TRANSCRIPT
Rules in War – A Thing of the Past?

“Panel Discussion”

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LOCATION
CSIS Headquarters, Washington, D.C.

FEATURING
Peter Maurer,
President, International Committee of the Red Cross

Susan Glasser,
Staff Writer, The New Yorker

Charles “Cully” Stimson,
Senior Legal Fellow and Manager, National Security Law Program, The Heritage Foundation

MODERATORS
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Transcript By
Superior Transcriptions LLC
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Stephen Morrison: Thank you very much, Peter.

Stephen Morrison: I’m going to offer a few words of introduction, Susan and Cully, and then move to a couple of questions.

Stephen Morrison: Susan Glasser is a staff writer at The New Yorker and a premier American journalist. I’m sure many of you read the “Letter from Trump’s Washington.” It appears every Thursday evening, is it? Every Friday morning?

Susan Glasser: Friday morning, Thursday night.

Stephen Morrison: And this week talking about the – is it a constitutional crisis we’re in or a constitutional confrontation at the Trump White House?

Stephen Morrison: So you bring this remarkable ability to interpret the present evolving complexities of power in the Trump era and the complexities of power between the executive and Congress, but also looking beyond. I mean, I’ve been struck by the writing that you’ve done at the G7, at the Munich Security Conference, looking at the G7, looking at the deterioration of our relationship with Germany, and NATO, the consequences of alliances with Kim Jong-un, Putin, European – Eastern European fringe elements, what this means in terms of values and norms.

Stephen Morrison: And it doesn’t surprise me that much, because when you look back, you were a foreign correspondent in Moscow. You covered earlier the impeachment period of Clinton in the late ‘90s. You were editor in chief of Foreign Policy for five years and international affairs for Politico for several years after that.

Stephen Morrison: So thank you for joining us today.

Stephen Morrison: I want to add one fun fact which pertains to our Global Health Policy Center. Your grandfather – is it Melvin Glasser? – led the field trials for the Salk vaccine, the polio vaccine. One fun fact.

Stephen Morrison: Cully Stimson is an American lawyer and government official. Since 2007 he’s been senior legal fellow and manager of the National Security Law program at the Heritage Foundation. Prior to that he served as a deputy assistant secretary at the Department of Defense in ’05 to ’07?

Charles “Cully” Stimson: ’06–’07.

Stephen Morrison: ’06–’07 – at a critically important period, particularly around the detainees at Guantanamo Bay; worked very closely then and since with the International Committee of the Red Cross. And he’s a frequent and trenchant commentator, often on The Daily Signal, the Heritage Foundation’s website, on a wide range of topics – International Criminal Court, counterterror prosecution, military justice as it pertains to sexual abuse, Julian Assange status and prospects for extradition, among many other things. He is an active contributor to the Federalist Society and – fun fact here – chairman of the U.S. Soccer Foundation, which is one of those initiatives that since 1994 has invested over $100 million in community –
in underserved communities focused on youth and is a great success story. And thank you, Cully, for that work.

Stephen Morrison: So our first question is focused on the world of Washington. And I’m going to ask Susan to offer a few minutes of opening remarks, and then Cully, and then we’ll come back to Peter. And the question is, how do you make the case in today’s environment here in Washington that the – that the Geneva Conventions truly matter and that they remain deeply relevant to U.S. values and national interests? And when you look at Washington in the executive, in Congress, and elsewhere, where are there vocal, high-level advocates? In Peter’s speeches he’s come back to this theme that there has been ground lost in the humanitarian struggles and the respective international humanitarian law. U.S. leadership has always been essential to this. We’re in a period of great-power competition and we need more high-level advocates in this space at this particularly acute moment. Susan?

Susan Glasser: Well, thank you. First of all, thank you very much for that generous introduction.

Susan Glasser: And thank you, Peter. I think that was a really stimulating and provocative and in-the-moment speech, you know. And I think, obviously, you’re well aware of how challenging an environment it is here in Washington today.

Susan Glasser: And I guess that’s where I would pick up, is where you left us in this conversation. The idea that, number one, international law, humanitarianism is at great risk of being politicized at the very moment at which it has an urgent need to engage with the political process, I think that sums it up, I think, pretty well.

Susan Glasser: You made another observation that I thought was particularly relevant to the Washington piece of this challenge, which was the idea that in recent years essentially this had defaulted to become a function of the military, almost a technocratic solution, as if there was such an overwhelming consensus it didn’t need to be debated or discussed; it was simply a matter of implementation and execution. And Cully, of course, can speak more to the – you know, to the execution side and where we are on that.

