the Tablada base, those persons involved clearly assumed the risk of a military response by the state. The fact that the Argentine military had superior numbers and fire power and brought them to bear against the attackers cannot be regarded in and of itself as a violation of any rule of humanitarian law. This does not mean, however, that either the Argentine Military or the attackers had unlimited discretion in their choice of means of injuring the other. Rather, both parties were required to conduct their military operations within the restraints and prohibitions imposed by applicable humanitarian law rules.

180. In this connection, petitioners in essence allege that the Argentine military violated two specific prohibitions applicable in armed conflicts, namely:
- a. a refusal by the Argentine military to accept the attackers offer to surrender, tantamount to a denial of quarter; and
 - b. the use of weapons of a nature to cause superfluous injury or unnecessary suffering, specifically, incendiary weapons.
181. In evaluating petitioners claims, the Commission is mindful that because of the peculiar and confusing conditions frequently attending combat, the ascertainment of crucial facts frequently cannot be made with clinical certainty. The Commission believes that the appropriate standard for judging the actions of those engaged in hostilities must be based on a reasonable and honest appreciation of the overall situation prevailing at the time the action occurred and not on the basis of speculation or hindsight.
182. With regard to their first allegation, petitioners charge that the Argentine military deliberately ignored the attempt of the attackers to surrender some four hours after the hostilities began on January 23, 1989 which unnecessarily prolonged the fighting an additional twenty-six hours and thereby resulted in needless deaths and suffering on both sides. Apart from the testimony of the MTP survivors, petitioners rely on a video tape, which they submitted to the Commission, to substantiate their claims. The video tape is a compilation of news programs broadcast by channels [...] of Argentina on the day of the attack, as well as subsequent documentaries by the same stations and other footage that the petitioners considered relevant to their case. While the tape is an important aid to its understanding of the events in question, the Commission believes that its probative value is nonetheless questionable. For example, the tape does not provide a sequential and uninterrupted documentation of the 30 hours of combat at the base. Rather, it is an edited depiction of certain events which were compiled by a private producer at the request of the petitioners, for the specific purpose of presentation to the Commission.
183. The Commission carefully viewed the above mentioned video tape, and identified two different scenes which supposedly depict the attempted surrender. The first of them, in which the image is not very clear, shows a very brief scene of a white flag being

waved from a window. This first scene, however, is not connected to any of the others on the video, nor is there any indication of the precise moment when it took place. The second scene shows a larger image of one of the buildings inside the military base, which is being hit by a volley of gunfire, presumably from Argentine forces. Upon repeated viewings and careful scrutiny of this second scene, the Commission was not able to see the white flag which supposedly was being waved from within the building by the MTP attackers.

184. The tape is also notable for what it does not show. In fact, it does not identify the precise time or day of the putative surrender attempt. Nor does it show what was happening at the same time in other parts of the base where other attackers were located. If these persons, for whatever reason, continued to fire or commit other hostile acts, the Argentine military might not unreasonably have believed that the white flag was an attempt to deceive or divert them.
185. Thus, because of the incomplete nature of the evidence, the Commission is not in a position to conclude that the Argentine armed forces purposefully rejected a surrender attempt by the attackers at 9:00 am on the 23rd of January. The Commission does note, however, that the fact that there were survivors among them tends to belie any intimation that an order of no quarter was actually given.
186. The video tape is even less probative of petitioners' claim that the Argentine military used incendiary weapons against the attackers. The video does show a fiery explosion in a structure presumably occupied by some of the attackers. But the precise nature of the weapon used that caused the explosion is not revealed by the tape. The reason for the explosion could be attributed to a weapon other than an incendiary device. For example, it might have been caused by a munition designed to pierce installations or facilities where the incendiary effect was *not specifically designed* to cause burn injury to persons, or as the result of a direct hit by an artillery shell that exploded munitions located within or near the attackers defensive position. Without the benefit of testimony from munitions experts or forensic evidence establishing a likely causal connection between the explosion and the use of an incendiary weapon, the Commission simply cannot conclude that the Argentine military employed such a device against the attackers.

