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THE LEGALITY OF RECIPROCITY IN THE WAR AGAINST TERRORISM

*Robbie Sabel**

Modern international humanitarian law has no satisfactory solution to the dilemma posed by a regular army in combat with an irregular force that deliberately targets civilians. In the past, the laws of war allowed an army to attack enemy civilians as a reciprocal measure to an attack on its own civilians. Modern humanitarian law has attempted to outlaw such measures of reciprocity. The question is posed as to whether the attempt to outlaw such reciprocity has in fact contributed to the protection of civilians or perhaps has encouraged irregular forces to attack civilians. The article also presents the cruel and arbitrary nature of reciprocal attacks against civilians and suggests that a more humanitarian approach might be to permit such action against the governmental organs controlling irregular forces.

I. RECIPROCITY IN THE WAR AGAINST TERRORISM

A troubling issue of law and morality is evoked by the question of reciprocity in an armed conflict where a regular army, complying with the laws of war, combats irregular fighters who deliberately attack civilians. This issue is compounded by the modern tendency to merge the laws of armed conflict with the international law of human rights. As a result of this merging, one finds that international organizations tend to automatically presume that any civilian death in an armed conflict is a violation of law. Where there are many civilian deaths the presumption of a violation of law tends to become a definite conclusion that there was such a violation. Civilian deaths caused by irregular forces, however, are often excused by explaining that the irregular forces do not possess accurate weapons, and that because of their inferior force, they are not capable of combating armed forces. Hence, it is legitimate for them to attack the soft underbelly of their enemy, namely civilians.

One of the much touted and admired aspects of international law of human rights is that it is void of any aspect of reciprocity. The norms of human rights are absolute norms; human beings are entitled to such rights by virtue of their humanity and not by virtue of reciprocity, nor by virtue of

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state behavior, existence of an international element, and not even by virtue of State recognition of such rights. Human rights are seen by some as a “secular religion, something which is metaphysical and cannot be proved, but often taken on faith”¹ As a consequence of the blurring of the classical differentiation between these two branches of international law, the absence of the element of reciprocity has also increasingly become a modern feature of the laws of armed conflict. It is pertinent to question, however, whether the lofty principle of the absence of reciprocity has in fact contributed to the protection of civilians in armed conflict.²

Democratic states are faced with the question as to what measures of enforcement can be legally applied against irregular forces deliberately targeting civilians, exploiting the fact that the regular army of a democratic state will be complying with the laws of war.³ There can be little utility in analyzing what rules of international law are applicable to such groups although this issue is much debated in academic journals.⁴ The very *raison d'être* of armed groups using terror tactics is to achieve their political aims by means that flout norms of law and humanitarian behavior. It is highly unlikely that Osama Bin Laden or his colleagues consult legal textbooks on international law prior to engaging in their nefarious activities. There is no universally accepted definition of terrorism, however, the U.N. General Assembly has defined terrorism as “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes.”⁵ The U.N. General Assembly further declared that such acts of terrorism “are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”⁶ The international legal community has, over the years, created an impressive network of treaties that require states to prosecute or extradite persons who

¹ DAVID P. FORSYTHE, *HUMAN RIGHTS IN INTERNATIONAL RELATIONS* 34 (2d ed. 2006).

² See generally Andrew D. Mitchell, *Does One Illegality Merit Another? The Law Of Belligerent Reprisals In International Law*, 170 *MIL. L. REV.* 155 (2001) (arguing for enforcement mechanisms at the international level as an alternative to belligerent reprisals).

³ See Jefferson D. Reynolds, *Collateral Damage on the 21st Century Battlefield*, 56 *A.F. L. REV.* 1, 79 (2005) (“[A] state’s . . . compliance with [laws of armed conflict] is essential to the effective execution of an adversary’s strategy to exploit it.”); MARK OSIEL, *THE END OF RECIPROCITY, TERROR, TORTURE AND THE LAW OF WAR* 36 (Cambridge University Press 2009) (“There may be a difference between ordinary armed conflicts, in which reciprocity enforces legal norms, and extraordinary wars, in which it cannot.”).