Susan Glasser: But I think that’s what I would spotlight today, is just very quickly this notion that we’ve moved beyond technocracy and we are back to debating first principles here in Washington in a way that I’ve never seen in my adult lifetime. And it’s perhaps not a surprise to anybody. It seems to me that we are at one of those hinge-point moments not only in our own politics, but that’s intersected with a global transition or hinge point in a way that has made old certainties not so certain anymore. And this is one, but hardly the only one.

Susan Glasser: So, you know, you could say in that sense what we’re looking at is a longer-term global trend, and this happens to be the American manifestation of it. And I think that’s true in the politics and I think it’s true in term of the fraying of a previous technocratic consensus, right? In my mind, and perhaps informed by living in Russia, traveling across the former Soviet Union, to me it seems not at
all a coincidence, but very much related the idea that you’re seeing these kinds of politics and disruptions across so many different countries at the same time.

Susan Glasser: You know, this is the inverse moment from the 1989 moment. Somebody said to me not that long ago maybe 1989 was the best year of our life and we just didn’t know it. (Laughter.) I don’t know if that’s the case or not, but certainly many of our assumptions, it seems to me, of that period in the early ’90s are being challenged in a significant way. So that’s the big picture framing.

Susan Glasser: How much does – you know, is the Trump administration the elephant in the room here? How much is that driving our politics and creating an even more challenging environment for you and other humanitarian groups? That’s an interesting question because certainly I think we can all agree that many of the longer-term trends we’re talking about are by no means exclusive to the United States. They’re by no means exclusive to this particular administration, right? So we can stipulate to that.

Susan Glasser: However, I certainly would say that what you’re seeing is a series of events and decisions, and then also at the top level a point of view in our politics that will create its own logic. You often hear, as you do I think for Democrats and Republicans right now in Washington, an idea that we can sort of snap back; you know, that this may be a particularly unconventional or challenging president and administration that he’s assembled but, you know, Joe Biden came to the Munich Security Conference this year and essentially his message was pay no attention to that speech you just heard from the vice president of the United States, we’ll be back. And that was his sort of takeaway line. And you know, again, maybe that’s reassuring to people and maybe it’s not. (Laughter.)

Stephen Morrison: It didn’t seem to be very persuasive at the moment.

Susan Glasser: Yeah, but – exactly. But whether it’s reassuring or not, I don’t know that it is persuasive. And we all know that in international relations you rarely go back. And so I take that as my starting point.

Susan Glasser: And I’ll leave it to everybody else, except to spotlight a couple things you said. One, you made the point – excellent point – that it’s – of your 15 major, you know, areas you’re focusing on, or countries or conflicts, are responsible for 85 percent – I think you said – of the refugees. What I’m struck by is how toxic our politics has already become around the subject of refugees and, frankly, how little the United States has chosen to do even if you put aside the toxic rhetoric of the current president and administration around this issue. Even President Obama, who certainly was almost the polar opposite in terms of how he communicated around these issues, the United States was not able to provide any kind of meaningful, concrete aid to people coming here. I think the number was negotiated down, even, of Syrian refugees to, I mean, essentially a token gesture at best. And so, you know, again – which is not to say I don’t find the current political climate around refugees, around some of these conflict issues, around human rights to be very toxic, but also recognizing they pre- and potentially post-date this particular administration.
Susan Glasser: So I do think that’s important. But at the same time, you know, maybe I can speak more bluntly than other people on the panel, so I’ll say you have a national security adviser who is at war with the very concepts of multilateralism and international agreements in a way that, you know, again, I think it behooves you not to dial it down, but to dial it up in terms of the level of alarm. This is significant and it can create realities in part because I don’t see a lack of – I don’t see a meaningful capacity within other senior-level empowered actors to do anything about it. And so I think you can create significant facts on the ground. I don’t believe it’s just a question of rhetoric, which is something we’ve heard a lot in the last few years: don’t worry about the words, everything is just fine on the policy side. I think that would be a little bit of whistling past the graveyard.

Susan Glasser: Thank you.

Stephen Morrison: Thank you, Susan.

Stephen Morrison: Cully?

Charles Stimson: Thanks to CSIS for having me.

Charles Stimson: Peter, it’s always a delight to be in the room with you and hear your remarks. I always learn things from you.

Charles Stimson: And, Susan, it’s a pleasure to meet you.

Charles Stimson: One thing I would add, not to toot my own horn, but on the resume side I was in the Navy, JAG for 25 years. But my comments are not attributed to the Navy or the Department of Defense. They’re just my personal thoughts.

Charles Stimson: The question how to make the case in the current environment that the Geneva Conventions matter, I think, you know, first off, panels like this, the ICRC – when you look at what the ICRC has been doing and the engagement that the ICRC itself has had with the United States government, especially since 9/11, it has been extraordinary. I think a lot of people – I don’t know anybody in uniform in the United States military who doesn’t have immense respect for what they do, the risks they take. And they’ve paid dearly. And the dialogue we’ve had in theater with them in Iraq and Afghanistan and Guantanamo and elsewhere, you know, from Geoff Loane, who was the first head of the D.C. operation, to Alexandra, I mean, you’ve sent tremendous ambassadors to Washington who have really helped educate not only people in the State Department, but other lawyers in DOJ and DOD. And so I think, you know, you’re not alone in this constant reeducation process, but I think you’re at the pointy end of the spear. I really do.

