

BOFAXE

"No Quarter for Insurrectionists"

TROUBLING USE OF RHETORIC IN RESPONSE TO THE BLACK LIVES MATTER PROTESTS (I)

As protests against police brutality and systemic racism have broken out in the United States following the murder of George Floyd, American politicians' rhetoric has taken on a militant tone to counter the citizens' Constitutional right to protest. In a call to U.S. Governors, President Trump admonished states for being too lax in their response and encouraged them to respond in such a way that would send protestors to "jail for long periods of time." Senator Tom Cotton of Arkansas strongly echoed Trump's tone calling for an escalating militarization of the situation on June 1st by posting two tweets:

"Anarchy, rioting, and looting needs to end tonight. If local law enforcement is overwhelmed and needs backup, let's see how tough these Antifa terrorists are when they're facing off with the 101st Airborne Division. We need to have zero tolerance for this [next tweet] And, if necessary, the 10th Mountain, 82nd Airborne, 1st Cav, 3rd Infantry—whatever it takes to restore order. No quarter for insurrectionists, anarchists, rioters, and looters."

He was quickly called out for his use of the term "no quarter", which is used most often to describe warfare carried out in such a lethal and unrestrained way that no prisoners would be taken, or enemy wounded left behind. Cotton defended his tweet, writing that the phrase was metaphorical ([here](#) and [here](#)) and citing [other](#) metaphorical uses of the term. However, as a veteran of the wars in Iraq and Afghanistan, he likely knew how the phrasing "no quarter" would be understood within the context of a proposed military solution against "insurrectionists."

"No quarter" practices are illegal under International Humanitarian Law (IHL) and clash with historical social and political norms related to warfare. [Article 23 of the Hague Convention](#) and [customary IHL](#) prohibit the practice, not least because of its indiscriminate nature. Consequently, the [U.S. Army Manual on the Laws of Armed Warfare](#) forbids not only the practice of utilizing "no quarter" but also the spreading of information or propaganda about its use. The practice is considered so abhorrent that in combat, it would likely constitute a war crime under Article 8 of the Rome Statute ([Dörmann](#), 2003, p. 480-1). The current unrest in the United States does not meet the prerequisites to be considered an armed conflict and render IHL applicable. However, the idea of restraint in the use of force reflected in the rules prohibiting "no quarter" is central to other fields of international law, too, most importantly for the issue at hand in international human rights law (IHRL). Thus, the practice is clearly at odds with international human rights law, and the human rights implications of the statements warrant a closer look.

The Human Rights Committee's (HRC) General Comment 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life underscores that law enforcement operations, even those carried out by the military, should be "adequately planned in a manner consistent with the need to minimize the risk they pose to human life." Later, in the same General Comment, it is suggested that "less-lethal force" be used only sparingly against the right to peaceful assembly and "less harmful means" would better guarantee respect for human rights. Here, "less-lethal force" means the use of force and weapons that are not as deadly as firearms with live ammunition, such as tear gas, pepper balls, and rubber bullets. Their label of being "less-lethal" does not, however, mean that they cannot be deadly or injurious. Balancing precaution with the use of force is also reflected in the [Code of Conduct for Law Enforcement Officials](#) and [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). Beyond the rhetoric, potential violations of human rights by the police in response to the protests have already been cited by Dr. Agnes Callamard in the Washington Post. Her critique highlights the current disparities between U.S. laws governing the use of force by police and international standards on the concept. The argument that U.S. standards do not match standards outlined in IHRL has [already](#) been [made](#), with special attention given to the contradictions between "reasonableness" and "necessity" and the focus of restraint on "lethal force," even though "less-lethal force" also falls under same restrictions of necessity according to IHRL. Yet, even when viewed through the frame of "reasonableness" instead of "necessity," one must ask themselves whether Senator Cotton's comments meet the standard. Comments from a leading political figure calling for "no quarter" for the protestors could not only legitimize further instances of excessive use of force by law enforcement but also potentially incite violence against the "insurrectionists", while it is really this figure's duty to de-escalate situations of violence, especially when police or other state agents are involved.