FROM THE WAR ROOM TO THE COURT ROOM: ASYMMETRICAL WARFARE AND INTERNATIONAL LAW IN THE 21ST CENTURY
18 OCTOBER 2010
POST-CONFERENCE REPORT

SPONSORING ORGANIZATIONS:
International Human Rights Law Institute, College of Law, DePaul University
National Strategy Forum
Jewish Federation of Metropolitan Chicago
Public Affairs Committee of the Union League Club of Chicago

IN COOPERATION WITH:
The Cohen Group, Washington, D.C.
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Executive Summary

This report summarizes proceedings from "From the War Room to the Court Room: Asymmetrical Warfare & International Law in the 21st Century," a conference held at the Union League Club of Chicago on 18 October 2010. The conference addressed theoretical and practical issues concerning asymmetrical warfare, as well as the status of international humanitarian law and human rights law in the 21st century. Conference themes included:

- *The coverage and adequacy of existing international law in the face of asymmetric warfare;*
- *The correlation between achieving strategic objectives, politics, and law;*
- *The alleged lack of compliance with international law by state and non-state actors;*
- *The perceived political legitimacy (or lack thereof) of non-state actors;*
- *Importance of public perception in the international community vis-à-vis asymmetrical warfare;*
- *Tensions between human rights regimens and the laws of war;*
- *Issues of accountability;*
- *The value of internal investigations and adjudications compared to the value of international investigations and adjudications; and*
- *The advisability of trying to establish a dual-pronged legal regimen, with states applying traditional international law and non-state actors following a different system.*

Conclusion: Through this conference, as well as through further research and publications, the conference sponsors demonstrated their desire to foster continuing discussion of conference themes and promote international solutions. Panelists similarly expressed interest in continuing a dialogue on conference themes through future research, writings, meetings, and conferences. They likewise suggested participation by other countries that encounter non-state actors.

I. INTRODUCTION

Warfare in the 21st century is not confined to traditional forms of armed conflict where one sovereign state's military battles another sovereign state's military. In modern warfare, sovereign states increasingly find themselves battling non-state actors, such as terrorist groups, organized crime syndicates and militias. The means and methods of war employed by non-state actors differ from those of traditional state-on-state actors, thus necessitating non-traditional means and methods of response by state militaries. Legal experts and battlefield operators alike question whether the traditional law of armed conflict (LOAC) (also referred to as international humanitarian law (IHL) or the law of war) continues to be relevant in the face of this modern warfare. They also question whether international human rights law can successfully interact with the law of armed conflict.

On 18 October 2010, the International Human Rights Law Institute of DePaul University (IHRLI), together with the National Strategy Forum, the Jewish Federation of Metropolitan Chicago, and the Public Affairs Committee of the Union League Club of Chicago, co-sponsored a conference entitled, "*From the War Room to the Court Room: Asymmetric Warfare and International Law in the 21st Century.*" The purpose of the conference was to facilitate dialogue on the aforementioned important issues, foster relationships between relevant parties, and provide educational and writing opportunities for DePaul University students and recent graduates.

The conference – held at the Union League Club of Chicago – brought together scholars, legal experts, and military officials to engage in a compelling examination of existing international human rights law and humanitarian law governing the conduct of war. Conference speakers addressed theoretical aspects of these laws, as well as their application to the often tenuous circumstances of modern warfare. They also addressed subsequent investigations and proceedings concerning charges of alleged human rights violations and war crimes. Additionally, participants discussed myriad interconnected issues, including the compatibility of the laws of war and international human rights law, the appropriate use of force to humanely achieve security objectives, the investigation and adjudication of alleged war crimes, and the challenges of counter-terrorism intelligence and its impact on the laws of war. Incidents in Iraq, Afghanistan, Gaza, and Lebanon provided specific examples for discussion and generalization.