Charles Stimson: I think it’s beyond dispute that the Geneva Conventions are relevant. And I think underlying and underpinning all of the Law of Armed Conflict is really that those rules and norms are an expression of values.
Charles Stimson: I was at Freedom House’s annual gala the other night and they talked about the march of freedom is on the wane. But when you think about what we’ve learned and partnered with the ICRC and other groups as a government since 9/11, we know that it’s the rules and norms set by the Geneva Conventions that guide and direct the honorable treatment of combatants, that the combatants have to treat people, civilians and others on the battlefield, honorably. Nobody in the military today doesn’t know that.

Charles Stimson: Before 9/11, LOAC and IHL was a niche practice in the military services, frankly. After that and over the years, not only has the ICRC but other organizations, but in particular ICRC, has worked with the JAGs and the service senior leadership to help them understand the importance on it. There’s tons of academic literature. You go on Lawfare blog or these other organizations that put out and have debates and discussions.

Charles Stimson: So I think they’re incredibly relevant and they’re not a thing of the past. You have advocates on the Hill on both sides of the aisle – Senator Booker, Senator Young, and many other people – the late, great John McCain – who were very strong advocates for the values within – embedded within the Geneva Conventions.

Charles Stimson: I’d also say that, you know, as we have new and evolving technologies, like autonomous weapons, artificial intelligence and cyber capabilities, you know, those are challenging issues. And we’ve seen a lot of academic literature in the United States and elsewhere talking about the applicability of the values and norms and rules of the Geneva Conventions to those new technologies. And I think that’s healthy. In part Snowden and Facebook and all these other things force us to confront some of these rules and norms as well.

Charles Stimson: I also think, you know, you can’t look past the obvious, that places like CSIS, which have been on the forefront of having these discussions, and other NGOs and think tanks in Washington, have played a major role. You asked about in Washington, so I’ll turn to the second part of your question. You know, where do you look in Washington for high-level advocates? The sense of the Senate, the Booker-Young piece coming up.

Charles Stimson: A lot of the advocates are in the room today. You look at the people who are in the room today, the people around the table at breakfast this morning, and that’s just a small sliver of the many great people; academics. Rosa Brooks, who was here from Georgetown earlier today, Marty Lederman, Bobby Chesney, lots of academics. There’s been a plethora of – a huge growth in academics who are devoted to IHL and writing about it, speaking about it, debating it. I think if you could multiply your staff, Peter, by 300 you wouldn’t still have enough people to be in all of these debates and discussions.

Charles Stimson: The executive branch – I will respectfully disagree slightly with Susan and say that, you know, the dialogue, which is confidential by design and needs to be, between the ICRC and the executive branch, has continued across administrations. And that’s important.
Charles Stimson: I’ll give you a good example of how far we’ve come. In the fall of 2001, there was a young military lawyer in Afghanistan, U.S. military lawyer in Afghanistan. We started processing detainees. And that lawyer didn’t get a lot of guidance from Washington, didn’t know what the heck he was supposed to do. But he’d been trained up on the Law of Armed Conflict and the Geneva Conventions. And so when the detainees started getting processed into the detention facility, he just started providing them a care consistent with Common Article 3 and essentially POW status without the legal acronym of POW status.

Charles Stimson: Today that lawyer, who’s a retired Marine colonel, is working for the ICRC. It’s Ian Brasure. That’s a remarkable transition. You can ask Ian more about it later on.

Charles Stimson: I’ll leave you with a thought. You know, there are some great quotes from General Dunford and Senator McCain about the values embedded in the Geneva Conventions. I think their comments are relevant today and inspiring today. But we’ve embedded these principles in our doctrinal publications as well. And Peter and Alex and others from the ICRC remember back in 2006 when the Department of Defense issued their first and revised overarching policy with respect to detention.

Charles Stimson: You mentioned detainees, Peter. It was DOD Directive 2310.01E. And I played a small part in helping roll out that document. And this is what I said at the time on September 6, 2006. And I think what we said here then, in 2006, is as relevant today as it is today, and it’s still within DOD language. And that is, we have accomplished a great deal today in revising and reissuing the instruction of the directive. It reflects the lessons we have learned in what we called then the global war on terrorism and in Iraq. It complies with the requirements of the law.

Charles Stimson: It unambiguously articulates the values and traditions of our nation, values that John Adams called the policy of humanity, which has been the cornerstone of American ethos in warfare. More importantly, it provides our forces in the field the policy guidance needed to ensure the safe, secure and humane detention during armed conflicts, however characterized.

