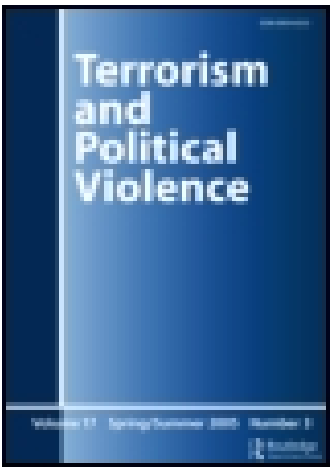

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The Panama invasion and the laws of war

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The Panama Invasion and the Laws of War

Juan E. Mendéz and Kenneth Anderson

This article considers the conduct of armed parties in the invasion of Panama on 20 December 1989 by United States forces, in relation to the standards established by the international laws of war and the Geneva Conventions of 1949. The article confines itself to the conduct of US and Panamanian armed forces from the commencement of hostilities, and does not consider arguments for or against the invasion itself. The authors, on behalf of the US-based Americas Watch, a human rights monitoring organization, visited Panama in January 1990, and collected information contained in the article. The article concludes that US forces failed in their Geneva Convention obligations with respect to the detentions of Panamanian POWs and civilians. It also concludes that US forces failed to exercise precautions to minimize collateral civilian casualties in the attack on the Panamanian military headquarters. It finds that Panamanian forces put non-combatant civilians at risk by dressing in civilian clothes and firing from civilian-occupied structures. It estimates the number of Panamanian civilian dead at approximately 300. The article further considers protection of human rights under the new Endara government, and the plight of refugees left homeless by the invasion.

In the film classic of the Second World War, *The Bridge Over the River Kwai*, the British POW commander asks the Japanese camp commander if he has ever heard of the Geneva Conventions. The Japanese commander replies, 'It is the coward's code. This is war, not a game of cricket'. It is partly on account of such films that Americans have warm feelings toward the Geneva Conventions. Unlike, perhaps, American suspicion of some international accords that popularly have become equated with loss of sovereignty, there is a general feeling that the Geneva Conventions have protected our side in the past and that this is how 'honorable' war is fought.

Indeed, it is not too far-fetched to say that American disenchantment with wars subsequent to the 'good war' of the Second World War partly derives from understanding that neither the United States nor its enemies in combat since 1945 have adhered to the international laws of war, including the Geneva Conventions. To be sure, on many occasions in the Second World War, the United States broke the laws of war – the bombing of Dresden, for example, and the atomic bombings of Hiroshima and

Nagasaki. Despite these lapses in fact, however, American popular perception holds that not only was the cause just, but further that the conflict was pursued, at least by our side, honorably.

In Korea, by contrast, American POWs were subjected to the degradations of brainwashing by the North Koreans and the Chinese. In Vietnam, the United States consistently ignored the laws of war in its treatment of Vietnamese civilians and POWs – as well as through its explicit establishment of rules of engagement which violated the rules of war. Subsequent to Vietnam, irregular civil wars, guerrilla insurgency, and low-intensity warfare – the characteristic modes of armed conflict of the last two decades – all around the world have reinforced the idea in many quarters that 'honorable' warfare is no longer 'practical' or 'possible', at least along the lines envisioned by the Geneva Conventions of 1949 and the Additional Protocols of 1977.

It is therefore no surprise that part of the popularity of the United States invasion of Panama on December 20, 1989 is not only the justification for intervention, but the perception that the invasion was conducted well. Conducted well, meaning that the US lost few soldiers, accomplished its goals, and conducted itself honorably, that is, in accordance with the rules of war.

The authors of this article visited Panama between 9 January and 20 January 1990, in the first month following the invasion, on behalf of Americas Watch, a human rights organization with long experience monitoring armed conflict in many places in the hemisphere including El Salvador, Nicaragua, Colombia, and Peru, to determine the extent of compliance with the laws of war in the conflict by the US as well as Panamanian forces. We met, in the course of our visit, with high-ranking officers at the Southern Command of the United States Armed Forces, local human rights organizations with which Americas Watch has had long contact, community-based and popular organizations, prisoners held by the US forces, and numerous witnesses of the events of those days.

The United States government offered several justifications for the invasion, among them the ultimately successful capture of General Antonio Noriega so that he could be tried on drug charges in the United States, and the need to restore democracy in Panama. Regardless of the reasons or validity of such reasons, the military invasion of one country by another and the fighting resulting from it constitute an international armed conflict. For that reason, both American and Panamanian forces are bound in their conduct by the rules of international humanitarian law found in the Geneva Conventions of 1949 and the related customary laws of war.

This article does not address the matter of the legality or illegality of the decision made by President George Bush to invade a foreign country. The

matter raises important issues of international law governing bilateral relations, the obligation to observe procedures for the peaceful resolution of disputes, and the principles of self-determination and non-intervention. All of these principles are at the heart of the international order of which international human rights and international humanitarian law are a part. They are, however, outside the scope of concern that we address in this article. That scope is restricted to the standards embodied in the Universal Declaration of Human Rights and similar instruments, and in the Geneva Conventions and the Additional Protocols of 1977 in regards to armed conflict.

On the grounds of the information gathered and on the basis of the arguments set forth in this report, we find that the conduct of the American forces during the fighting failed to observe important obligations enshrined in the Geneva Conventions with regards to the treatment of civilians. In particular, the United States forces violated their ever-present duty to minimize harm to the civilian population in some of the most important battle sites. The command of the American forces also failed to live up to its duties concerning the collection of and accounting for the wounded and the dead among civilians and among the enemy forces. In the conduct of searches and seizures and arrests in subsequent days, the American forces exceeded the boundaries of what was permissible to them as an occupying force. In addition, American forces have been and continue to be, as of this writing, delinquent in the discharge of their obligation toward the thousands of poor Panamanians rendered homeless by the invasion.

The now-defunct Panamanian Defense Forces and the paramilitary 'Dignity Battalions' were also responsible for violations of the Geneva Conventions, even though the fighting was relatively minor and circumscribed. Their tactic of leaving the site of military objectives, melting into the population (including dressing as civilians) and resisting from the perimeter of military installations had the effect of drawing fire on civilians and making civilian structures a legitimate military target.

Civilian Casualties

Debates over civilian casualties resulting from the invasion have been largely sterile because they have focused almost exclusively on the number of dead. The number is important, but still more important, from the perspective of the rules of war, are the *circumstances* under which those persons died. The point is to determine whether or not they died under circumstances which, however tragic, constituted a violation of human rights. Without ascertaining those circumstances, the debate over numbers largely reduces itself to an argument conducted in a vacuum over

what level of civilian casualties in an armed conflict is 'acceptable'. Although we obviously favor fewer rather than more, even ten civilian dead would be unacceptable if, for example, they had been summarily executed.

