

INTRODUCTORY REMARKS: PANEL ON INTERNAL CONFLICTS

*John R. Crook **

Welcome. The purpose of our panel this morning is to look at some difficult questions related to nature and the role of international law applicable in non-international conflicts. Most of the world's conflicts today are not international. They take place within the boundaries of a single state. They often involve contests between the authorities of a state and other groups who seek power, or between armed groups that do not necessarily function under state authority. Consider some recent cases: Rwanda, Afghanistan, Angola, Liberia, Chechnya, and Somalia. The list could go on.

Particular circumstances vary widely, but these situations are often marked by great violence and brutality on all sides. Violence is often deliberately directed against civilians, prisoners, cultural sites, and other types of persons or property that would be protected by the law of war in international conflicts.

The reason for organizing this panel is my strong belief that international law does not now play an effective role in restraining these conflicts. There are many reasons for this. I hope we will talk about some of these here. I hope the panel will also have some practical suggestions about what can be done. I will sketch a bit of the legal background and then introduce our panelists.

The most familiar text applicable in all non-international armed conflicts is article 3, common to each of the 1949 Geneva Conventions.¹ Common article 3 provides that "in the case of armed conflict not of an international character occurring in the territory" of a party to one of the Geneva Conventions, *each party to the conflict* shall observe certain minimum standards. Persons who take no active part in hostilities must be treated humanely: murder and torture are banned, there must be no

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1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 609.

summary executions, and so on. By its terms, article 3 seems to apply to both sides, even those that do not represent a State. But there is a threshold legal question whether a particular situation constitutes an *armed conflict* triggering common article 3. And, clearly, common article 3 is not being applied in many situations where it ought to be.

Then there is protocol II to the 1949 Geneva Conventions. Protocol II was designed to lay down standards of conduct in civil war situations, but its threshold of application is high. It applies only to armed conflicts between national armed forces and "dissident armed forces or other organized armed groups" that have command structures, that control territory, and that can carry out "sustained and concerted military operations." Protocol II has been applied in a few situations; perhaps our panelists will have something to say about its strengths and weaknesses.

Finally, there is human rights law, both customary and conventional. However, human rights law is subject to a variety of possible qualifications or derogation in conflict situations.

We have a distinguished and experienced panel to discuss these issues today. Ambassador Michael J. Matheson is the Acting Legal Adviser of the Department of State. He was a leading figure in developing the mandates of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. Recently, he led the United States delegation that successfully negotiated a protocol strengthening the land mine provisions of the Weapons Convention. Mike will give a short overview from his perspective of a senior United States' government lawyer.

Dr. Luke Lee of the Department of State's Refugee and Migration Bureau has done a great deal of work on the special problems of protection of displaced persons, among the most vulnerable of all groups in internal conflicts.

Professor Leslie C. Green has a long and distinguished career as a scholar in this area. Professor Green now holds the Stockton Chair at the Naval War College; I believe he may be the first non-United States citizen to do so. Professor Green will address problems of enforcing the law in these conflicts.

Our last speaker will be Professor Theodore Meron, another leading authority in the field, known not least for his remarkable book on the role of the law of war in Shakespeare's *Henry the Fifth*. Ted may talk about current proposals to articulate a set of minimum humanitarian standards applicable in all situations.