As panelists tackled these challenging topics, an audience of about 100 people contributed to the dialogue through intense question and answer sessions. The conference successfully promoted utile relationships between scholars, legal experts, and battlefield operators with diverse perspectives on the topics, and meaningfully contributed to an on-going international dialogue that will continue long after the

conference. In order to further the conference's contribution to this on-going dialogue, IHRLI will be producing policy papers throughout the winter that will explore the notions and perspectives that emerged during the conference. IHRLI intends to use its intellectual capital to advance further discussion of asymmetric warfare and engage the Chicago community in facilitating possible solutions to these delicate questions. In doing so, IHRLI aspires to create a Chicago-rooted discourse on the subject that can impact the larger international dialogue.

II. SUMMARY OF THE CONFERENCE PROGRAM

The conference began with a welcome speech delivered by Ambassador J.D. Bindenagel, the Vice-President of Community, Government, and International Affairs at DePaul University. Thereafter, the conference was organized around three panels, all of which addressed the day's issues from varying perspectives, including those of political scientists and legal and military experts.

A. Panel 1:
The Law of War and International Human Rights Law: Compatible or Conflicting?

The first panel provided an academic and theoretical examination of the relationship between human rights law and the laws of war, paying particular attention to the relevance of these laws *vis-à-vis* asymmetric warfare in the 21st century. One consensus of the panel was that a fragile and vaguely defined relationship existed between the laws of war and international human rights law. Panelists concluded that while normative human rights concepts were to be found in the Geneva Conventions, Hague Conventions and other legal codes of war, these concepts were generally applicable only to the rights of soldiers, the rights of the wounded, and the distinctions between civilians and the military.

Debate ensues, however, over whether the laws of war effectively incorporate human rights regimens. As new actors—non-state actors, NGOs, etc.—enter the battlefield and alter the face of conflict, the relationship between the laws of war and human rights becomes even more nebulous. Panelists explored this imprecise relationship in terms of modern warfare, while also grappling with allegations that traditional international law was insufficient for modern warfare.

Panelists recognized that modern warfare between state and non-state actors was asymmetric in two ways: an asymmetric balance of power whereby states enjoy greater power and resources than non state-actors; and an asymmetric balance of law whereby non-state actors do not always adhere to the same norms of international law to which states adhere. Panelists also recognized that perspectives, power, and relationship to the law change as non-state actors gain political legitimacy. Some panelists referred to the

asymmetric balance of law and the practice of non-state actors using the laws of war as a weapon against state actors as "lawfare" and used the example of human shields being used to thwart strategic operations aimed at legitimate targets, such as weapon stockpiles. States are obligated by international law to distinguish between civilians and military targets and must keep collateral damage to civilians to a minimum. Accordingly, states often give the enemy notice of an impending attack on a military target in order to allow the enemy time to clear civilians from the site. Aware of this legal obligation, non-state actors may respond by sending civilians to the site in order to discourage the attack. The state must then choose between abandoning the strategic objective or continuing with the strike knowing that it will cause multiple civilian casualties. The non-state actor has used the laws of war as a tactical tool against the state.

The general consensus of the first panel was that, although traditional laws continue to be relevant, there is a disconnect between the laws and their practical application. Panelists noted that while a lot of blaming and shaming occurs today, little responsibility is taken, especially regarding the widespread practice of granting immunity and a general failure to prosecute for war crimes and human rights violations. This issue is not merely one of non-state actors refusing to follow international law, but also of states denying their responsibility to adhere to the international laws they claim to follow.

Although panelists agreed that there was a disconnect between the laws and their application, they could not precisely identify the source of this disconnect. Panelists agreed that there is a problem with compliance and that a system of "carrots and sticks" (incentives for compliance and disincentives for non-compliance) is necessary. They disagreed, however, about whether current laws are sufficiently complete and comprehensive. Panelists disagreed about the role of customary law and whether it sufficiently fills the gaps and inconsistencies within and between the laws of war (laws governing the means and methods of international armed conflicts) and human rights law (laws promoting individual human rights at the international, regional, and domestic level). Customary law is composed of unwritten rules that are considered implicit because of a general and consistent practice of the principle among states. For some panelists, customary law is too vague and cannot provide precise norms for states to follow, which leaves gaps in the laws that prevent the laws from being applied effectively. For these panelists, improvements need to be made in both the laws and compliance with them. Other panelists argued that customary law can and does sufficiently fill the gaps in the laws. For these panelists, improvements need to be made only in compliance and not in the laws.