Yet it took weeks, beyond the end of hostilities, for questions of Panamanian civilian dead, as distinguished from American military dead or even Panamanian military dead, to gain a place on the media agenda or the agenda of the US Southern Command. Only in January did the US press in Panama begin to discuss civilian deaths, mostly as a result of allegations in the United States and in some Latin American countries that thousands of civilians had died.[1] The Southern Command should have forthrightly addressed the issue from the beginning rather than directing attention away from it for weeks; it thereby contributed to the development of wild rumors. On the other hand, US critics of the invasion, among them former US Attorney General Ramsey Clark, made matters worse by giving estimates running into the thousands without evidence.[2] Apart from lacking credibility, these reports have made it more difficult for more accurate estimates of civilian casualties, and the circumstances under which they died, to be appreciated for their own seriousness. If someone alleges, for example, that 4,000 died, whereas a more accurate estimate is only 10 per cent of that, then the media unfortunately but naturally takes it that the lower figure is 'acceptable'. Yet the circumstances of some of those deaths may be deeply troubling.

The Southern Command's official figures for civilian dead are presently 202, including 147 identified and 55 unidentified. Of the unidentified, 13 to 18 bodies will probably never be identified because they are burned beyond recognition. The figure of 202 was first given on 9 January, 1990, at a briefing for human rights monitors at Gorgas Military Hospital in Panama City. Only a day earlier the Southern Command had given the press a figure of 230; in earlier days the estimate given to the press was around 300. The reason for the reduction, as explained to us, was that some corpses positively identified as members of the Panamanian Defense Forces (PDF) or the paramilitary units known as Dignity Battalions were taken off the civilian list, and added to the figure for military casualties or 'enemy dead'.

Bodies were collected in different areas of the city and taken to hospitals and morgues. At that point, the Panamanian Institute of Forensic Medicine (a unit under the Office of the Attorney General) sought information on each corpse that could assist in identification. Bodies were buried in common graves, but records were kept to allow exhumations when relatives came forward with further information. The initial 250 bodies included more than 40 who were subsequently classified as 'enemy dead'. They also included cadavers brought from the interior of the country;

about 40 came from Colón, Panama's second largest city, and a few from three or four different regions.

In our view, the figure of 202 civilian dead is low; an estimate of 300, as also found by the Boston-based Physicians for Human Rights following a February, 1990 mission, is more likely the real figure. During our visit to Panama, the Panamanian Institute of Forensic Medicine and the US office of the Command Surgeon continued to follow leads on the existence of other corpses, as did we. There were rumors that families buried their own dead in backyards or other places, but did not report them for fear of being identified with the PDF or the Dignity Battalions. Soldiers and civilians might have died in marshes or lowlands that would make recovery of corpses difficult. Other rumors circulated of more graves not registered in the official tally.

Our investigation did not give substance to these rumors, although the subsequent and very thorough investigation by the Physicians for Human Rights brought to light a mass grave in Colón which, while reported to the Panamanian Red Cross at the time of the invasion, was nowhere included in the official tallies. Families have not come forward in significant numbers to claim disappearances not otherwise accounted for, and we do not believe the atmosphere created fear against coming forward.

There have also been references to the deliberate burning of bodies. We were not able to obtain confirmation of this fact. We believe, however, that it could not have involved more than a few bodies; in addition, the procedure would not have resulted in the complete destruction of all traces of the remains, unless very sophisticated methods were used. As far as we can tell, the bodies burned beyond recognition were found in the rubble of the extensive fires that destroyed the Chorrillo neighborhood in Panama City.

Accordingly, taking into account the possibility that some bodies escaped count altogether – such as the grave registered by Physicians for Human Rights – we do not believe the civilian death figure would rise to more than 300. The International Committee of the Red Cross (ICRC) established an emergency 'tracing agency' in Panama in late December. As in other countries, families who had no news of their loved ones came to the ICRC with requests. The ICRC located most persons searched for either in the list of casualties or under detention. After a few weeks, only a relatively small number of missing persons remained in ICRC records, in numbers only slightly higher than the unidentified dead.

There is thus no substantial evidence, as of this writing, to support figures of thousands of civilian dead. The impressive weaponry used in the invasion and the devastation of a teeming urban neighborhood led to very high initial estimates which, on examination, cannot be sustained.

The effort to identify and count the civilian dead was, however, belated

and incomplete. It left no room to examine the circumstances under which each person died. Most were counted once they were in a morgue or in a hospital, so it was impossible to determine where the body had been found. The centralized counting took place several days after the fighting, and then the fast decomposition of bodies forced the authorities to bury them. Though in many cases an effort was made to preserve data that would lead to an exhumation and identification, the grave in Colón demonstrates that the procedure was chaotic. We understand that the conditions for orderly counting and identification were not ideal, and the professionals who did work on the matter probably did their best under the circumstances. Nonetheless, considerable controversy remains as to the number of people buried and it would be a good idea to proceed to a complete new exhumation, counting and effort to identify, at least so that some uncertainties can be laid to rest.

Unfortunately, the US effort to count the 'enemy dead' was even more deficient. The Southern Command initially estimated their number at 314, but has since lowered this figure considerably. At the January 9 briefing with the Southern Command, it was made clear that there was no list of names comparable to the one prepared for civilian victims. In fact, of the 314 Panamanian military thought dead in the conflict, only about 40 had been properly identified – presumably those who were initially thought to be civilians and then transferred to the 'enemy dead' category. Needless to say, the same humanitarian considerations that led the Southern Command to identify civilians and disclose information to relatives apply to military casualties. In addition, Articles 15 and 17 of the I Geneva Convention of 1949 impose clear obligations in this respect – the same humanitarian considerations which kept the demand for information on Vietnam POWs and MIAs alive for so long.[3]

At the second briefing with the Southern Command on 19 January we were told that the estimate for enemy dead was obtained by adding up the reports that each soldier gave in the course of battle. As a soldier thought he downed an enemy, he reported it to his unit commander, and estimates were passed up the line. While such a method may be useful for certain battlefield purposes, it has an obvious, built-in bias on the side of overcounting. It also leaves open the possibility that some of the dead might have been civilians. Either way, it seems that no one took the trouble to collect the enemy dead and then proceed in accordance with the clear directives of the I Geneva Convention of 1949.

It now turns out that the figure of 314 enemy dead appears greatly exaggerated. According to the *Miami Herald* of March 27, the Southern Command has since revised the count down to around 50. Overlapping field reports accounted for the previous estimate, the US is reported to have said.[4] The good news for the Bush Administration, obviously, is that

the total casualties for the invasion, including military, were actually lower than first reported. On the other hand, the *proportion* of civilian victims of the invasion is much higher than it first appeared. Indeed, civilian deaths now appear to have exceeded military deaths by a margin of four to one, using official figures, and possibly by as much as six to one. It is revealing that so many more civilians than soldiers died in what has been touted as a 'surgical operation'.

