Humanitarian Protection in Future Wars

Mike Newton

I am indebted to the organizers of this splendid conference, and to those of you here in attendance whose insights and perspectives have made this conference such an unqualified success. The opportunity to gather from our respective nations and legal systems to discuss these important issues is indeed welcome. I am convinced that it is only through a respectful and candid dialogue that we can fashion remedies to the legal difficulties and policy debates that await each of us upon our return to the real world in which we strive to serve our country while remaining faithful to the spirit and aspirations of the law.

Gathering together in such a magnificent setting to approach the challenges that confront the rule of law is a privilege. In this forum we are able to set aside the pressing concerns of the daily crises to fashion ourselves into a sort of a collective intellectual sledgehammer. Thinking and talking together, we can smash misperceptions, speak out about the nuances of the law that we all respect and serve, and confront some of the hard truths that we brush past in the chaos of problem solving and client serving of our usual routines.

It is in that spirit that I offer my thoughts this morning. I fully realize that not all of you will readily accept every word that I say, and some of you will laugh and accept not a single one of my Alabama tainted words. That is all right. I want to

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remind you that my comments this morning are made in my individual capacity, and reflect my personal perspective. I remain an active duty Army lawyer, and speak here only in my personal capacity. My comments are therefore not intended to represent the official views of the United States Army, the Department of Defense, the Department of State, or any other United States government agency.

To paraphrase Hugo Grotius, law is based on more than mere expedience, which logically compels me to the assertion that we are bound by common expectations, aspirations, and ideals. The absence of law in the international domain leads ineluctably to chaos, anarchy, and a decreased quality of life for ordinary citizens. At the same time, we all have different perspectives, and this is the time and place to confront the pragmatic and political realities that will determine whether the law of armed conflict thrives in the future or withers on the vine of neglect and discredited irrelevance.

As we approach the problem of considering humanitarian protections in future wars, it is tempting to start from the perspective of considering the pace of new technologies, and the changing face of conflict. We have already heard some tremendous discussions along those lines. To be perfectly frank with you, I have neither the vision nor the technological expertise to proffer detailed prescriptions for the further development of the substantive norms applicable in a future brand of conflict. Rather than speculate on detailed prescriptions of what the law will be at some undefined future point based on hypothesis and assumption, I want to address the foundational principles that will allow the law to have meaning and form in the conflicts that will surely come.

If these foundational principles are preserved and strengthened, I am convinced that the nuances of the law will adapt to fit the future conflicts as required. Having said that, I think it is vital to remember that the law is not some uncontrollable living beast that we set free to grow and devour new foes to feed its own power. Humanitarian law is the servant and expression of the international community, not the other way around. For humanitarian law to retain its force and vitality in future conflicts, it is essential to candidly recognize that its power comes from its constraining and humanizing function. We must realistically face the fact that the very purpose of humanitarian law is to influence the actions of real actors who must confront horrific scenes of violence and moral ambiguity.

As we consider the future implementation of the law, I think we must remember that the Geneva Conventions are grounded in the principle of profound respect for human personality. The laws of armed conflict developed from the practice and pragmatic requirements of commanders across the world. The developed body of norms we lump together under the vague and not altogether satisfactory rubric "international humanitarian law" is today the very essence of what it means to be a military professional. They are the benchmark for measuring professionalism and provide the standards that divide military professionals from lawless thugs. The