Charles Stimson: I think that was the beginning of turning the corner. And I think we’ve come a long way then. But I don’t think that there are any laurels to rest on. I mean, one of the things one of my bosses said a long time ago is in Washington there’s no permanent defeats and there’s no permanent victories. There’s just permanent battles. And I think that panels like this are absolutely necessary for civil society to amplify and dilate the dialogue and make the case for the continuing relevance of the Geneva Conventions and their utmost importance as an extension of our values.

Stephen Morrison: Thank you, Cully.

Stephen Morrison: Peter, would you like to offer some response to what we’ve just heard?
Peter Mauer: Well, maybe just on one aspect, which both Cully and Susan discussed from slightly different perspective, and just to emphasize how much this is a preoccupation for us. And I’m referring to your pickup, Susan, that the sort of expert bureaucratic dialogue on international humanitarian law is not sufficient anymore, given the questioning also at many levels – by the way, not only in Washington, but in many other countries – the political questioning on some of the fundamentals on international humanitarian law.

Peter Mauer: And I think this is one of the big struggles we are fighting. And we see it very much – and Cully has referred to in a country like the United States, where the public debate on norms of international humanitarian law does not necessarily move in the same direction as the substance of debates that we have with the administration, with the militaries.

Peter Mauer: So if I look at the last 20 years, it looks, in our view, like an uninterrupted positive dimension of dialogue with the U.S. militaries, with DOD, with other parts of the U.S. administration. I think there is no other country in the world in which ICRC has the depth and breadth of dialogue and engagement and response than we have with the U.S. administration. And this is obviously not in sync with some of the populist reactions to international norms, be it international humanitarian or human-rights frameworks that we see in public debate.

Peter Mauer: And it’s something which preoccupies us a lot, because I agree with you, Susan. Normally you can’t go back in history. So the question is, how can you confront, then, also the public debate which eventually moves in another direction, be it supported or not by top-level politicians?

Peter Mauer: And I continue to believe that we need to have what I call an evidence-based and public debate on that issue, which is, at least in ICRC’s use, probably the only viable approach that we have to counter the questioning on some of the elements of a normative framework in the political space. And I think that’s basically the way we are – we are trying to go. But it is a big challenge because I do agree that we cannot just go back in bringing the ghosts back into the bottle because the discussion is out there. And in order to counter the argument, as often in populist debates that we see all over the world, it is full of half-truth. And half-truth can only be confronted if you bring them into evidence-based – evidence-based debate. And as I alluded to in my introductory remarks, I think we are – increasingly also see it as a big challenge for us, not only to reaffirm legal and ethical framework of the Geneva Conventions, but to show why it is reasonable and useful to use it as a framework in our conflict and situations of violence. So I found your reaction to this particularly interesting.

Stephen Morrison: Peter, in the face of proliferating populist, nationalist governments and open scorn of international norms and institutions, and the dehumanization of many refugee populations, other migrant and displaced populations around the world – as the guardian – as a guardian of international humanitarian law, how do you reshape your strategy? I mean, evidence is important, but we’ve had this same debate in looking at the rise of the anti-vaxxer movement and the collapse of
coverage rates in many, many different vaccine immunization coverage rates in many places.

Stephen Morrison: The roots of this, the skepticism, the paranoia, the sort of inward-looking around science, around elected authorities – how do you – and the same debate comes up. What do you do? And social media being a very powerful driver of lots of misinformation and just warped and distorted views, along with leadership itself. So we’re in a different moment, it seems to me, fundamentally a very different moment. what would you say in terms of your strategy?

Peter Mauer: Well, I think we have thought quite profoundly in our last institutional strategy, how do we have to adapt engagement for the law, and how do we have to differentiate our strategy given the more complex environment in which we work? And you may have seen that I would probably characterize our work for a very long time on focused on the unquestionability of the international humanitarian framework, and then trying to negotiate and to elaborate on mechanisms of compliance for international humanitarian law.

Peter Mauer: And I think you – I agree with you, seemingly we are not any more in a time of unquestionable normative frameworks which – where strategically we can focus on mechanisms of implementation because we have the questioning of the fundamentals. And when you have the questionings of the fundamentals, there are different strategies to – you can embrace. You can start, as I mentioned before, we have mentioned evidence. But we – evidence-based argumentation. But you can also increasingly try to see what the origin of the frustrations are. And sometimes it’s – the response is simply not in the realm of your own strategy. It has nothing to do with international humanitarian law.