It is even more disturbing to compare the numbers of civilian dead to American casualties, officially given as 23. How does a 'surgical operation' result in almost ten civilians killed (by official US count) for every American military casualty? Not all of them, of course, died as a result of direct American fire. Some were killed in crossfire, others by the PDF, and still others in the looting that followed the invasion. Even with respect to those who were directly killed by Americans, that fact alone does not mean that a violation of the laws of war was committed. Depending on the circumstances, civilian victims may be considered, within the laws of war, incidental to an attack on a legitimate military target. The problem is that there is no way of knowing, at this point, *how* each of those civilians died, because the occupying American forces, who were in charge of processing the dead, made no real effort to determine those circumstances. In some cases American actions, such as the levelling of El Chorrillo by bulldozer shortly after the invasion, made the gathering of evidence on civilian casualties nearly impossible.

The ratio of civilian to military dead, by itself, should have prompted a serious investigation. Instead, we were told that there is no general investigation under way to determine whether any violations of the rules of war have been committed, although the Southern Command said that it was interested in evidence concerning any particular cases of indiscipline brought to it. At the 19 January briefing, the Judge Advocate for the Southern Command, Colonel John Wallace, told us that one incident in a Panama City neighborhood called Altos del Chase, where US troops killed one civilian allegedly by firing without warning, is the only matter under inquiry. It has subsequently been reported that the army is investigating accusations that US soldiers killed two Panamanian prisoners during the invasion. One of the soldiers may be charged with negligent homicide, it was reported. An army official who declined to be identified told *The New York Times* that the army investigated more than 60 cases of wrongdoing by US troops, resulting in 20 formal investigations, most of which were dismissed.[5]

At a press conference, General Maxwell Thurman, chief of the US Southern Command, explained the tactics used in the invasion.[6] According to his statement and the accounts of many eyewitnesses, a deliberate effort was made to use highly sophisticated weaponry and tactics in order

to present an overwhelming superiority of firepower that would make any resistance unthinkable. In some cases, only after hours of heavy shelling did American troops even come near the battlefield. It seems clear that this contributed to the relatively low number of American casualties. It also apparently had the effect of inducing either surrender or flight by PDF forces, thus sparing casualties which might otherwise have occurred on all sides. On the other hand, at least in some places where civilians were close to the targets and this overwhelming firepower was actually used and not just threatened, these tactics unnecessarily caused significant civilian casualties.

The general headquarters of the PDF, or the Comandancia, was located in the midst of the very poor Panama City neighborhood of El Chorrillo. The Comandancia was shelled from at least two directions for about four hours before US troops approached it at dawn. Extensive areas of El Chorrillo were destroyed that night and when fighting resumed, the following day, apparently to put down sniper fire. Two successive fires broke out in El Chorrillo which caused much damage to property and took significant civilian tolls as people were burned alive in the wooden houses, were injured or killed trying to escape burning multi-story buildings, or were killed in crossfire trying to flee.

The Catholic Church of Panama has accused Dignity Battalion members of setting fire to El Chorrillo in revenge for voting against Noriega in the May, 1989 elections. The evidence for this allegation is not strong. It is attributed generally to unidentified neighbors who allegedly told the local parish priest that in the early morning hours men in plain clothes were seen starting slow-burning fires at one end of El Chorrillo.[7] Yet one wonders why PDF or Dignity Battalion combatants who were using civilian structures as shelter, and then attempting to melt into the population, would burn the very buildings they were using as protection. Even if the story is partially true, it would not account for the destruction by fire of several city blocks of wooden housing, or for the destruction by artillery of large housing units made of cement in the same neighborhood. Also, according to credible eyewitnesses, some of the fires started almost immediately with the attack and continued for hours. American military officials acknowledge that, at least in part, the fires could have been caused by flares and tracer bullets used by US troops.

It is evident that the buildings immediately adjacent to the Panamanian command forces could have constituted the legitimate objects of attack or defense, and consequently could have been hit by either side during the battle. Even considering the international law of war obligation to minimize harm to property, at least some of these buildings might very well be destroyed by either side. The real question of El Chorrillo, however, is less how the buildings were destroyed as battle proceeded than whether

inhabitants had an opportunity to escape. Was any warning given to civilians in these buildings to evacuate before the attack? Alternatively, was there any 'military necessity', such as surprise attack, that would justify a failure by attacking American forces to warn the civilian population?

Rear Admiral David Chandler, Chief of Staff of the Southern Command, told us that no specific warning was issued to the citizens of El Chorrillo about the imminent attack, nor was there any effort to allow them to evacuate before fighting commenced. A few minutes before the attack, an announcement was broadcast over American armed forces radio and TV networks operating in the area formerly known as the Canal Zone, but which can be seen and heard in all Panama. This message was clearly directed to alert Americans about the imminent danger and it referred generally to the beginning of operations, without specifying targets. It does not, in our view, constitute adequate warning to the residents of El Chorrillo that they should evacuate a war zone.

Only hours later, at around dawn when US ground troops entered the area, were residents directed by loudspeakers in tanks to evacuate. Yet American aircraft had previously, in the midst of shelling, apparently approached the Comandancia and broadcast surrender messages. We could determine no reason why evacuation messages could not have been broadcast to the general population from those same platforms, with time provided in which US forces withheld fire.

We do not believe this constitutes second-guessing US command decisions on the battlefield. The opportunity to give warning could have been anticipated in the advance planning of 'Just Cause' as it was anticipated with respect to warning Americans over Southern Command radio and television. Indeed, we repeatedly asked the Southern Command if there was any specific reason of military necessity that might have precluded such a warning, such as the need for surprise, or the suspected presence of General Noriega in the Comandancia. We were told that there was little likelihood that Noriega would be there (he was not, as it turned out). It was also known that news of the invasion had leaked to PDF forces a few hours earlier, so that little if any surprise was left in this attack. Some 15,000 persons were left homeless in the attack, and a very rough estimate is that 50–70 civilians were killed. Many more were seriously wounded.[8]

At the very moment in which the attack on the PDF headquarters started, a Delta Force team of US troops conducted a daring commando raid on the Cárcel Modelo, Panama's central penitentiary located just across the street from the Comandancia. The purpose of the raid, conducted in only a few minutes, was to rescue US citizen Kenneth Muse, a Central Intelligence Agency operative jailed there.[9] There was no

resistance from guards, and the jail was left open so that the majority of common crime offenders escaped and thus escaped possible death or injury in the battle that followed (several of them were recaptured in the following days, some after committing new serious crimes). In our view, this carefully planned and risky operation stands in contrast with the absolute lack of concern for the safety of thousands of innocent civilians in El Chorrillo.