Panelists disagreed on the precise balance between human rights law and the laws of war. For some panelists, human rights laws can apply simultaneously with the laws of war. This perspective places the laws of war and human rights law on the same plane, meaning political and military decision-makers must take the laws of war and human rights law equally into account when making strategic decisions. Other panelists felt that, in accordance with the doctrine of *lex specialis derogate legi generali*, the laws of war took precedence over human rights law during times of conflict. The doctrine of *lex specialis derogat legi generali* holds that laws governing a specific subject matter (*lex specialis*) override inconsistent laws governing a more general subject matter (*lex generalis*). Proponents of this view contended that certain individual rights could be compromised during times of war so long as the laws of war are complied with because the laws of war are *lex specialis* and human rights laws are *lex generalis*. Opponents to this view argued that it was hypocritical to suspend human rights obligations when they are inconvenient. From this view, there is little point in enacting civilized laws about rights and responsibilities if they are to be ignored and excused away.

Regardless of the precise relationship between the laws of war and human rights law, panelists agreed that the international system needs to find a means of gaining access to non-state actors and including them in the sphere of international laws of war and human rights law. There was disagreement, however, on how this could be accomplished. For some, the focus should be on disincentives for failure to comply with existing norms of international law. For others, incentives that convince non-state actors to opt-in to international norms are key. A suggested incentive is to grant non-state actors some sort of political legitimacy if they opt-in to international laws. This approach would help change the position and perspective of the non-state actor and its relationship to states. It was also hinted that, due to their different status, perspective, and power, non-state actors should be afforded their own system of rules of warfare that would interrelate with the system for states. Panelists noted that when non-state actors are not recognized as legitimate political powers, it is difficult for them to achieve their ideological objectives without resorting to illegal practices. Moreover, their lack of economic resources causes them to turn to organized crime in order to fund their political activities. While these circumstances do not justify war crimes and human rights abuses by non-state actors, they do create obstacles to participation in the traditional international law sphere.

Panelists balked at an audience member's suggestion that current laws are out-of-date and wholly inadequate for dealing with modern threats, such as bio-terrorism, that can cause wider destruction than previous forms of warfare. While some panelists believed that the current laws can be interpreted to cover these situations, and others conceded that the current laws may need to be modified or expanded to meet

these new threats, all panelists agreed that the current laws cannot simply be ignored or disregarded as too "quaint" for handling modern forms of warfare.

B. Keynote Address

General Paul J. Kern, Retired US Army General and Senior Counselor with the Cohen Group

Gen. Paul J. Kern delivered a moving keynote address that gave a soldier's perspective on the applicability of the laws of war to the battlefield. Gen. Kern called upon his own experiences as a soldier in the battlefield and his leadership position in the military's internal investigations of the abuses at the Abu Ghraib prison in Iraq. The address created a smooth transition between the first panel's academic focus to the second panel's focus on laws in the battlefield.

Gen. Kern reminded the audience and participants that the simple directive that a soldier receives to "defend the Constitution and follow the orders of the officers appointed over you" are difficult to put into practice in a complex and confusing battlefield. Even soldiers trained on the Geneva Conventions may fail to follow them at all times as fear and emotion on the battlefield can cloud judgment. Placing soldiers in situations where they have to choose between following orders and doing what is right leads inevitably to mistakes. Gen. Kern stressed that important legal decisions need to be made before sending soldiers to the battlefield and ordering them to kill or capture enemies. Those soldiers must be equipped with clear, understandable, and enforceable rules. Lawyers and politicians must fill in the "gray" areas in the law before giving orders to soldiers. Gen. Kern concluded with the admonition that when authorities fail to equip soldiers with clear guidance, they risk allowing the soldier's conduct to slip to the level of the terrorists'. Legal, military, and political authorities are responsible for ensuring that soldiers are equipped with enough information and training to make the right decisions.