Peter Mauer: And I think we see a lot of it in the humanitarian approach. Maybe an interesting one in trying to listen more carefully, not only in the zones of conflict in which we operate, but also in the countries which are important donors and supporters of international humanitarian law. What is the origin of the frustration? What is at the origin of disrespect and questioning of the legal frameworks under which we operate? And I think in order to have compliance with the law, whether in the battlefields or outside of the areas of battlefields, we have to come to the grips on what is at the origin of questioning the norms, and then address some of these origins.

Peter Mauer: We see, for instance, that the profound experience of injustice in many contexts in which we operate is at the origin of the driver of disrespect for the law, because when you experience your life as profoundly unjust, you have difficulties complying with the law. So we need to understand the dynamics of populist movements, as much as we need to understand the dynamics of disrespect in the battlefields. And I think we have not learned yet to see that some of those trends probably have its origin in some of the same resentments. And so we need to be more cognizant of the environment in which we work.

Peter Mauer: In terms of our own institutional strategy, I think we started to really look in a more sophisticated way on how we transport the message. I think when there is
no question on the norm, you can discuss compliance. When there are questions on the norm, you have to explain why the norm is important. And I think that’s at the origin of the reshaping of our training program, for instance, with regard to nonstate armed group. They are not interested in compliance with norms. They may respond to pressures of peers or to influencers in their communities. We have engaged and multiplied our engagement, for instance, in the Islamic World, with Islamic clerics. We know that appeals to compliance don’t bring compliance, but when appeals for compliance or instruction for compliance come with credible leaders in the community, that’s different.

Peter Mauer: I think we have also increasingly started to see on what – how we can mobilize community energies to stand for international humanitarian law. So I don’t say that all these examples that we are collecting in the battlefield and which make our strategy more varied in ensuring compliance with international humanitarian law are applicable also in contexts of public debates on the norms here in the United States. But it is interesting, maybe, some in thinking of what has been useful and workable in some of our experience in conflict, and what eventually will also be useful and interesting to reflect upon in a policy debate here, in a country like the United States.

Stephen Morrison: Thank you. Susan, would you like to add any additional thoughts?

Susan Glasser: I mean, look, I think this is a really – it’s striking how quickly we’re getting to the heart of it actually, interestingly. And my sense is, actually, there is a lot of consensus here including, you know, perhaps we weren’t really disagreeing. To me, I see that military engagement as a success story but also kind of the challenge, which is to say perhaps it’s a lagging rather than a leading indicator. That may well be something that as you look going forward you can turn that deep engagement that is a product of this post-9/11 reframing of American national security and turn that into the political conversation and the values conversation that we are now having that we didn’t need to have a decade ago.

Susan Glasser: I mean, that is the thing that everybody here is recognizing there is a shift and, you know, your frame is we’re not talking compliance anymore. Mine is essentially that we are back to debating first principles in our society. This is one example, not the only example, of that. And I don’t think in any way – I certainly didn’t mean to diminish the accomplishment. If anything, to say looking at that perhaps a source of public support and a new kind of political commitment, essentially. You know, we’re used to thinking not only of our commitment to international humanitarianism, but also to the U.S. military, almost as something that there’s consensus on our society.

Susan Glasser: And, you know, the political model that springs to me – and, again, you could see this as positive or you could see it as worrisome – is from the very beginning of this presidency when you had a president who came to office explicitly disavowing the international commitments that the United States had made, and saying that he was an advocate of torture. And it was the military and the defense secretary who literally had to persuade in public view – (laughs) – you know, the commander in chief that, in fact, putting aside as a rule of law, but
simply as a practical matter, right? The argument that was very interesting that Secretary Mattis made to President Trump was not, well, this is the law and we’ve agreed to this, but that it protects our soldiers, it protects our country to do this. That it’s a form of sovereignty, you know, effect. So that was a political iteration of it. But, you know, not only is Secretary Mattis gone, but the people that you mentioned as the guarantors of this consensus – Senator McCain, General Dunford – are also leaving us.

Susan Glasser: And I think that reflects something true about the political conversation, which is it’s not moving in the direction that, you know, I would imagine the people in this room want it to move. And it’s moving in the opposite direction. We are farther away from that in the last two years than we are closer. So that just is where I come back to the idea that it’s not just words, and that events and actions are taking place that put us in a different place than we were before. And I have to say, though, I’m very encouraged to hear that this is – this is where your thinking has already gone in terms of, you know, what’s required for this different moment in Washington, because it sounds to me like, you know, yes. (Laughs.)

Stephen Morrison: Cully, any thoughts? And then we’re going to turn to the audience for a few questions before we close. Cully.

Charles Stimson: Yeah. So, as a person whose paycheck is paid by a 501(c)(3), I can’t make any political comments. But I can talk to the policy and what I see. First off, what I have noticed – and I mentioned this to you two in the green room, in the time I’ve worked with and had great admiration for the ICRC since about late 2005-2006, is that every time there’s a change in Congress, every time there’s a change in administration they are naturally concerned that their access and/or funding might suffer. And that hasn’t happened. And that’s a good thing. It speaks to the deep relationships that you and your team have built on the Hill over a long period of time. And of course, I mean, when you think about it, 50 percent – in other words – to say it differently – only 50 current senators voted for the 2002 Iraq AUMF. The other 50 weren’t even in the Senate. And so there’s a lot of constant reeducating.