The attack on the Comandancia was the single episode in the short-lived war that generated the highest number of civilian dead and wounded, along with extensive material damage to civilian property. It was not, however, a case of indiscriminate fire, nor of fire purposely directed at civilians, since it is clear that the target was the Comandancia. Nonetheless, circumstances surrounding the attack suggest that several of the most important obligations under the laws of war were disregarded in the El Chorrillo attack. Although the mere presence of 'protected civilians', within the meaning of the IV Geneva Convention of 1949, does not render a target immune from attack, the duty to minimize harm to civilians is an ever-present obligation that could have been observed by the common sense measure of fair advance warning. In addition to that duty, attacking commanders are bound by the rule of proportionality, which requires them to weigh the different ways in which a legitimate military objective may be achieved, and to choose the way that is least likely to cause unnecessary harm to civilians. In El Chorrillo, inadequate observance of the rule of proportionality resulted in unacceptable civilian deaths and destruction.

Violations by General Noriega's Forces

It may be a moot point to raise violations of the rules of war by General Noriega's forces, since they no longer exist as a government or a fighting force. On the other hand, certain of their violations were extremely serious – such as the taking of hostages – and were committed by individuals who should be tracked down by the new government of President Guillermo Endara and prosecuted. Other violations are less traceable to individuals, but were part of forbidden security measures, such as using hospitals for combat.

In the first hours of the fighting, Panamanian combatants took hostages among the civilian population, particularly among Americans and other foreigners. Journalists trying to cover the war were violently arrested and held for a few hours or days, and then released. One American citizen, a resident of Panama, was taken hostage and then murdered. The fact that these actions seem to have been perpetrated by different groups immediately after the beginning of the hostilities suggests that it was part

of a deliberate strategy. Hostage-taking is plainly outlawed by the IV Geneva Convention of 1949 and by the First Additional Protocol of 1977. The relevant sections of those instruments state:

> Article 34, IV Convention: The taking of hostages is prohibited.
>
> Article 147, IV Convention: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ..., taking of hostages and ...
>
> Article 75.2, I Protocol: The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents: ... (c) the taking of hostages; ...

In these cases, the violation was compounded by the fact that the persons taken were civilians. The hostage-taking appears to have been carried out by civilian members of the Dignity Battalions, which operated as an organized civilian militia. It makes no difference from the point of view of the Geneva Conventions, however, that the hostage-taking was carried out by uniformed members of the PDF or by civilian members of the Dignity Battalions militia; hostage-taking in war is always punishable as a grave breach of the Geneva Conventions.

The heart of the protection that must be accorded to civilians in wartime are provisions of international law distinguishing combatants from noncombatants. The tragedy of modern warfare, whether high technology aerial warfare which systematically bombs enemy cities, or contemporary guerrilla warfare where lightly armed combatants hide among the civilian population, is that the difference between combatants and noncombatants is eliminated. Nowhere is this more evident than in the matter of wearing uniforms. A fundamental purpose of wearing a uniform in war is to identify the legitimate targets, and thereby to distinguish military combatants from noncombatants.

As dozens of post-Second World War insurgencies have demonstrated, however, this rule of war – as well as the associated rule that combatants must carry their arms openly – tends to favor the counterinsurgency army, rather than insurgents, for the obvious reason that it deprives insurgents of hiding places. As these rules erode in contemporary warfare, the inevitable result is a heightened civilian toll as civilians are treated by all parties as combatants. The PDF followed a strategy during the invasion which in fundamental respects contravened the principle of keeping combatants distinct from noncombatants, and as such was fundamentally at odds with the rules of war.

In particular, the strategy followed by the PDF in defending fixed positions in military quarters and installations consisted of an order for the

troops to leave those buildings and to defend them from the perimeter, or from other places in the neighborhood. It appears, from interviews with Panamanian military POWs, that they were also instructed to dress as civilians and to merge with the population while fighting the invaders. It appears, too, that many civilian structures were used to snipe at US forces. To the extent that these tactics were likely to attract fire against civilians who were not given the opportunity to evacuate, they violated the laws of war. The presence of armed fighters in a civilian structure converts it into a legitimate military target and an attack on it does not violate the rules of war, even if it results in collateral civilian victims, so long as the rule of proportionality and the duty to minimize harm are observed by the attackers.

It appears, in addition, that at least one hospital, the Santo Tomás, was used in the fighting as a base for snipers. There have been accusations in the Panamanian press, although not well-documented, that the Noriega government attempted to turn certain hospitals into military depots, with caches of arms and supplies. Some doctors with hospital administrative duties under the Noriega regime in the Santo Tomás Hospital have been accused by the Endara government of engaging in such activity. If doctors or other administrative personnel in fact cooperated with efforts to turn hospitals into centers of military operations, that would violate the rules of war governing protected medical facilities.

The Southern Command told us in a briefing on 20 January, however, that a search by US troops of the Santo Tomás Hospital shortly after the invasion did not turn up arms caches or other evidence that the hospital had been made a military depot. On the basis of available evidence, it appears that the charges by the Endara government against Santo Tomás Hospital personnel are not well-founded, and are part of a political vendetta. Indeed, such political vendettas by the Endara government seem to be a more and more common tool to undermine its political opponents.

The Santo Tomás Hospital was apparently used for sniper activity by some individual members of the PDF, which violates the protected status of the hospital. US troops returned fire against the hospital on at least one occasion, which itself violates the special Geneva Convention rule that even where a protected hospital facility is used for combat, a warning to end fire must be given before undertaking a counter-attack.[10]

Prisoners of War

The end of the two days of hostilities resulted in several thousand Panamanian troops surrendering to US forces. On the one hand, Pana-

manian forces were confronted by overwhelming firepower which would have made resistance suicidal. On the other hand, many PDF officers felt no great allegiance to General Noriega and did not consider surrender a matter of dishonor, according to various PDF officers interviewed in US custody. The US occupation forces then took a curiously schizophrenic attitude towards these prisoners. US military spokesmen described them as prisoners of war, to be treated as such. Yet ultimately, the detention of the Panamanian POWs resembled not the regimen prescribed by III Geneva Convention of 1949 concerning prisoners of war but, instead, a military jail for persons awaiting interrogation and a determination of whether or not they were to stand trial.

It should be acknowledged that none of the questions about POW or civilian detainee treatment involves, so far as we could determine from private interviews we conducted with many inmates, credible allegations of torture, brutality, or failure to provide medical care, food, or shelter. These matters appear to have been handled satisfactorily by US forces, who were made up principally of trained military police units. US occupation forces followed the basic Geneva Convention precept that the standard of care to be provided POWs is to be the same as provided to one's own soldiers. Nonetheless, in other important respects, Panamanian POWs were treated not as POWs, but as criminals or potential criminals, an attitude which is deeply at odds with the spirit and letter of the III Geneva Convention of 1949.