C. Panel 2:

Military Operations, Decision-Making and Real-Time Application of Laws

Case Studies: Iraq, Afghanistan, Gaza/Lebanon

The second panel discussed the real-world application of the rules of law in modern warfare. Panelists asked difficult questions about whether the current laws are sufficient in the field, whether the laws are specific enough to be normative, and whether the law is being practiced on the battlefield.

According to panelists, in modern warfare, there are many ways to win a war that do not rely on traditional weapons and warfare. Military and strategic objectives are different in asymmetric warfare because the goals go beyond killing the enemy. For example, in both Iraq and Afghanistan the goal of the United States was not only to defeat the armed forces of the Hussein and Taliban regimes, but also to

build states that would not serve as safe havens for terrorist groups. To achieve this goal, the United States attempts to promote government institutions that follow the rule of law and have the judicial capacity to protect their citizens from terrorist organizations or other illegitimate non-state actors threatening their society. In this sense, "lawfare" can be employed by both sides—just as it is a form of lawfare to use existing laws against a law-complying state (e.g., creating "human shields" around military targets), it is a form of lawfare to bring a system of law to a nation in order to give citizens the judicial capacity to prosecute wrongdoers (e.g., the Rule of Law Field Forces in Afghanistan).

Panelists noted that states are continuing to learn the nuances of the law and its real-time application in modern warfare. For example, coalition detention operations in Iraq, from 2003 forward, were distinctly different from those conducted there in 1991. A system of procedures for international detentions developed over time, and lessons learned in Iraq have informed subsequent practices in Afghanistan. This is just one example of the way military decision-making constantly evolves to reflect the lessons of "the last war," with the aim of improving the application of law to operations in the field.

Panelists stressed that the laws of war—no matter how comprehensive they are—are only effective if they are assimilated into the military. Soldiers must be able to easily follow the rules and incorporate them into the split-second decision making on the battlefield. If the laws of war exist only on a higher academic or theoretical plane, understood only by lawyers and politicians, the law will not be followed in practice. The law must be assimilated into the army at all levels of the army: foot soldiers, commanders, and all other levels in the chain of command must be aware of the relevant laws and how they are applied during conflict situations. Simply reading the rules is not sufficient as there are many gray areas in the law when it is put into practice. On paper the laws may appear complete, but circumstances arising during conflict can be incredibly diverse and nuanced making the correct application of the law difficult. Accordingly, all levels of the military need instruction on the laws and should engage in simulations and training exercises where they learn to apply the laws in realistic scenarios. Clear rules of engagement must be taught to soldiers in such a manner that they become instinctive. Pre-planning should be used whenever possible and real-time legal advice should be available during operations. Moreover, post-hoc evaluations of strategic objectives and investigations into alleged war crimes and violations of international law are essential.

Although audience members raised concerns that war is being "over-lawyered" and military strategic objectives are being sacrificed in favor of strict legal adherence, panelists generally agreed that legal considerations are imperative. The struggle is balancing the law and strategy. Striking this balance

requires strategic analysis that considers the legal principles of distinction and proportionality as well as the broader military and political objectives. Moreover, military practitioners must be able to distinguish from what is legal and what is strategically wise. Operations should not be undertaken simply because they are legal. The general opinion from panelists is that the strategic decision-makers are aware of this distinction and constantly engaged in reasoned decision-making, but that, nonetheless, mistakes are made. They stressed that the way to avoid these mistakes is to increase the accuracy of intelligence in order to reduce collateral damage. For most panelists, intelligence is key in today's warfare and the greater and more precise our intelligence, the lower the likelihood of mistakes.