⁴ *Supra* note 2, at 158 (noting the debate over applicability of the U.N. Charter to non-belligerent reprisals).

⁵ G.A. Res. 51/210, ¶ 2, U.N. Doc. A/RES/51/210 (Dec. 17, 1996).

⁶ *Id.*

have committed acts of terrorism.⁷ However, the reality is that there has been a dearth of actual prosecutions. The International Criminal Court by its nature can have only a very limited effect and the increasing reliance on the principle of universal jurisdiction seems to have been used mainly as a political tool to demonize Israel and the United States, rather than to prosecute individuals from groups that deliberately target civilians.⁸ The U.N. Security Council has recognized that, in addition to criminal prosecutions, states have a right of self-defense against terrorism, a right that includes the use of armed force.⁹ At what point the right of self-defense kicks in would seem to be dependent on the scale and intensity of the hostilities.¹⁰

On the assumption that a state is involved in armed conflict with an armed group that deliberately attacks civilians, the question then arises as to whether a state can take countermeasures that would otherwise be illegal in order to prevent further attacks against its civilians. It can be argued that the

⁷ See, e.g., Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, 704 *U.N.T.S.* 219; Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 *U.N.T.S.* 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, 974 *U.N.T.S.* 178; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, 1035 *U.N.T.S.* 167; International Convention Against the Taking of Hostages, Dec. 17, 1979, T.I.A.S. No. 11081, 1316 *U.N.T.S.* 205; Convention on the Physical Protection of Nuclear Material, Mar. 3, 1980, T.I.A.S. No. 11080, 1456 *U.N.T.S.* 125; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Feb. 24, 1988, 27 I.L.M. 627, 1589 *U.N.T.S.* 474; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988, 27 I.L.M. 668, 1678 *U.N.T.S.* 221; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Mar. 10, 1988, 27 I.L.M. 685, 1678 *U.N.T.S.* 304; Convention on the Marking of Plastic Explosives for the Purpose of Detection, Mar. 1, 1991, S. TREATY DOC. No. 103-8 (1991), 30 I.L.M. 721; International Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997, S. TREATY DOC. No. 106-6 (1998), U.N. Doc. A/RES/52/164, 37 I.L.M. 249, 2149 *U.N.T.S.* 284; International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, T.I.A.S. No. 13075, U.N. Doc. A/RES/54/109, 39 I.L.M. 270 (Full text of all these treaties available at untreaty.un.org/English/Terrorism.asp).

⁸ See NGO Monitor, *The NGO Front in the Gaza War: Lawfare Against Israel*, Feb. 2, 2009, http://www.ngomonitor.org/article/the_ngo_front_in_the_gaza_war_lawfare_against_israel (commenting on the exploit of universal jurisdiction by NGOs to politically demonize the United States and Israel).

⁹ See S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001) (recognizing the right to self defense while condemning the terrorist attacks of 9/11/01); S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) (reaffirming the right to self defense while deciding states should take steps necessary to prevent the financing of terrorism).

¹⁰ See Gregory E. Maggs, *Assessing the Legality of Counterterrorism Measures Without Characterizing Them as Law Enforcement or Military Action* 7 (George Washington University Law School Public Law Research Paper, Paper No. 257, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=965433 (noting that for a state's response to qualify as self defense, an "armed attack" must have occurred).

laws of war are inadequate when they purport to deal with a situation when one party, which is a regular army, implements the laws of war and the other party, which is not a regular army, deliberately acts against the laws of war and bases its military tactics on the exploitation of the fact that the army facing it abides by these laws of war.¹¹ International law, and in particular laws of armed conflict, have very limited means of enforcement and the desire for mutuality is one of the elements that motivate hostile parties to respect the laws of armed conflict. Countermeasures are a recognized act of enforcement in international law and the International Law Commission (“ILC”) draft on the subject reads:

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State.¹²

The ILC commentary, however, explicitly points out that the reference is to “non-forcible measures” and, hence, clearly not applicable to armed reprisals.¹³ Countermeasures in armed conflict, which are commonly referred to as “reprisals” or “belligerent reprisals” have been defined as:

Acts of retaliation in the form of conduct which would otherwise be unlawful, resorted to by one belligerent against enemy personnel or property for acts of warfare committed by the other belligerent in violation of the laws of war, for the purpose of enforcing future compliance with the recognized rules of civilized warfare.¹⁴

It has been argued that it was the fear of reprisals in kind that led to the Axis States refraining from using poison gas during the Second World War.¹⁵ The Third Geneva Convention, for example, obliges the release of all prisoners at the end of “active hostilities.”¹⁶ The language of the Convention does not authorize states to demand reciprocity as regards to releasing prisoners, yet common sense dictates reciprocity and indeed that is what happens in practice. The International Committee on the Red Cross (“ICRC”)

¹¹ See Reynolds, *supra* note 4; OSIEL, *supra* note 3, at 36.

¹² Int'l Law Comm'n, 53d Sess., *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, art. 22, U.N. Doc. A/56/10 (Aug. 2001).

¹³ *Id.*

¹⁴ U.S. DEP'T OF THE ARMY, FM 27-10, DEPARTMENT OF THE ARMY FIELD MANUAL: THE LAW OF LAND WARFARE ¶ 497 (1956); See also Naulilaa (Por. v. Ger.), 8 Trib. Arb. Mixtes 409, 422–25, reprinted in 2 R.I.A.A. 1011, 1026.

¹⁵ David A. Koplow, *Long Arms and Chemical Arms: Extraterritoriality and the Draft Chemical Weapons Convention*, 15 YALE J. INT'L L. 1, 9 (1990) (discussing the chemical warfare weapons both Allied and Axis powers stockpiled but did not use out of fear of “escalatory retaliation”).

¹⁶ Geneva Convention Relative to the Treatment of Prisoners of War, art. 118, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

has never, in practice, demanded from one state that it release prisoners except against a reciprocal release by the other party involved.

Modern conventional law of armed conflict appears, however, in most circumstances, to reject the element of reciprocity. The 1977 Protocol I rule is that “attacks against the civilian population or civilians by way of reprisals are prohibited.”¹⁷ According to the International Criminal Tribunal for the former Yugoslavia (“ICTY”), “the bulk of this body of law lays down absolute obligations, namely obligations that are unconditional or in other words not based on reciprocity.”¹⁸ Yet, the outlawing of reprisals against civilians may not be as clear-cut as would appear. The right to execute acts of reprisal—apart from a number of absolute prohibitions such as the murder of prisoners of war—has been recognized in the past and was the legal basis to the justification of the air bombardment by the Allies of German cities during the Second World War.¹⁹

The 1949 Geneva Convention did not reject reprisal actions against civilians in enemy territory and the rule in Protocol I is an innovation.²⁰ During the debate on the Article at the diplomatic conference that drafted the Protocol, some states expressed reservation as to the prohibition on acts of reprisal against civilian targets.²¹ The U.S.’ representative remarked, “[b]y denying the possibility of a response and not offering any workable substitute, the Protocol is unrealistic and, in that respect, cannot be expected to withstand the test of future armed conflict.”²² It has been held by Bothe and others that this new rule did not reflect customary law at the time and they note that “[e]xisting conventional law does not prohibit reprisals against enemy combatants and enemy civilians in territory controlled by the enemy.”²³ The British Government added a reservation when it ratified Protocol I, which stated that the United Kingdom retains the right to attack civi-

¹⁷ Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 51(6), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter First Protocol].