The premise underlying the III Geneva Convention of 1949 is that prisoners of war are simply persons placed hors de combat by reason of capture, not criminals. Consequently, although POWs can be guarded, watched, controlled, and prevented from rejoining combat, they may never be subjected to treatment appropriate to criminals. Indeed, they may not be kept in jails, or submitted to degradation, taunts or cruelties by a hostile civilian population, or any of a variety of other abuses. The reasons for these rules are obvious. To understand their significance, one need only reflect on the outrage Americans would feel if a US pilot shot down over Libya were put on trial as a criminal. These rules should have a special importance to soldiers, as they serve to protect them most of all. It is thus puzzling that the US occupation forces took such an ambivalent attitude toward their enforcement.

Colonel Wallace, the Southern Command's chief legal officer, explained to us that rather than applying a technical Geneva Convention definition of POW, and then meeting all the legal requirements for captured soldiers but not for civilian detainees, US forces instead sought to provide the same humane treatment to all. Providing a higher standard of care than actually required by international law is of course commendable. Nonetheless, the failure to follow the specific Geneva Convention

rules in fact gave a lower standard of care than required in three substantive respects.

First, the III Geneva Convention of 1949 provides elaborate mechanisms for communicating between a POW and his or her family, and for officially registering a POW as alive and captured with the ICRC. These mechanisms include notification of capture, forwarding of mail and packages, and a variety of contacts consistent with security. Panamanian detainees, POWs as well as civilians, were held at two prison camps on American military bases. Although most POWs were captured between December 20 and 23, the ICRC was given access to prisoners for the first time only on December 31, 1989, which itself violates the Geneva Conventions, which require immediate access.[11] Lists of detainees were carefully kept by US forces, but they were never made public. Instead, they were given to the newly-created Panamanian Public Force, and to one Panamanian human rights organization which, in its sympathy for the invasion, rashly declared that the Geneva rules had been complied with. Families were notified by a letter sent through the Panamanian post office that a relative was being held even though the post office was known to have suspended service.

Second, interviews with POWs indicate that US soldiers interrogated some in a fashion not consistent with POW status. The famous Second World War slogan, 'Name, rank and serial number', is based on international law, and extensive rules are provided in the Geneva Conventions regarding limitations on the interrogation of POWs. It is true that a detaining army, under the Geneva Conventions, has the right and, in some cases, the duty to investigate and prosecute a POW for crimes apart from the fact of being an enemy soldier. General Noriega himself is being tried in the United States under this power. But the basic assumption for general interrogation of enemy POWs by a detaining army cannot be that they are all *presumed* involved in some crime and may therefore be interrogated, without other cause, as potential criminals.

Third, the III Geneva Convention of 1949 is absolutely clear that once hostilities have ended, POWs must be promptly released. The reasons are obvious, and the abuses of this rule – the Soviet Union holding German officers for decades following the Second World War, for example – have been tragic. It is also clear that interpretations of when hostilities have ceased can reasonably differ. However, in an action in which armed conflict lasted two or three days, the US was still holding PDF officers nearly a month later, although the majority of POWs had been let go by then. Colonel Wallace acknowledged that a strong case could be made that hostilities had ended and that these POWs were being held not for security reasons, but just in case the new Endara government decided to charge any with crimes. In other words, detention had moved from being a

security matter involving potential combatants to preventive detention in anticipation that the new Panamanian government might decide to file criminal charges.

This justification is unacceptable. Once hostilities were over, the US could continue to hold POWs as a police agent on behalf of the Endara government only insofar as those detentions met the fundamental human rights standard for arrest and detention – that is, some form of probable cause and a judicial order. The Endara government may well have legitimate legal cause to charge some of these persons with crimes; if so, it must produce evidence that meets a minimum standard needed to prosecute, and it must charge them. Moreover, no state of emergency was ever declared in Panama – only a nighttime curfew, and thus there was no suspension of Panamanian or international guarantees of due process.

Some US officers in the Southern Command accepted our response in principle; Colonel Wallace also agreed that the point was valid. Accordingly, a number of POWs were released several days earlier than they would have been otherwise. While we were gratified that our point was accepted, it is hard for us to see how such an elementary legal concept could have been ignored previously.

Detentions and Arrests of Civilians

Some of these same criticisms of the conditions and justifications of detention apply to civilians detained by US forces, and to civilians who were searched or who had their houses searched by US forces. In the course of the invasion and during the weeks afterward, American forces established control of the streets, and for several weeks thereafter conducted searches of houses and offices and arrested thousands of Panamanians. In mid-January, the press office of the Southern Command acknowledged that more than 5,000 persons had been arrested by them – although that figure did not distinguish between ordinary civilians and members of the Dignity Battalions who properly should have been classified as POWs. There has been no explanation and no public identification of those arrested; the figure of 5,000 apparently reflects the number of individuals processed through detention camps and held for at least one or two days. The number would probably be higher still if it included those held for less than 24 hours and never put into the detention centers.

The IV Geneva Convention of 1949 is clear in allowing an occupying force, which US forces were, to detain civilians for the purpose of preventing security risks to its own forces while hostilities continue and during some reasonable period of disengagement thereafter. This authority allows the occupier relatively wide latitude in defining security risks, and in particular imposes no standard of 'probable cause' or similar

criminal law concept on detention, for the reason that persons so detained are not criminals. As under the III Geneva Convention of 1949 respecting the treatment of POWs, civilians detained as security risks may not be treated as criminals by the occupying power.

Under this 'security' standard, the arrests and detention of former civilian officials of the Noriega government were probably permissible, insofar as they were made while the hostilities were still going on or during a very short time thereafter. As it happened, US occupation forces continued to arrest former government officials when the hostilities were long over. We have more doubts as to the practical security risk posed by journalists and trade union leaders who were also arrested. It appears to us that many of these people were arrested for purposes of intimidation or simply because they were at odds with the new Endara government. The Endara government has not hesitated to put the apparatus of the judicial system, already a dubious bastion of objectivity following its years of subjugation under the Noriega regime, at the service of pursuing its political enemies. Some of these prosecutions, on extremely vague evidence and charges, are of doubtful validity under standards of international human rights. In any case, we question the pursuit of such obviously political vendettas. Even so, during the period of hostilities, US forces were entitled to use their own judgment on security matters with respect to such detention.