Some panelists urged viewing modern warfare through a more political lens, arguing that the calculation should not just consider lawfulness and military objectives, but also bigger picture political objectives. Although the U.S. has generally viewed war as a temporary and apolitical phenomenon that occurs when politics break down, counter-insurgencies are long and political, and this political aspect cannot be ignored. From this view, it is preferable to focus on politics and negotiations rather than targeted military objectives. In the end, the objective is not only the targets, but also the effect on civilians.

From the political perspective, one panelist posited that the targeted killing of insurgency leaders was unwise and inappropriate. Because these actors are labeled politically illegitimate, states justify targeted killings. However, this view ignores the reality that these actors often have legitimate political roles and provide a government function for their followers. As political actors, they should not be subject to targeted killings or assassination. Thus, targeted killings may undermine strategic objectives, especially if any of these groups hold real political power. We may need to negotiate with these groups on a political level in the future and this course of targeted killing can undermine that.

Moreover, it was suggested (as it was in the First Panel) that the rules might be different for state actors and non-state actors because of the different perspectives and political statuses. Some panelists were opposed to this position, arguing that it is one thing to recognize the political dimension of a conflict and another to excuse illegal acts and war crimes merely because non-state actors have fewer military resources than states. This position holds that non-state and state actors are subject to the same standards and laws when it comes to warfare, and that asymmetrical power does not justify asymmetrical obligations.

In a similar vein, one panelist objected to the view that "one person's freedom fighter is another person's terrorist," implying that non-state actors that are generally characterized as "terrorists" should be treated

as politically legitimate because, from a different perspective, they could also be characterized as "freedom fighters." The reality is far more complicated. A non-state group could have a legitimate political objective while fighting for it in a manner that conflicts with the laws of war or vice versa. Thus, the determination as to whether a group is politically legitimate is more complicated than simply saying that the group has a legitimate objective or serves some governmental function.

One panelist likened the targeted killings by drone attacks to the high-tech equivalent of suicide bombing. The panelist argued that just as the U.S. finds suicide bombings to be a morally repugnant exploitation of human vulnerability, Pakistan and other nations view drone attacks to be a morally repugnant exploitation of technology. Ultimately, perspectives matter in the strategic context of war and human rights.

Other panelists disagreed with applying the pejorative term "targeted killing" to all operations aimed at destroying a defined human subject. Citing Harold Koh, they argued that such operations are legal so long as the principles of *distinction* (between military and civilian objects) and *proportionality* (of collateral damage to civilians compared to the military advantage achieved) are taken into account. Although mistakes are sometimes made in the analysis, the legitimacy of the practice remains. Greater accuracy is needed to ensure fewer mistakes, but the practice is still legitimate.

D. Panel 3:
Perspectives on contemporary Problems:
Gaza Blockade, Flotillas and International Maritime and Humanitarian Law

The third panel discussed military operations as they move from the war room to the court room through investigations and adjudications of alleged war crimes. Panelists examined issues of who should be investigated for alleged war crime violations, accountability up the chain of command, and whether investigations and adjudications should occur internally or in front of international tribunals. Additionally, panelists discussed the importance of the court of public opinion. Discussion focused on Israel's operations in Gaza and the Flotilla Incident as contemporary examples of these issues. The discussion had relevance for other asymmetric military operations, such as U.S. operations in Afghanistan and Pakistan.

With regard to Israel's actions in Gaza and the Flotilla Incident, panelists generally agreed that Israel did have a legal right to self-defense against Hamas under Article 51 of the Charter of the United Nations. Nonetheless, some panelists questioned the strategic value of Israel's response. Regardless of the technical legality of Israel's actions, some panelists felt that Israel lost face in the court of public opinion. On the one hand, some panelists argued that Israel's investigations into the alleged crimes that took place

during these events fell short because only lower-level soldiers were held accountable while the elite decision-makers were neither investigated nor prosecuted. Additionally, these panelists questioned whether Israel's internal investigations were sufficient and suggested that an international tribunal would be more effective. On the other hand, some panelists responded that the decisions made by the Israeli government in these situations were completely consistent with international law, that every alleged war crime occurring during these operations was thoroughly investigated and adjudicated as necessary, that politicians were judged and held accountable for their decisions in the political field, and that international tribunals were not appropriate venues for judgments on the political wisdom of legal military operations.