¹⁸ Prosecutor v. Kuprekić, Case No. IT-95-16-T, Judgment, ¶ 517 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2001) (criminal tribunal commenting on humanitarian law).

¹⁹ Geneva Convention Relative to the Treatment of Prisoners of War, art. 2, July 27, 1929, 47 Stat. 2021, 118 L.N.T.S. 343 (“[Prisoners of war] shall at all times be humanely treated and protected, particularly against acts of violence . . . [and m]easures of reprisal against them are forbidden.”).

²⁰ See OSIEL, *supra* note 4, at 36 (“The 1949 treaties do not bar reprisal, for instance, against enemy civilians and civilian property unprotected by the Fourth convention . . .”).

²¹ See generally *infra* note 28 and accompanying text.

²² Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 58th plen. mtg. (Vol. VII) U.N. Doc. CDDH/SR58, ¶ 81 at 294 (Geneva, 1974–1977).

²³ MICHAEL BOTHE ET AL., NEW RULES FOR VICTIMS OF ARMED CONFLICT 312 (Martinus Nijhoff Publishers 1982).

lians or the enemy's civilian targets in reprisal against such attacks against her, solely in order to force the enemy to cease from such attacks and after having warned the enemy and that the decision to carry out such an act of reprisal must be made at the highest levels.²⁴ This reservation is reflected in the order found in the British Army Manual according to which states: "[reprisals] may not be undertaken by UK armed forces without prior authorization at the highest level of government," thus clearly not rejecting the actual legality of acts of reprisal.²⁵ Germany and Italy also added a statement, though not in the form of a reservation, that was similar to the British reservation, but couched in vaguer terms. It states that they retain the right to respond to an attack on civilians with all the means allowed to them by international law.²⁶ At face value, the British reservation appears to be in contradiction to the article's wording, but no state sent an objection to the Swiss government regarding the British reservation. This silence is especially meaningful since during the diplomatic conference, a significant number of states expressed their opinion that the Article itself, regarding the defense of citizens, is so important that reservation with it should not be permitted.²⁷ The ICTY examined the legality of reprisal acts against civilians and eventually rejected the legality, but commented that "[t]he protection of civilians

²⁴ See Letter from Christopher Hulse, HM Ambassador of the United Kingdom, to the Swiss Government, available at <http://www.icrc.org/ihl.nsf/NORM/0A9E03F0F2EE757CC1256402003FB6D2?OpenDocument> (providing a correct copy of the letter dated 28 Jan. 1998) [hereinafter UK Declaration to Geneva Protocol I].

²⁵ U.K. MINISTRY OF DEF., *MANUAL OF THE LAW OF ARMED CONFLICT* 65 (Oxford University Press 2004).

²⁶ Declaration of the Federal Republic of Germany upon ratification of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Reg. No. A-17512, Aug. 14, 1991, available at <http://www.icrc.org/ihl.nsf/NORM/3F4D8706B6B7EA40C1256402003FB3C7?OpenDocument> ("The Federal Republic of Germany will react against serious and systematic violations of the obligations imposed by Additional Protocol I and in particular its Articles 51 and 52 with all means admissible under international law in order to prevent any further violation."); Declaration of Italy upon ratification of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Reg. No. A-17512, Nov. 20, 1990, available at <http://www.icrc.org/ihl.nsf/NORM/E2F248CE54CF09B5C1256402003FB443?OpenDocument> ("Italy will react to serious and systematic violations by an enemy of the obligations imposed by Additional Protocol I and in particular its Articles 51 and 52 with all means admissible under international law in order to prevent any further violation.").

