6. Summary

Aspects of public international law in connection with the fight against terrorism

My thesis is concerned with several aspects of public international law relating to the contemporary fight against terrorism. I focused on the *war on terrorism,* the concept developed by the United States of America. The USA consider it a global armed conflict against terrorism and terrorists. During this conflict, they used several controversial methods to fight it more effectively. My thesis concentrates on two of them: status and rights of detainees at Gunatánamo Bay detention centre and the situation regarding *extraordinary renditions* and secret detention centres worldwide, especially in Europe.

In early 2002 first detainees were transferred from the battlefields in Afghanistan to Guantánamo Bay, more than 800 people were detained there, out of which 200 still remain there in early 2009. US administration labeled them *unlawful combatants* and claimed they have no rights under the Geneva Conventions. In this chapter, I argue that there is no legal vacuum regarding these detainees. I assessed their position, both as a matter of law and as a matter of fact. In my opinion, some of them were entitled to the prisoner of war status. However, in the first place their status should have been determined by a competent tribunal and until then they should have enjoyed the protection of the Geneva Convention relative to the Treatment of Prisoners of War (GC III). I also argue that the others should have been considered *protected persons*, in case they satisfied the conditions laid down by article 4 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (GC IV). Both *prisoner of war* status and *protected person* status confer important rights on detainees, especially procedural rights ensuring fair trial. All the detainees at Guantánamo Bay were denied these rights. I further claim that even those detainees not covered by GC III or GC IV fall within the scope of article 3 common to all the Geneva Conventions. Its provision guarantees, *inter alia*, humane treatment and basic fair trial rights. In addition, all the detainees are covered by article 75 of the First Additional Protocol to the Geneva Conventions or article 6 of the Second Additional Protocol. USA has not ratified these protocols yet, but considers the provisions in question to be binding because they embody customary international law. I also looked at the situation of detainees who were detained outside of Afghanistan, ergo outside of the armed conflict. Humanitarian law does not apply and I had to assess their situation under international human rights law. There is a controversy about the

scope of application of the International Covenant on Civil and Political Rights (ICCPR). The USA interpret jurisdiction to be primarily territorial and claim that the Covenant is not applicable extraterritorially. However, in specific circumstances (effective control or power over an individual), human rights bodies consistently apply ICCPR extraterritorially. I also looked at the general relationship between humanitarian law and international human rights law. In the Guantánamo Bay chapter I analysed several aspects of humanitarian law and international human rights law and I found substantial violations of both of them. Therefore I reckon United States did not comply with its international legal obligations.

In the second chapter I analyse the practice of extraordinary renditions. *Extraordinary rendition* is an extrajudicial transfer of a person to another country where he or she is at risk of torture. US intelligence agency CIA used this method to facilitate interrogations of the high profile terrorist suspects. For the same purpose they also allegedly built several secret detention centres (*black sites*), two of them were supposed to be in Europe. After the disclosure of this practice by the press, there were several investigations within the Council of Europe and European Union which confirmed that detainees were transferred through the European territory. It is also quite probable that *black sites* existed in Poland and Romania. After examples of individual cases of *extraordinary rendition* I analyse the practice and its legality under international human rights law. All the victims of this process claim they were tortured or ill-treated (availability of harsh interrogation methods is most probably the purpose of these renditions). *Extraordinary renditions* also violate the principle of non-refoulement. The principle is contained in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It prohibits any state from transferring a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In spite of this prohibition, the USA transferred the detainees to the countries with very bad human rights record or to the *black sites* where they were held incommunicado. This also constitutes breach of the right to liberty of person, prohibited in all important human rights instruments. Detainees were arbitrarily arrested (sometimes kidnapped) and detained without a chance to challenge their detentions in court. I also considered the obligations of the Council of Europe member states and found out that some of these countries did not comply with their positive obligations under European Convention on Human Rights and ICCPR. The *extraordinary renditions* seem to be just a temporary practice used by the USA and their allies in extraordinary

circumstances, but in my opinion it is important to stress that it breaches the most fundamental human rights.

My conclusion is that the USA during its *war on terrorism* acted contrary to the international law in many respects. Thus it damaged its reputation in the world and also endangered the respect for the concept of human rights.

Klíčová slova: *status osob zadržených za ozbrojeného konfliktu – mimořádná předávání – mezinárodní právo lidských práv*

Keywords: *status of persons detained in armed conflict – extraordinary renditions – international human rights law*