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Trial and punishment for battlefield misconduct / by Dru Brenner-Beck

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Abstract:	This chapter discusses trial and punishment for battlefield misconduct in the United States' "global war on terror" since 2001, examining the basis for the use of military commissions to try alleged violations of the laws and customs of war by suspected terrorist operatives (or "enemy belligerents"). The author reviews the development of military commissions in Guantanamo Bay and the legal framework of the subsequent Military Commissions Acts of 2006 and 2009 passed by the US Congress in the aftermath of the Supreme Court's Hamdan v. Rumsfeld decision. The author argues that the use of courts whose jurisdiction derives from the LOAC for the trial of operatives captured in the course of the armed struggle against transnational terrorism should be considered legitimate. However this legitimacy relies on legal safeguards, such as substantive and procedural limitations that are inherent to the LOAC. Additionally, the author makes his case by detailing several human rights and procedural norms protected by both international law provisions and the US Constitution that seem compatible with the military commissions regime. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]
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