

Asia Pacific Military Justice Workshop

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We need not be reminded by statistics or testimony that military forces do not stay put. They travel across the world into foreign jurisdictions, sometimes as friendly forces and sometimes not. When military forces cross borders, how is discipline maintained, and misconduct punished? A question is even harder to answer in times of war when the soldier's personal survival is intertwined with that of his flag and country. Can we really believe that 'All's fair in love and war'?

We are here not to talk about love, but war. To be precise, to talk about military justice, and in my address this evening, I hope to emphasise to you that military justice, military laws, and the military's role – to prevent war if possible and to wage war if necessary – cannot be examined in isolation. The role and function of military law and justice is crucial in times of peace. It is even more crucial in war where victory is the prize, and a safe disengagement the consolation prize for no one goes to war to lose.

We have an impressive international contingent of participants in this workshop, and as you begin your dialogue you may wish to keep in focus the pervasive query, namely, what is in military justice today that should trouble us?

In just fifteen years, the changes in all things military have been exponential. The world is inundated with new technology; new technology means new weapons; and new weapons mean new rules. The rules entrenched in the Geneva Conventions have been largely dependent on the conscience of the soldier even if he may not be able to recite all the rules that determine how non-

combatants are to be treated. But is the conscience of the soldier firing a drone missile thousands of miles away from his target as sensitive as that of the soldier releasing a bomb from a plane? Do we need to find common ground for all nations and not just for those with drones, after all, those that have no drones might one day have weapons equally or more devastating than the drone? Law and justice in the military context must be as clear and consistent as law and justice in any other context.

Military courts are sometimes perceived as inferior to civilian courts and generally neglected when it is clear that soldiers deserve as fair a trial as a civilian gets. Fair trials and the rule of law go hand-in-hand; one provides the structure, the other the foundation. Warfare in the 21<sup>st</sup> century, transformed by technology, is smudging the roles of the military commander and his civilian government even more. No matter how the solution is found, it must embrace the rule of law. The rule of law is the inflexible doctrine that everyone, nations and individuals, are accountable to law. Laws that hold us accountable must be properly passed if they are to gain acceptance as just and fair law. The rule of law entwines civilian and military courts in many aspects and in many ways. International law and military law are similarly intertwined.

Two examples will suffice. The experience of Abu Ghraib and Guantanamo Bay is the first. The stories are well-known but the impact continues to be discussed. The second is the Permanent Court of Arbitration's ruling that dismissed the Chinese claim to the Spratly Islands. The impact of that is not only a matter of interest in the field of international affairs but it also concerns studies in military justice insofar as the underpinnings of the rule of law apply to nations and to the military that nations use to assert themselves. From the highest arches of government to every wing in the military, rules and

regulations intended to ensure discipline and effectiveness must be clear and consistent to pass muster.

War and trauma leave long traces. We can see the effect of battle on the soldier now more clearly than in the past. I am sure post-traumatic stress disorder may be a modern name for an old wound, but we now know how it affects the soldier long after his battles are over. The trouble is that when a war veteran commits offences after leaving the military, does that mean that the military is no longer responsible for him, and that the responsibility of understanding the ex-soldier's troubles is passed to the civilian court? That is no different from leaving the wounded behind.

We must ask: 'what is the impact of all this on the universal soldier?' I think that the impact is tremendous. The soldier today cannot just master technology without upgrading his thoughts on ethics, discipline, cohesion, rapprochement, and the responsibilities of a robot handler. He has a great deal more responsibilities yet faces a barrage of conflicting ideologies. And as you may suspect, we cannot shake off the refrain of 'All's fair in love and war' – that old song will continue to haunt the modern military. How can justice advance the aims of the military without rendering the war-machine ineffective and without morals? That is the challenge. Workshops like this must help the modern military understand the issues and to develop rules that shape the soldier as gentlemen and ladies in times of peace, and as warriors in times of war.

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