Similarly, US forces were entitled to search houses without warrants, probable cause, or judicial authorization, also for security purposes. However, here too we question the necessity of many such searches and believe it clear that some, at least, were conducted for political reasons having little to do with security. On various occasions, searches by US soldiers were not restricted to looking for weapons or other war materials. Many houses and offices were carefully searched, among them the offices of a leftist publication and at least three offices of church-related development and human rights organizations. In these places, American soldiers proceeded to look through files and to examine documents, an activity which obviously bears no relationship to the security of the occupation force. Rear Admiral Chandler acknowledged at our 20 January briefing that such rifling of papers and documents by American troops was not authorized, and that the scope of searches was to be limited to weapons.

Civilian arrests initially were directed against persons named on a predetermined list, but precise information about the origin and criteria of this list was never forthcoming. At other times, it appeared that anyone who had a grudge against a neighbor could simply call the Southern Command anonymously, and have the victim picked up by US troops. We interviewed several persons in US camps who had arrived there in that

way. The foreign press was told on occasion that American soldiers were looking for persons identified to them 'by our Panamanian buddies'.

In addition, civilians interrogated in detention were asked questions related to their political affiliations, ideology, or sympathies, a practice that raises grave concerns about the chilling effect that such interrogation may have on the exercise of freedom of association and expression. Press photographs published in the first days following the invasion show blindfolded and handcuffed prisoners being interrogated while crouched on the floor or lying down.[12] We are not in a position to determine whether this was a routine practice, but these photographs raise unanswered questions about the propriety of US interrogation methods of civilians as well as POWs.

US Embassy officials claimed that arrests of civilians, at least by early January, were being conducted pursuant to warrants issued by Panamanian authorities under Panamanian criminal law and procedure. On 11 January, 1990, we inquired about this with Attorney General Rogelio Cruz and First Vice-President Ricardo Arias Calderon, who is also Minister of Government and Justice in the Endara government. Each categorically denied that he had issued any warrants, and denied that they asked the US forces to arrest anyone.

Once the period of hostilities was over, the legal basis for the US forces to detain, arrest, and search civilians was at best tenuous. It was suggested in the January 20 briefing with the Southern Command that US forces were operating as 'agents' for the new Panamanian government, under a grant of authority by the Endara government, and were holding individuals while the new government got itself sufficiently organized to decide who to charge with what crimes. The obvious problem with this policy is that once the Geneva Conventions-authorized period of pure 'security' detention was past, ordinary human rights and civil liberties concerns were fully in force. Those guarantees do not permit 'convenience' to determine that individuals should be held until the Endara government was sufficiently organized to marshal evidence and charges. The Endara government would either have to charge persons on the basis of sufficient evidence, or let them go. The US could not lend itself as an 'agent' to such violations of elementary liberties, any more than it could do so as a principal.

US forces solved the problem, after a fashion, by turning over prisoners to the Endara government's direct custody, so that by the end of January it could be said that the US had custody of only some 50 high level prisoners at Fort Clayton, civilians and military POWs. This solution only transferred the problem of the violation of civil rights to the Endara government. Similarly, the initial security-based policy of US troops searching houses for weapons on the mere say-so of any anonymous tipster

gradually gave way to searches nominally conducted by members of the new Panamanian police force, but accompanied and backed up by US troops.

Whether US troops conducted searches and arrests on their own account, as agents for the Endara government, or as backup for Panamanian police, they were bound to observe international and Panamanian law standards; that is, to issue warrants of arrest, to guarantee a speedy determination of the legality of the arrest through *habeas corpus*, to provide access to legal counsel of the detainee's own choosing, and to give notice to relatives and allow family visits. Save for establishing a curfew between 11:00 p.m. and 5:00 a.m., the new Panamanian government did not suspend any rights or guarantees under the Panamanian constitution or under international law. If the Endara government wishes to show that it embodies the respect for the rule of law absent under its predecessor, that government and the US forces acting as its agent ought to begin by observing elementary guarantees of civil and human rights in the arrest an treatment of detainees. Inconvenience and disorganization are excuses not proper justifications.

Human Rights Under the Endara Government

The failure of the Endara government to follow the rule of law in the weeks immediately following its invasion is disturbing. What will distinguish the Endara government from its predecessor, if anything, will not be that Noriega wore a uniform, while Endara, Arias, and Ford do not. It will not even be that they began as democratically elected leaders. It will be, rather, that the exercise of power under their government followed the law, in spirit and letter. The arrests and detention of civilians in a manner not in accordance with Panamanian and international standards do not bode well; nor does the willingness of the Endara government to press charges – particularly corruption – against former Noriega officials and alleged associates on extremely vague evidence. It is likely that various of Noriega's associates are actionable for various offenses. Particularly in the case of alleged gross abuses of human rights, we believe that such persons should be brought to trial. For the same reason, in our view the Endara government has an obligation to try General Noriega for such alleged human rights abuses as the murder of political opponent Dr Hugo Spadafora and the summary execution of officers who surrendered after a failed coup attempt.[13]

But in any such proceedings, due process must be observed. This is not to export specific US constitutional standards across the world; international law and Panamanian law already have their own ample versions of such requirements. Some of the charges of corruption and misuse of

office against former office-holders appear so vague that they cannot be said properly to describe crimes, and more accurately represent a political purge. It is one thing for the Endara government to replace policy-makers with its own personnel, and another thing to throw them in jail for the mere fact of having been officials in Noriega's government.

The most serious example of the use of criminal procedures for political ends is the prosecution started by Attorney General Rogelio Cruz against all members of the now-defunct Council of State. On 22 March, 1990, we wrote, in the name of Americas Watch, a letter to Vice-President Guillermo Ford, on the occasion of a visit he made to Washington, to protest these prosecutions. The Council of State was a short-lived institution set up after the May 1989 elections were voided; it consisted of some members of the pre-existing Assembly, with the incorporation of military leaders (including General Noriega), trade union leaders and other well-known personalities. Later in 1989, the Council of State chose General Manuel Antonio Noriega as 'Chief of State' and appointed Francisco Rodríguez as interim President. The criminal charges brought by Mr. Cruz contend that that action by the Council of State constituted the crime contemplated in Article 302 of the Panamanian Penal Code, which criminalizes actions by those who exercise the force of arms, particularly abusing governmental authority, to prevent legally constituted authority from taking over their functions.

As we stated in our 22 March letter, the decision to prosecute civilians who were members of the deposed regime on those grounds appear to us to be an impermissible extension by analogy of a criminal provision, as well as a violation of the basic principle that forbids *ex post facto* prosecutions. Most of those facing prosecution have not been arrested, but the fact that they are charged makes it impossible for them to move freely, to leave the country and return, and – more importantly – to express their ideas and form associations for political or other purposes. In that regard, these prosecutions are a powerful tool to prevent development of any significant opposition, at least from quarters once sympathetic to the old regime.

