

BOFAXE

"No Quarter for Insurrectionists"

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

— With all this in mind, should one choose to accept that there is a literal and metaphorical understanding of “no quarter,” as Senator Cotton suggests, it is hard to see how either would respect the rights of the protestors. Given its absolute nature, “no quarter” exceeds not only the use of *necessary* force but also the use of *reasonable* force by willfully ignoring the context and the individuals in it. In war, “no quarter” means no matter what happens as an attack develops, the attack should be carried out indiscriminately and leave no survivors. The mercilessness of the use of force in this instance constitutes a blatant disregard for the protections against “arbitrary” deprivation of life emphasized in IHRL. Using force against an individual who is already incapacitated or restrained and poses no threat contradicts the norms found in IHRL and those found acceptable in U.S. use of force in law enforcement.

President Trump has done little to de-escalate either. His call to designate ANTIFA as a terrorist organization and attempts to tie ANTIFA and anarchists to looting during the protests, does little to change the situation on the ground. There is no indication that there are any active armed actors with the structures or capabilities for a sustained and organized military campaign, as suggested by Additional Protocol II or the Haradinaj Case. However, President Trump’s remarks on the evening of June 1st called for further militarization to counter the current unrest – a move that would be highly problematic in respect of “necessity” central to IHRL. On June 3rd, The New York Times published an op-ed written by Senator Cotton, reiterating his call for military to aid law enforcement. While Senator Cotton did not strike as extreme a tone as in his earlier comments, this advocacy must be viewed skeptically within the context of his previous comments. The rhetoric of Trump and Cotton is not the only reason to doubt the Trump administration’s respect for international norms in response to these protests. A military helicopter with the protected Red Cross symbol was seemingly used in an offensive manner to disburse protestors in Washington, D.C.. Likewise, President Trump’s previous comments and actions in reference to the landmine ban and families of fighters in the Middle East cast doubts as to Trump’s willingness to encourage respect for IHRL in general. The President’s tweet at the outset of the protests stating that when the “looting starts, the shooting starts” further underscores this. It is thus imperative that all politicians and military commanders in the U.S. continue to weigh legal and humanitarian considerations into their decision-making to avoid unnecessary suffering despite such violent rhetoric.

However, the issues observable in these protests extend far beyond the rhetoric used. The murder, which incited the protests, is a single example of excessive use of force by law enforcement and discrimination in how the force is used. But it is not the only example that has been documented by cell phone video and witness statements. The systemic racism festering in law enforcement and other institutions in the U.S., which created an environment where the murders George Floyd, Breonna Taylor, and too many others occurred, are examples of failures to live up to commitments in IHRL on racial discrimination and potentially the shortcomings of existing treaties to chip away at less salient forms of racism. These issues have already been explored and remain an issue that has to be dealt with at a political level. Current calls from protestors to defund or reform the police reflect this. Yet, as long as political leaders in the U.S. use rhetoric calling for the use of force beyond what is acceptable according to international norms, it is hard to imagine that the U.S. will be willing or able to make practical steps toward meeting, let alone improving, IHRL standards on the use of force.