Regardless of any technical legality of its operations against Hamas, the international community does not view Israel's actions favorably. Although Hamas may have intended to incite an overreaction by Israel that would cause public perceptions of Israel to diminish, some panelists felt that Israel made a strategic blunder by reacting in an unrestrained manner. Whether or not Hamas purposely provoked an overreaction, Israel's actions spurred negative reactions across the international community. This loss in the court of public opinion has negative applications for Israel's international standing and relations in the Middle East. Panelists further argued that the technical legality of the operation becomes irrelevant when the operation fails to achieve any strategic objective. For example, one panelist analogized Israel's operations to the U.S. use of drone strikes, arguing that even if they are adjudicated as legal, they diminish public support for the U.S., outrage the populace, and weaken the government of Pakistan, thus undermining any strategic objective they were intended to achieve.

Some panelists countered that Israel had investigated every single war crime allegation surfacing from the Gaza and Flotilla incidents, that a range of lessons have been learned, and that consequent changes were made in policy, rules of engagement, and methods of interacting. Moreover, they contended, Israel takes its international obligations and responsibilities very seriously, is transparent with the international community, and shares its findings with both its own citizens and the international community.

Some panelists questioned whether these investigations and adjudications were sufficient. One panelist posited that Israel's attack on the flotilla was a political decision in which the risk of international legal violations was high. Yet, only the soldier is investigated and prosecuted for his actions. Panelists would like to see a higher level of accountability and a system where the political decision-makers may also be held accountable. Panelists noted that attacking the flotilla itself did not necessarily violate international law, but that it did create a high likelihood of human rights violations, and that a system of higher

accountability is necessary for situations like this where soldiers—due to no choice of their own—are placed in these tense highly-explosive situations. Some panelists objected to this notion, explaining that the directives given could have been followed in a manner consistent with international law. Accordingly, the soldiers are the persons who should be held responsible for the violations because they could have performed their duties without violating international law. The person giving the directive, on the other hand, should not be held responsible for a soldier's failure to comply with international law when the directive itself is legal and can be complied with in a lawful manner.

In addition to suggesting a need for a higher level of accountability, some panelists questioned whether internal investigations and adjudications were sufficient for addressing these issues and suggested that international adjudications were necessary. Other panelists felt that internal investigations were sufficient and appropriate, noting that militaries and governments were comprised of systems of checks and balances that allowed for thorough and effective investigations and adjudications. Moreover, if the issue is whether Israel's decisions were politically and diplomatically wise and not whether they were legal, an international tribunal is not the proper forum for adjudication. International tribunals were created to determine the legality of operations, not their political usefulness. According to these panelists, the best venue for adjudicating political wisdom and usefulness is the polls and the voters have already held Israeli officials accountable.

III. OVERARCHING THEMES—POINTS TO PONDER

Several overarching themes permeated the three panels, providing areas for further consideration and discussion. These themes constituted areas of underlying disagreement and uncertainty among panelists that shaped each panelist's individual perspective. Due to the complex nature of the subject, there is significant overlap among themes. Each theme deserves further consideration in its own right as well as in its interrelationship with other themes.

- *The Sufficiency of Current Laws*. Are the existing laws comprehensive enough to cover modern means and methods of warfare? Is it simply an issue of interpreting the existing laws to apply to modern situations? Or do we need to re-think the existing laws and develop new treaties?
- *The Role of Customary Law*. Does customary law sufficiently fill in the gaps in international laws? Are states constantly updating it to reflect the current state of warfare? Or is it too vague and imprecise to creative normative rules?
- *Dual System of Laws*. Should non-state actors be held to a different legal standard than state actors? Does the asymmetrical balance of power necessitate a dual system? Since international laws are norms that were negotiated by states, is it unfair to expect non-state actors to abide by

them? Should non-state actors be allowed to negotiate their own laws of war? Are non-state actors already developing their own customary law that provides a basis for the non-state actor system of laws? What role should states play in the negotiation of laws of war for non-state actors? How can and should the two systems interact?

