A CRITICAL ANALYSIS OF THE UNITED STATES' TREATMENT OF DETAINEES AT GUANTANAMO BAY NAVAL BASE IN THE CONTEXT OF INTERNATIONAL LAW

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ABSTRACT

Released detainees, the media and non-governmental organisations have claimed that the detainees at United States' Naval Base at Guantanamo Bay have been subjected to torture and inhumane treatment. In the thesis the treatment of the detainees has been analysed in the context of international humanitarian law and international human rights law. The reported treatment of the detainees at Guantanamo Bay Naval Base has been compared with similar treatment that has in other cases been defined as torture or inhumane treatment by the United Nations' Human Rights Committee, and the analysis of this comparison shows that the treatment of the detainees is violating the prohibition of torture and inhumane treatment in Geneva Convention III and in article 7 and article 10(1) International Covenant on Civil and Political Rights (ICCPR).

This thesis furthermore investigates how these violations have taken place without intervention from the international legal system. In this regard it is important to realize that when the United States acceded to ICCPR and Convention against Torture it made reservations to the definitions of torture and inhumane treatment. The Bush Administration has interpreted "torture" and "inhumane treatment" very narrowly, allowing treatment that otherwise would be considered as a violation of torture and inhumane treatment in international law. Because of weaknesses in international law it is not clear whether the United States' reservations are permissible, thereby making it impossible to say in legal terms whether the United States is violating the prohibition of torture and inhumane treatment as it is stated in international humanitarian and human rights law, despite the fact that treatment similar to the described treatment of the prisoners at Guantanamo Bay Naval Base has previously been judged as a violation.

KEY WORDS: GUANTANAMO/ TORTURE/ GENEVA CONVENTION III/ ICCPR/ CONVENTION AGAINST TORTURE

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