Charles Stimson: And so that’s one quiet but very strong signal that the respect for not only the ICRC but for IHL exists, in part because of the constant drumbeat of reeducation and public discourse, which was niche, and now I think it’s pretty broad-based about the importance of IHL, and the reflection of IHL in our – in our rules and regulations. You know, if you take – if you – if you step back – and I know it’s hard for some people.

Charles Stimson: But if you step back from the last five years, four years, two years, pick your short period of time – 10 years. And you look at the arc of the challenges to IHL since those go back to ’49. I mean, what has – what has that – what has IHL succeeded at despite totalitarianism? Despite different forms and flavors of
nationalism? Despite Marxism, despotism, jihadism – fill in the -ism you want? The -isms change. The norms and values don’t.

Charles Stimson: And so if you can project past the current administration, if that’s not your cup of tea, to the next administration – President Fill-In-The-Blank, or the next president – what matters is that people in this room and allies of ours who believe that there is dignity in every human being, wherever they’re born and live, which I think what we’re talking about, that organizations such as the ICRC, which is on the pointy end of the IHL spear, and other allies, are out there making the case for human dignity, and that the implementation of the human dignity, however challenging it is – and I do not envy your job, Peter. I wouldn’t even travel to half the places you travel without a few Marines next to me. But we need to be able to make the case.

Charles Stimson: And I’m cautiously optimistic that with the change in Congresses and the change in administrations, the fact that the ICRC is supported and IHL is still growing as a matter of discussion in civil society – I know there’s challenges. I mean, listening to your opening remarks makes me cringe at the thought of what if my daughter or my son joined the ICRC and was working out in the field, the danger they would be in. And so I applaud you for what you’re doing. But I think we need to take a broader historical view of the situation.

Stephen Morrison: Thank you. We have just enough time for one quick round of comments. What I’d ask is just put your hand up. We’ll bring a microphone to you. Right down here, Sammy (sp). Please identify yourself and be very succinct. One comment or question, please.

Q: (Inaudible.) Thank you for your presentation. I am Ethem Coban from the American University Washington College of Law.

Q: My former supervisor was Professor Michel Botha (sp). So my question will be very technical. (Laughter.) Do you think that the failure of not conferencing competence status in the additional protocol to regulating non-international armed conflict could be seen as the main source of the increase of dehumanization of warfare, since the collapse of the Berlin Wall? Thank you.

Stephen Morrison: We have a hand up back here. Any others?

Q: Hello.

Stephen Morrison: Yes, sir.

Q: Thank you for the talk. My name is Kunio Kikuchi.

Q: And I’d like to talk of Mr. Cully’s reference to historical precedence. I am of a generation when the most powerful country in the world crushed the Asian military force 75 years ago. And it was done by an eight-month campaign of indiscriminate aerial bombing. And I still don’t know if the Red Cross ever made a comment about how cruel and dangerous that was to the rest of humanity.
And there was a lot of lessons involved in it. I was struck by Susan first mentioning about 13 people being killed by terrorists somewhere, but she didn’t mention anything about aerial bombing in Yemen which killed way more civilians. Perhaps we should pay more attention to the – or, my question is, shouldn’t we pay more attention to the impact of aerial bombing, which is the biggest killer? And only a few countries have the ability to do so. Thank you.

Stephen Morrison: Thank you. Any other comments? Janet?

Q: Thank you all very much. My name’s Janet Fleishman with the CSIS Global Health Policy Center.

Q: Peter, you have spoken out recently, as Steve alluded to earlier, about the importance of addressing sexual violence in conflict and humanitarian crises. And I wonder if you could speak a little bit more about why that is such an essential priority now, and what we have to do to elevate that issue in the humanitarian response.


Q: My name is Shannon Orcutt. I’m with Save the Children.

Q: So I feel like I wanted to recognize the fact that children in war are facing increased violations. And IHL is not quite doing enough to protect them. We’ve seen since 2010 grave violations that have been verified by the U.N. against children triple. So – and despite this, in the U.S. we’re seeing an administration where international rules and norms designed to protect civilians in conflict, such as the Arms Trade Treaty, removing our support for that. On the Global Compact on Refugees – playing an antagonistic role when it comes to the kind of final stage of voting in that process. So I’m wondering how – in this context, how can we do a better job of ensuring that IHL is protecting children in these contexts? Thanks.

Stephen Morrison: Any others? Yes, right here. Then we’ll come back to our speakers.