Vice-President Ford responded to Americas Watch that he had conveyed these concerns to Attorney General Cruz, and that the Executive Branch could not interfere with the independence of the judiciary. President Endara gave a similar answer to inquiries by foreign visitors about this case, though he hinted he may eventually use his discretionary powers to pardon those who may be convicted as a result of this prosecution. Attorney General Cruz has not responded to our concerns, nor has he explained the legal basis for bringing these charges.

Moreover, some of the charges, for example against members of General Noriega's Dignity Battalions, are not charges for specific abuses

committed, but merely for having been part of a then-legal civil militia, for having helped organize it and for preparing its members to defend against a foreign invasion. Such prosecutions could not survive a due process attack. They are the equivalent of trying a soldier merely for having been a soldier on the losing side. If the Endara government has evidence of specific crimes that violated valid laws that were previously enacted, then let charges be brought for those specific offenses.

The reconstitution of the Panamanian police force, the new Fuerza Publica, is also troubling. There is little evidence that its ranks have been effectively purged of some of the worst human rights abusers under the Noriega regime. The current director of the new police force, Col. Eduardo Herrera Hassan, to name the most notorious example, directed the most brutal repression of the peaceful demonstrations in Panamanian history, in July 1987, which Noriega's opponents called 'Black Friday'.[14] By any reasonable standard, he himself should be on trial. But his record was apparently cleansed in 1988 when he joined a failed coup attempt against General Noriega and then went into exile in the United States.

It is also astonishing that less than a month after invading Panama to squash a US-trained army directed by its intelligence chief, US forces had permitted the 'new' Public Force to operate an office of 'Intelligence–counterintelligence' in an old PDF center. Its agents appeared to be virtually all former agents of General Noriega's notorious secret police, the DENI. These agents, acting under the new government, have already started arresting people without warrants or due process and bringing them in for secret interrogation. Even some US Army officers privately expressed to us doubts about the wisdom, let alone legality, of such a policy.

The Displaced

The shelling of urban areas during the few hours of fighting caused the destruction of many private homes, almost entirely in poor neighborhoods in Panama city and in Colón. The dwellers of El Chorrillo initially fled to a Catholic parish church, whose building was made of cement and brick and therefore would not burn down, at the edge of the neighborhood and farthest away from the Comandancia. By the end of the initial hours of fighting, close to ten thousand people were crowding the church and adjacent buildings. A few hours later they left on their own, crossed the highway and spontaneously settled in the campus of the Balboa High School, in the former Canal Zone. Balboa High School is a large school for the children of American servicemen and residents. The Southern Command closed down the school and provided security, food and some

emergency assistance to almost 15,000 people who were displaced in those early hours.

Eventually, many of these people left the school to go back to apartments and houses which were not completely condemned in El Chorrillo, or to relocate with relatives elsewhere in the city. We visited the makeshift camp in Balboa on January 12, 1990, when there were still close to 3,000 persons living there. The living conditions we observed were appalling. Families lived in cardboard boxes outside or on the floor of the gymnasium, without any privacy or separation from each other. Very few had been given Army tents, and others made tents out of parachutes which they spread out on the football field. The US forces provided some food assistance and medical care. They also insisted that if people left the camp they would not be allowed to return. By the time of our visit, an announcement had been made that there would be a rebuilding program in El Chorrillo, sponsored by the Agency for International Development of the United States government. Rumor had spread that only those remaining in Balboa would benefit from it, so many families were attempting to return after having settled elsewhere.

In the days after our visit, about 3,000 displaced persons who were still in Balboa were moved to a larger hangar in Albrook Air Force Base. At this writing they remain there. Conditions there seem to be somewhat more orderly. Nonetheless, each family is assigned to a small cubicle surrounded by makeshift cloth or cardboard dividers six or seven feet high, with no ceilings. There is obviously little or no privacy in them. Many other former El Chorrillo residents are temporarily housed in several school buildings around Panama and at a gymnasium in Colón. They moved in there spontaneously and are receiving only some precarious emergency assistance from church-based and popular organizations. AID's policy is not to extend any assistance to the displaced unless they are at the Albrook camp. In effect, then, United States emergency aid is presently delivered only to about 2,500 of the 15,000 or more displaced; that assistance was originally scheduled to continue only until 26 April, 1990, though from the start it was clear that those displaced persons would not be firmly resettled elsewhere after that date.

The only resettlement effort currently under way is the rehabilitation of El Chorrillo's high-rise apartment buildings, all of which were rendered uninhabitable by the attack. The Bush administration reallocated $2.5 million for such a project, which will eventually benefit only about 1,500 persons (450 families). As of late April, the reconditioning of those apartments had not been completed, and the families had not moved in. There are no other housing efforts under way for the rest of the displaced persons. The Bush administration's proposed budget for 1991 includes $42 million for the rebuilding of homes in El Chorrillo. On that basis,

Panamanian officials had made public promises that each family would receive about $8,500 for this purpose (later reduced to $6,000). The Panamanian government has made clear, however, that no funds are available for this until after the US budget for fiscal year 1991 is approved. They also estimate that $42 million will be insufficient for a complete rebuilding program, but would suffice only to give each family some construction materials and some technical advice.

The Bush administration rejects the idea of an obligation to provide compensation to victims. Efforts are under way to demand payment of direct compensation, through legislative or judicial channels.[15]

Conclusion

Legal rules matter, even in questions of war, invasion, and occupation. American forces did not meet their obligations with respect to the laws of war in at least one battle, El Chorrillo, and scores of civilians died as a result. It is not an answer to say that the Geneva Conventions and the laws of war are merely 'ideals', to be set aside whenever wartime practicalities intrude. International humanitarian law was not drafted by dreamers remote from the fact of war; it came about through the efforts of diplomats, statesmen, and military officers who had suffered through, in the case of the drafters of the Geneva Conventions of 1949, the Second World War. The realities of that war were fresh in their minds. The Geneva Conventions of 1949 and other aspects of the international laws of war take into account 'military necessity', as do we in concluding that the failure to warn the inhabitants of El Chorrillo of impending attack amounted to a serious breach of international humanitarian law.

Failure to follow the Geneva Conventions in the detention by US forces of POWs and civilians resulted in the violation of the rights of these individuals when they were not repatriated or freed upon the cessation of hostilities, absent proper charges of criminal conduct based on evidence. There may be some debate about when hostilities properly ended, but there is little dispute that several weeks following the end of the fighting, US forces were then engaged in law enforcement on behalf of the Endara government, and not security procedures collateral to the occupation. US forces did not, however, apply any concept of due process at the point at which it became required. The rights of detained persons were also substantively violated by the failure immediately to put the ICRC in contact with them.

Because the detention operation was never conceived as an application of the Geneva Conventions, there is a lengthy list of rules relating to POWs and civilian detentions which were not met. We do not suggest that these failures constituted inhuman treatment. Yet we wish to stress the

interest that all countries, and all soldiers, have in the compliance with every aspect of the Geneva Conventions. The Geneva Conventions protect soldiers when they are unarmed and defenseless.

