

Bridging the Divide Between Academia and Practice in International Humanitarian Law

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The terror attacks of September 11, 2001, and the subsequent initiation of the U.S.-proclaimed Global War on Terror have had a profound impact on the development and understanding of international humanitarian law, more commonly referred to in the profession of arms as the law of armed conflict. One of the more interesting factors in this development has been the proverbial explosion of academic and scholarly interest in the field. Prior to these events, scholarly interest in humanitarian law was confined to a small circle of both practitioners and scholars, where many of the experts were well known to one another. While the development of the international criminal tribunals following the war in the former Yugoslavia expanded this circle of interest, it still remained relatively tight-knit. This is no longer the case. A simple review of the National Security Law Listserv demonstrates that literally hundreds of scholars have taken an interest in this field of law and are now offering their own contributions to the marketplace of ideas.

Because humanitarian law, like any other category of international law, is based on both treaty and custom, the impact of scholarly work on its development is potentially profound. Such works are routinely cited by domestic and international tribunals called upon to render decisions requiring interpretation of humanitarian law. In addition, scholarship provides a field of resources for government and non-government experts involved in policy- and decisionmaking related to humanitarian law. The potential impact of humanitarian law scholarship is even more significant within the context of the rapidly evolving nature of warfare. Nearly every aspect of this evolution is influenced by legal considerations, including the growing role of civilian support to military operations; the fielding of ever more technologically sophisticated weapons and tactics; and the concept of “asymmetrical warfare” as typified by one party’s efforts to exploit an opponent’s fidelity to the law for tactical advantage.

This explosion of scholarly interest has been matched during the same period by one of experience in the practice of humanitarian law throughout the U.S. military legal community. The historically unprecedented role of military lawyers, or JAGs, in the planning and execution of military operations is creating an equally unprecedented foundation of operational legal experience and expertise. U.S. commanders and staff officers have responded to the paramount importance of “law on the battlefield” by integrating JAGs at every level of command. The involvement of these lawyers in the

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implementation of humanitarian law obligations—particularly in an era of increasing transparency—will also have a profound impact on the evolution of this law.

These two groups—academia and the military legal community—are therefore playing crucial roles in the development of humanitarian law. This leads to an important question about this development: is there sufficient “cross-leveling” of expertise between these two groups to ensure that the development of the law is informed by both scholarly exploration and practical experience? In the opinion of this author (and many of my former military colleagues and current academic colleagues), the answer to this question is no. This is both unfortunate and potentially dangerous: unfortunate because each group’s expertise would be invaluablely enhanced through the sharing of ideas; dangerous because those who influence the evolution of this law may be insufficiently informed.

It is because of this danger that I have advocated elsewhere that the Department of Defense establish a humanitarian law “center of excellence,” where experts from all the military services could work in a joint educational environment. One important aspect of this proposal is the development of visitorship opportunities for distinguished members of academia. Consolidating the expertise of the military legal community into one such center of excellence in which members of academia could contribute to the development of military lawyers and benefit from their collective experience seems to this author to be an appropriate response to the growing significance of this law. Although the military services are clearly disinclined to consolidate their educational venues, there has been a substantial effort to increase participation of JAG officers in non-military-sponsored symposia and to offer members of academia the opportunity to participate in events sponsored by the military. These efforts reflect the recognition by the leaders of the respective JAG Corps that there is tremendous value in creating opportunities for the type of cross-leveling of expertise described above. Moreover, the increasing inclusion of military legal experts in academic symposia reflects an analogous recognition in that community.

It is because of this that I believe venues like the newly established *Texas International Law Journal Forum* are so important. Such forums allow both academics interested in humanitarian law and military and non-government practitioners of the law to offer insights into some of the most complex and pressing issues related to the War on Terror and future military operations. Providing a venue for these experts to offer timely and pointed essays and commentary on articles published in the *Journal* will provide the type of virtual cross-leveling that is so beneficial to informed analysis of humanitarian law issues.

Few areas of law have or will have a more profound impact on life-and-death decisions than international humanitarian law. This law provides the framework for the planning and execution of military operations that employ an ever increasing degree of lethality. It also provides the foundation for holding accountable individuals who plan or participate in conduct that exceeds the limits of military necessity and humanity. It is therefore essential that those involved in the study, analysis, and evolution of this law understand its impact from both a theoretical and practical perspective. Providing opportunities to bridge the divide between academia and the military legal community will go a long way toward achieving this critical goal.