Q: Thank you. I just wonder if you could speak to 3 million people in concentration camps currently. Have you asked for access to the thousands of camps and prisons?

Stephen Morrison: Where specifically?

Q: Xinjiang China

Charles Stimson: Peter, I think many of these questions were directed to you. (Laughter.) So I’m going to turn back to you to treat them. We’ve got five different questions.

Peter Mauer: Yeah. Let me just maybe first say there is a – I think we should not try to sort of find an origin of all the problems in a lack of mechanism here or there or a lack of a normative framework here or there. We all recognize, I think, in that room,
and also through the discussion this morning, we are in very complex environment and we have to do conjunct effort to improve on the normative framework, on the implementation of the normative framework, in trying to limit the dynamics of violence with which we are confronted and which cause so impactful and systemic problems with which we are operating.

Peter Mauer: So this shouldn’t discourage you to make research on how you fix either the norms, the mechanisms, or the strategies for implementation. But I wouldn’t sort of offer one reason which either fixes it all or a reason which is at the origin of all the problems. I think we are in too much of a complex environment.

Peter Mauer: I’m sometimes confronted with this question. And at least three of the five questions basically go back to the point, have you expressed yourself on this? Have you asked this or that? I mean, I think that’s not the point. You know – and I have alluded to this morning what our basic strategy is. It’s engagement with belligerents to ensure respect and to help them respect international humanitarian law.

Peter Mauer: For obvious reasons, this entails, to a large extent, diplomatic and confidential engagement with those belligerents. And that’s what we do. And the measurement for us is not whether we speak out against something. We may speak out at certain moment when we think that we have exhausted diplomatic and confidential tracks, and we may speak out occasionally also to advocate for respect or to express our frustration for disrespect.

Peter Mauer: But I encounter that in many places. And I really also wanted to impress on you that the measurement of engagement is not necessarily a public declaration of where you think violation happened.

Peter Mauer: With regard to also demanding access to places of detention in the world, let me just remind yourself, all of you, on what the legal landscape is under which we operate. The legal landscape is that ICRC has a conventional right to ask for access to prisoners of war in international armed conflict. Even in non-international armed conflict, this right is not enshrined. It has to be negotiated by consensus of the respective parties.

Peter Mauer: And not to speak outside the realm of either international or internal armed conflict, we are only be able to operate, and we may have access if there is an interest and if there is consent of a country to give us access and to have ICRC work in detention facilities. What we put up as ramification is that we have conditions under which we accept to go into detention facilities. And you know that we don’t go and won’t go into detention facilities just to go there, but we want to go also to improve the situation. And this is dependent on our ability to interact with prisoners individually and confidentially and without witness.

Peter Mauer: So there are ramifications from both sides, from ICRC’s side, what we are ready to do in order to visit detainees. And there are ramifications from countries which limit our possibilities to even demand by law access to detention facilities. So I just wanted to impress you on that.
Peter Mauer: Just fun fact, interesting figures. At the present moment, the prisoners of war that ICRC visits, according to the Geneva Conventions, are less than 100 in the world, while we visit more than 900,000 prisoners by having negotiated consensus with more than 100 countries in the world who allow ICRC access to detainees.

Peter Mauer: So you see the discrepancy also between when we operate within the strict legal framework of international humanitarian law and how the organization has evolved to respond to problems, to engage with states, to negotiate consensus on certain policies and surfaces and licenses to operate. And there is this discrepancy we have always to consider.

Peter Mauer: Let me say something about sexual violence. It’s a big debate, I think, in the humanitarian community, and not least within ICRC as well. Why is it important, and what can we do?

Peter Mauer: I think the why – why it is important is really a big learning process also for the institution, because sexual violence, contrary to many other forms of violence, is a hidden form of violence which doesn’t pop into your eyes as aerial bombardment or illegal use of weapons. Sexual violence is a hidden crime which has its intricacies and is difficult to find.

Peter Mauer: But once you operate under the hypothesis that it takes place and you are looking for evidence, you see that it is most – one of the most prevalent problems of violations of legal frameworks that we are encountering. And that’s the reason why we are convinced today that it has to be an institutional priority.

Peter Mauer: How do you deal with it? I think the second recognition is on our side that we can’t deal with it in the usual way because it is not a violation which carries the usual mechanisms. Because it is, in many respects, a hidden violation, we can’t, for instance, do proper needs assessment on sexual violence, because in order to have the trust of the victims and to find out what the problem is and to define policies to address and practice these problems, you need other methodologies.

Peter Mauer: And I think that’s the core of the challenges with which we are confronted. We deal with a hidden pattern of violence which – in which the traditional mechanisms and approaches of humanitarian assistance, which are valid for health and water and shelter and everything physical, is not valid in that sense. And that needs a different approach.