The Japanese POW camp commander in *The Bridge Over the River Kwai* thought it obviously 'just' that POW commissioned officers should do manual labor alongside ordinary soldiers, although the practice was prohibited by the Geneva Conventions; after all, these officers had shamed their men by surrender. The interpretation of 'humane' and 'just' treatment varies from place to place. The only sure means to know that international standards are met is for all parties to adhere to every rule, and to provide international inspections to ensure that is done. We do not want American forces to tell us that they have provided the 'equivalent' of the Geneva Conventions treatment, for the same reasons that the United States does not want to be told this by Libya, or any other state, if a US pilot were shot down and held prisoner.

One reason the Geneva Conventions were not the operative document in governing the treatment of those detained in the Panama invasion may be that the overriding concept of this invasion was that of a police action. A posse came down from the United States to capture General Noriega and bring him to justice. Those who surrounded General Noriega and who fought back against the Americans were therefore seen as fighting against justice, automatically put in the 'criminal suspect' category and treated as such.

American detention camps were not concentration camps, as some critics of the invasion have suggested, but neither were they proper POW camps, as they should have been. They were, rather, military jails for captives waiting for trial, and staffed by military police from Fort Bragg. United States MPs were efficient in their performance as jailers, but the *regimen*, the fundamental order of things, was wrong because it conceived of the detentions in terms of criminality. The Geneva Conventions of 1949 adopt a far wiser course and prohibit any general classification of soldiers as criminals.

Many of the enemies that the US may face abroad are far more fanatical than any it encountered in Panama. Those enemies may see it as a matter of strict revolutionary or religious justice that American soldiers taken prisoner should be treated as criminals, not as POWs. One need only think of the recent tragic murder of Colonel Higgins in Lebanon to understand the risks to the United States and its armed forces in sanctioning, by example, any deviation from the Geneva Conventions of 1949 and the international laws of war. Strict compliance matters. Technicalities matter.

The Geneva Conventions of 1949 are agnostic as to the causes of an armed conflict; they do not speak to just and unjust wars. Instead, they

confine themselves to governing the conduct of all armed parties to a conflict, regardless of their aims and aspirations. They are an exercise in the doctrine that ends do not justify means, and as such are a source of irritation to those with messianic ideals for whom, indeed, the sacred cause justifies anything. The United States too has a form of political messianism, generously built into its culture, ideology, and foreign policy. That American messianism is ironically analogous to the religious or revolutionary messianism of some of those societies and movements which are currently the United States' chief enemies, in matters of international terrorism and hostage-taking. American messianism led the United States to label the Panamanian intervention Operation Just Cause; the blindness of that messianism led the United States forces to believe that they were morally above and not subject to the procedures, and especially the technical procedures, by which civilized nations have agreed to govern armed conflict, regardless of whether the cause is just or not. The United States has foolishly set a dangerous precedent.

NOTES

Juan E. Mendéz is Executive Director of Americas Watch, Washington, DC. Kenneth Anderson is a New York lawyer and a member of the Americas Watch. They conducted a fact-finding mission for Americas Watch in Panama during January 1990. Much of the factual material utilized is taken from a report issued by Americas Watch in May 1990; additional analysis and views expressed here are those of the authors personally and not attributable to Americas Watch as such.

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1. See, for example, Comisión para la defensa de los Derechos Humanos en Centroamérica (CODEHUCA), 'Panama Delegation Report', San José, Costa Rica, 1 March 1990.
2. Peter Eisener, 'Panama to Probe Civilian Deaths', *Newsday*, 10 Jan. 1990.
3. The text of Articles 15 and 17 of the I Geneva Convention of 1949 reads as follows:

> Art. 15: At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled ....
>
> Art 17: Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made ....
>
> Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and

reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of dead.

They shall further ensure that the dead are honorably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found ....

4. 'U.S. admits inflated military death count', *Miami Herald*, 27 March 1990.
5. Michael R. Gordon, 'G.I. Faces Panama Murder Charge', *New York Times*, 18 Marh 1990; John M. Broder, 'GIs Being Investigated in 8 Noncombat Panama Deaths', *Los Angeles Times*, 20 March 1990; Michael R. Gordon, 'G.I. Accused of Murder in Panama Invasion', *New York Times*, 12 April 1990.
6. George C. Wilson, 'Invasion of Panama reflected Gen. Thurman's Gung-ho Style', *Washington Post*, 7 Jan. 1990.
7. We have heard equally unverifiable rumors that other residents of El Chorrillo claimed to have seen US troops set deliberate fires, perhaps with the intention of smoking our snipers.
8. The total number of wounded for all of Panama is conservatively estimated to have been at least 3,000. The figure results from an examination of records kept by the largest hospitals in Panama City, and extrapolating to others whose records were not available. See Physicians for Human Rights report, op. cit. El Chorrillo was the site of the largest battle by far, so presumably a high number of those wounded came from that neighborhood. It is impossible, however, to determine the breakdown by sites with any certainty.
9. John Monk, 'Secret U.S. force rescued CIA agent from Panama Jail', *Miami Herald*, 4 Jan. 1990.
10. I Geneva Convention of 1949, Articles 19 *et seq.* Article 21 states: 'The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded'. Article 22 makes it clear that the presence of armed personnel in a medical unit does not by itself deprive it of its protective status.
11. Articles 10, 69, 70, 71, 72, 73, 74, and 75 of the III Geneva Convention of 1949.
12. *El País*, Madrid, 31 Dec. 1989, p.4; *Newsweek*, 8 Jan. 1990, p.31.
13. Dr Hugo Spadafora, a former government official and well-known political figure, was killed on 13 September 1985, as he entered Panama from Costa Rica. His decapitated body was found in Costa Rican territory, but witnesses saw him being arrested inside Panama. See Inter-American Commission on Human Rights, *Annual Report 1987–8*, pp.174 *et seq.* The October 3 1989 attempted *coup* was headed by Major Moisés Giroldi. Giroldi and others surrendered after they failed to depose Noriega. At least ten officers, including Giroldi, were murdered in the following hours.
14. Disproportionate use of force in quashing popular demonstrations in 1987 was perhaps the most distinctive feature of the Noriega regime. Details of the violence displayed against those demonstrations, including the 'Black Friday' incident, can be found in the Americas Watch Report, *Human Rights in Panama*, April 1988.
15. Physicians for Human Rights report, *cit.*; telephone interview with Dr Gregg Bloche, a member of the PHR mission. See also: Coordinadora Popular de Derechos Humanos de Panama (COPODEHUPA), *Hable Ahora*, Bulletin No. 7, Nov. 1989–Jan. 1990, p.14.