²⁷ For a comprehensive analysis of the proceedings of the diplomatic conference see, e.g., BOTHE *supra* note 24, at 571–572; COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (Yves Sandoz et al. eds., 1987). For a description of the work of the Conference, see, e.g., Charles L. Cantrell, *Humanitarian Law in Armed Conflict: The Third Diplomatic Conference*, 61 MARQ. L. REV. 253 (1977); R. R. Baxter, *Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law*, 16 HARV. INT'L L.J. 1 (1975); David P. Forsythe, *The 1974 Diplomatic Conference on Humanitarian Law: Some Observations*, 69 AM. J. INT'L L. 77 (1975).

and civilian objects provided by modern international law may cease entirely or be reduced or suspended in three exceptional circumstances: (i) . . . , (ii) . . . , and (iii) at least according to some authorities, when civilians may legitimately be the object of reprisals.²⁸ The Tribunal added “that at any rate, even when considered lawful, reprisals are restricted.”²⁹ The Tribunal preceded to give details of the conditions for permitting acts of reprisal.³⁰ It becomes clear that the innovative prohibition against acts of reprisal is not considered a rule of *jus cogens* and the rule is not considered by some as representing customary law.³¹ The ICRC study on the customary law of war does not contend that the rule prohibiting reprisals has solidified into custom, but rather refers to “[t]he *trend* towards outlawing reprisals.”³² International legal scholar Yoram Dinstein argues that:

If Contracting State A commits atrocities against the civilian population of Contracting State B, the latter is not allowed to retaliate in kind against the civilian population of State A. But what do the framers of the Protocol expect State B to do? Turn the other cheek? That is a religious tenet rather than a serious military or political proposition. Since the Protocol does not provide State B with any practical alternative response, what is likely to happen is that Article 51, para. 6 will remain a dead letter and— notwithstanding the paragraphs’s lucid language—State B will resort to belligerent reprisals against the civilians of State A.³³

However, cogent arguments can be made against allowing reprisals. A reprisal means deliberately killing civilians not participating in combat in order to pressure terrorists, in other words, a form of collective punish-

²⁸ Prosecutor v. Kupreškić, Case No. IT-95-16-T, Judgment, ¶ 522 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000), <http://www.haguejusticeportal.net/eCache/DEF/6/117.html>.

²⁹ *Id.* ¶ 535.

³⁰ *Id.*

³¹ OSIEL, *supra* note 4, at 55–56; Theodor Meron, *The Humanization of Humanitarian Law*, 94 AM. J. INT’L L. 239, 250 (2000); THE COMMANDER’S HANDBOOK OF NAVAL OPERATIONS, NWP-1-14M, para. 6.2.3.3 (1995), available at http://www.lawofwar.org/naval_warfare_publication_N-114M.htm (last visited Sept. 30, 2010) (“The President alone may authorize the taking of a reprisal action by U.S. Forces.”).

³² INTERNATIONAL COMMITTEE OF THE RED CROSS, RULE 145 REPRISALS <http://www.icrc.org/customary-ihl/eng/docs/v1-rul-rule145> (last visited Sept. 30, 2010) (the online version of the ICRC Study on customary international humanitarian law, conducted by the ICRC and published by Cambridge University Press in 2005).

³³ Yoram Dinstein, *Comments on Protocol I*, 320 INT’L REV. RED. CROSS 515 (1997), available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNV5> (last visited Sept. 30, 2010).

ment.³⁴ Frits Kalshoven points out their “dubious efficacy.” Terrorist organizations may well be callously indifferent to their own civilian losses and indeed welcome such losses as part of their “lawfare” against democratic societies.³⁵ Furthermore, the ICRC recalls that “on the pretext that their own population had been hit by attacks carried out by the adversary, [the Second World War belligerents] went so far, by way of reprisals, as to wage war almost indiscriminately, and this resulted in countless civilian victims.”³⁶ Allowing reprisals against civilians clearly can be a slippery slope, reducing the arguments about legality to “who started it?”