- *Compliance—the State Level*. Have states really "opted-in" to the international law system? Rampant impunity and a general failure to accept state responsibility suggest that they have not. How can we ensure that states, who are (theoretically) obliged to abide by international law, actually comply with the law? Further, how can we expect non-state actors to "opt-in" to the international legal system if states fail to comply? If we do not have a sufficient system of incentives and disincentives for states, how can we expect to create one for non-state actors?
- *Compliance—Non-State Actors*. If non-state actors are expected to follow traditional international laws, how do we induce compliance and dissuade violations? Should states grant certain concessions to non-state actors that encourage them to comply with international norms? If non-state actors are treated as legitimate political actors will they be more willing to follow the rules?
- *Non-State Actors and Political Legitimacy*. How and when can "terrorists" become "freedom fighters"? Is this distinction even necessary? What does political legitimacy add to the equation in war?
- *The Court of Public Opinion*. How important are public perceptions of military operations? Are they more important than legal technicalities? How can states take public perceptions into account in making strategic decisions? Should the court of public opinion be allowed to give final adjudications on delicate legal issues? Does the legality of an operation really matter if it fails in the court of public opinion?
- *Politics*. Are we killing the people that we should be negotiating with? Are we getting bogged down in laws and specific military objectives and forgetting about the larger political picture?
- *"Victory" in Modern Warfare*. Do we even know how to win a modern war? What are the markers of success? What are signs of defeat? When is the war over?
- *Who is Really Responsible?* Who can we hold responsible for military operations that go terribly awry due to soldier miscalculations? Is it the responsibility of those who placed the soldier in a precarious situation without enough guidance? How can we develop a system of political accountability?
- *Laws in the Battlefield*. Can soldiers truly be expected to execute military objectives in compliance with international laws? How can we teach the rules of law to soldiers in such a manner that the proper responses are instinctive?

- *Internal Investigations*. What must states do in order for their internal investigations and adjudications to be accepted as transparent and fair?
- *The Laws of War and the Relationship with Human Rights*. Can human rights ever be put aside? Do emergency and conflict situations necessitate less individual rights? In modern warfare, with no geographical constraints or foreseeable end to conflicts, does this mean that human rights are essentially forgotten?

IV. Conclusion and Recommendations

The Conference ended on a positive note with participants recognizing the new relationships cultivated by the conference and expressing a genuine interest in furthering the conference's dialogue with future discussion and interaction. Through further research and discussion, including the production of relevant policy papers, IRHLI aims to produce a "Chicago Voice" on the topic that will significantly add to the international dialogue.

As Gen. Kern noted in his keynote address, legal, military, and political authorities must provide soldiers with clear guidance in the face of the challenges of war. This is increasingly true for soldiers confronted with the complicated intricacies of modern warfare. Yet, no clear guidance can be given when the rules of modern warfare are not clearly established. The following recommendations arising from the conference promote clearer understanding of the challenges of modern warfare and the laws applicable to it. None of the recommendations will solve the complex legal, political, and strategic issues that modern warfare poses, but they will help provide the first stepping stones toward a more comprehensive understanding of the current status of laws and warfare and the legal implications of the tenuous relationship between sovereign states and non-state actors.

- Increase public education on the laws of war—make information about the laws of war and their intersection with human rights law available to the public.
- Conduct further study, engage in dialogue, and convene international meetings addressing the themes above.
- Encourage participation from countries that deal with non-state actors on a daily basis (e.g. Pakistan and Afghanistan).
- Develop a "carrot and stick" system of incentives and disincentives to induce non-state actors to comply with international laws.
- Develop a system for punishing decision-makers, as well as soldiers, responsible for war crimes.
- Conduct more soldier legal training with practical application.