187. The Commission must note that even if it were proved that the Argentine military had used such weapons, it cannot be said that their use in *January 1989* violated an *explicit* prohibition applicable to the conduct of internal armed conflicts at that time. In this connection, the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons annexed to the 1981 United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious and to Have Indiscriminate Effects (Weapons Convention), cited by petitioners, was not ratified by Argentina until 1995. Moreover and most pertinently, Article 1 of the Weapons Convention states that the Incendiary Weapons Protocol applies only to interstate armed conflicts and to a limited class of national liberation wars. As such, this instrument did not directly apply to the internal hostilities at the Tablada. In addition, the Protocol does not make the use of such weapons per se unlawful. Although it prohibits their direct use against peaceable civilians, it does not ban their deployment against lawful military targets, which include *civilians who directly participate in combat*.
188. Because of the lack of sufficient evidence establishing that state agents used illegal methods and means of combat, the Commission must conclude that the killing or wounding of the attackers which occurred *prior to the cessation of combat on January 24, 1989* were legitimately combat related and, thus, did not constitute violations of the American Convention or applicable humanitarian law rules.
189. The Commission wishes to emphasize, however, that the persons who participated in the attack on the military base were legitimate military targets only *for such time as they actively participated in the fighting*. Those who surrendered, were captured or wounded and ceased their hostile acts, fell effectively within the power of Argentine state agents, who could no longer lawfully attack or subject them to other acts of violence. Instead, they were absolutely entitled to the non-derogable guarantees of humane treatment set forth in both common Article 3 of the Geneva Conventions and Article 5 of the American Convention. The intentional mistreatment, much less summary execution, of such wounded or captured persons would be a particularly serious violation of both instruments. [Footnote 32 reads: The Commission notes parenthetically in this regard that the War Crimes Tribunal for the former Yugoslavia

has found such violations of common Article 3 to entail the individual criminal responsibility of the perpetrator(s) [...]

[...]

Discussion

1. (*Paras 149-156*) What distinguishes a non-international armed conflict from internal disturbances and tensions? Is Art. 3 common to the Conventions applicable to the attack on the Tablada military base? Is Protocol II applicable? (GC I-IV, Art. 3 ^[3]; P I, Art. 1 ^[4])
2. (*Paras 157-171*) Why can the Inter-American Commission apply IHL? Because it is part of international law? Because it is part of Argentine law? Because it defines with greater precision, in relation to armed conflicts, the right to life protected in the American Convention? Because under Art. 29 of the American Convention, the Commission has to apply any rules offering better protection than the Inter-American Convention? Because derogations from the rights protected by the American Convention are only admissible, under the American Convention, if they do not violate other obligations of the State concerned? (See American Convention on Human Rights, available on <http://www.cidh.org> ^[2])
3. (*Paras 173, 174*) If the petitioners' attack was justified under Argentine law, would that have changed anything from the point of view of IHL? Is there a distinction between *jus ad bellum* and *jus in bello* in non-international armed conflicts?
4. (*Paras 177-179*) Do civilians taking a direct part in hostilities lose the protection of common Art. 3? Of the whole IHL of non-international armed conflict? Of the rules on the protection of the civilian population against the effects of hostilities? If so, for how long? (P II, Art. 13(3) ^[5]) [See ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* ^[6]]
5. (*Paras 181-185, 189*) Is the denial of quarter prohibited in non-international armed conflicts? Why? Because it is prohibited in international armed conflicts and there is no relevant difference on that point between non-international and international conflicts? Because it would violate common Art. 3? Is it justified to deny quarter to one surrendering member of a group of combatants as long as other members of the

group continue to fight?

6. (*Paras 186-188*)

a. Is the use of incendiary weapons prohibited in international armed conflicts? Are there limitations? Do those limitations simply prohibit attacks with incendiary weapons on civilians? What do the prohibitions of Protocol III to the 1980 Weapons Convention add to the prohibitions applicable to the use of all weapons? [See Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III to the 1980 Convention) ^[7], and Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons ^[8]]

b. Are the limitations on the use of incendiary weapons also applicable in non-international armed conflicts? Why? Because on this point too there is no relevant difference between non-international and international conflicts? Because a use of incendiary weapons beyond that permitted by the IHL of international armed conflicts would violate common Art. 3? Because no State can claim the right to use against its own citizens methods and means of combat which it has agreed not to use against a foreign enemy in an international armed conflict? If they are not applicable, where does the difference lie between the prohibition of the denial of quarter and the limitations on the use of incendiary weapons?

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