Another avenue that may be less dangerous is to interpret “civilians” and “civilian targets” in a narrower sense than is currently adopted by the ICRC. The destruction of governing executive or financial institutions is likely to provide a distinct military advantage to the attacking party. Clearly, we are not referring to obviously civilian institutions such as health, welfare, or justice institutions. Ingrid Detter writes that “[i]t is questionable whether government buildings are excluded under any clear rule of law from enemy attack.”³⁷ The ICRC also recognizes that a factory that produces for the civilian market can provide support for a military effort, and therefore, there is a military achievement to be gained by its destruction.³⁸

In a draft version presented to the diplomatic conference that drew up the 1977 Protocols to the 1949 Geneva Convention, the ICRC suggested defining civilian targets as including facilities and means of transport that were planned for the civilian population, “except if they are used mainly in support of the military effort.”³⁹ The ICRC definition did not relate to government institutions.⁴⁰ The ICRC draft was not accepted and the version that was accepted stated, in the negative, that a civilian target is not a military

³⁴ THE COMMANDER’S HANDBOOK OF NAVAL OPERATIONS, *supra* note 32, para. 6.2.3; BLACK’S LAW DICTIONARY 1417 (9th ed. 2009) (“The use of force, short of war, against another country to redress an injury caused by that country.”).

³⁵ FRITS KALSHOVEN, BELLIGERENT REPRISALS 26 (1971).

³⁶ First Protocol, *supra* note 17, at 626 para. 1982.

³⁷ INGRID DETTER, THE LAW OF WAR 294 (2nd ed. 2000).

³⁸ First Protocol, *supra* note 17, art. 43 (“Other establishments or buildings which are dedicated to the production of civilian goods may also be used for the benefit of the army. In this case the object has a dual function and is of value for the civilian population, but also for the military. In such situations the time and place of the attack should be taken into consideration, together with, on the one hand, the military advantage anticipated, and on the other hand, the loss of human life which must be expected among the civilian population and the damage which would be caused to civilian objects”).

³⁹ *Id.* art. 47(2).

⁴⁰ *See id.* art. 47(2) (“Consequently, objects designed for civilian use, such as houses, dwellings, installations and means of transport, and all objects which are not military objectives, shall not be made the object of attack, except if they are used mainly in support of the military effort.”).

target.⁴¹ Protocol I states, “[i]n case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”⁴² The list of civilian objects that possess civilian status does not include broadcasting stations, means of transport, or government institutions.⁴³ An indirect definition of permitted targets appears in the 1954 Hague Convention, concerning the protection of cultural places, that notes that cultural treasures may not be stored near “industrial centers, an aerodrome, broadcasting station, establishment engaged upon work of national defense, a port or railway station of relative importance or a main line of communication.”⁴⁴ It could be well argued that such objects are legitimate targets, and even if not, they would be legitimate objects for reprisals, thus making a distinction between reprisals against semi-civilian governing bodies and reprisals against civilians and indisputably civilian objects.

II. CONCLUSION

Democratic societies need to find a way to deter terrorist forces from attacking civilians, yet to do so not by adopting the tactics of the terrorists themselves. The rarely applied possibility of *post factum* criminal prosecution has not proved itself sufficient a deterrent. Within armed conflict between regular forces reciprocity, using reprisals against civilians, was, in the past, accepted as legal under customary law. Such reciprocity entails applying collective punishment to innocent civilians, it is liable to abuse and is often not effective.

Another avenue could be to exclude executive bodies from the definition of civilians, thus allowing them to be legitimate targets and certainly

⁴¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 52(2), June 8, 1977, 1125 U.N.T.S. 3.

⁴² *Id.* art. 52(3).

⁴³ *See id.* arts. 53–56 (limiting protection of civilian objects to cultural objects and places of worship; objects related to survival, such as foodstuffs and granaries; the natural environment; and dangerous power supply installations, such as dams and nuclear power plants).

⁴⁴ *See* Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 8(1), May 14, 1954, 249 U.N.T.S. 240 (“There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication; (b) are not used for military purposes.” (emphasis added)).

legitimate objects for reprisals aimed at deterring terrorist attacks against civilians.