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Playing by the rules : combating al Qaeda within the law of war / David W. Glazier

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Abstract:	<p>Although the conflict formerly known as the “war on terror” is now in its eighth year, key legal issues governing the use of force and military detention remain largely unresolved. These questions survive the Bush administration, as the United States continues to launch aerial strikes against al Qaeda and President Obama has indicated his intention to continue the use of preventative detention and military trials even after Guantánamo is closed. Military victory is not possible, but good faith application of authority from the law of war can effectively complement traditional criminal law in combating the threat. Even if the Geneva Conventions do not formally apply to this conflict, there is a large body of customary international law, including many Geneva rules, that should. If the war is limited to those adversaries authorized by Congress, and the opposition is validly classified under the law of war, the military (but not the CIA) can legally target members of al Qaeda and detain them without requiring a criminal trial. But the conditions of that detention and any trials that are held must meet international standards, which they currently do not. Good faith application of law of war rules also offers better protections for civil liberties than other proposed solutions, such as national security courts, which offer less due process than regular federal trials. Such measures start down a slippery slope of compromising legal standards on the basis of expediency that can be avoided through the faithful application of existing international law.</p>
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