Peter Mauer: And I think we charter our way forward in trying to hypothesize, to do pilot projects, to find practices which work, to find new and innovative approaches. And I think the big problem at the end of the day is that we are in another category. But once you start with the hypothesis that it is a problem, then you will find the problem and it is a huge concern.

Peter Mauer: I didn’t respond to all of the questions, but I think I responded to many of them.
Stephen Morrison: Thank you, yes.

Stephen Morrison: We’re getting to the end here. What I’m going to do is ask – start with Cully, Susan, Peter, to close by taking a minute to offer your thoughts on where do you find the greatest hope in this situation that we face. I think we’ve heard – we’ve had a very rich conversation today and we’ve heard extensively from Peter the nature of the challenge. And it is daunting. It is aggravated. It’s perhaps not moving in the right direction by most accounts. So where do you find hope?

Stephen Morrison: Cully.

Charles Stimson: Well, thank you again for hosting this. Actually, it was something that Peter said a little bit ago that I’ll start with, and that is when you alluded to a continuing and fruitful dialogue in the executive branch, you know, we – when I had the privilege of being that person who had those discussions, I always said to Geoff Loane you help me do my job better. And I meant it because it was true. And I think all of the other JASDs (ph) and people at State and elsewhere felt that was true, too. We may have had differences on the margins, but we benefited from that.

Charles Stimson: And so I think my glass-is-half-full comment is that because we enjoy a constitutional republic where the rule of law ultimately matters over the long haul – you know, we have a First Amendment that allows for conferences and discussions like this across a wide variety of opinions – and we have a Congress that can’t agree on anything, that water is wet and the sun starts up in the east, but they can do a consensus that IHL matters – you know, Cory Booker to Young; that’s a pretty wide gap, but clearly violently in agreement on something that is important, that matters to all of us.

Charles Stimson: And I think, you know, to my more pragmatic point that I made earlier, is that we are in a different place institutionally, especially on DOD-centric – but I’ll add State to it as well – than we were back in 9/11, where there’s a very rich and ongoing vibrant debate about the applicability of the norms and the Geneva Conventions to emerging technologies, and new ways of confronting privacy issues and the rest of it, and war. That’s healthy. And so I think that’s why I remain cautiously optimistic.

Stephen Morrison: Thank you.

Stephen Morrison: Susan?

Susan Glasser: Well, thank you, and I appreciate the exercise of being optimistic. And also, I really do just want to thank you for your work – (laughter) – and to all these good conversations.

Susan Glasser: But I will say I don’t – I don’t disagree. And in fact, actually, and particularly on this last point, is a genuine reason for optimism, and I do share it, which is the institutionalization and the embedding of these – these are values, of course, of international humanitarian law that are consistent. They are American values.
And ultimately, you know, the – if we are able, and I certainly hope that we are, to look back upon this period in a way that gives us hope, what we will look back on and we will see is not only that these are American values as well as international values, but also that the exercise of the debate itself and this return to first principles, of course, is what each American generation has had to do in order to make those institutions and those values its own. And really is our history, or it’s one way of looking at our history.

Susan Glasser: And I don’t – I don’t rule that out as the – as the outcome here. I think, it seems to me, that you had already reached long past the danger point over the previous, say, decade, decade and a half, where institutions and frameworks and alliances were continuing on without a shared consensus about, you know, what does NATO mean to me today; why, you know, is the U.N. relevant or does it even function. And everyone understood there was no consensus for reforming those institutions or even having the conversation. We’re having the conversation. I find that we’re having the conversation about journalism and how it’s going to survive the fragmentation and disruption of its business models in a way that is probably a very healthy thing. Because if each generation doesn’t own these things, it doesn’t matter that we had 70 years of the Geneva Conventions if we don’t have a Geneva Convention that people today embrace.

Susan Glasser: So I do actually find that to be a positive. But I’d rather be looking at it from the vantage point of 20 years from now and saying, OK, well, that worked out. (Laughter.)

Stephen Morrison: Peter, you get the closing bell here.

Peter Mauer: Two, two-and-a-half years ago we did kind of a global poll in 17 countries, some of them at war and some of them not at war, on the understandings of people about the Geneva Conventions, and we had a sample of more than 30,000 people that we asked what they thought about the Geneva Convention and what their attitude was toward the Geneva Convention. And I would close with the result of the poll, which are on one side very positive and on one side maybe a challenge in particular for this country.

Peter Mauer: The positive result of the poll is that in all countries in conflict we have skyrocketing approval and knowledge rate and support rate about the Geneva Convention. So this is not reflecting an abstract normative system far away from people. People know what is right and wrong in a war environment to which they are exposed and they want the law to be respected. And what my hope is and what we see each and every day in the context in which we operate is that people do engage – societies, civil societies, communities, leaders do engage that the law is respected, and that’s very positive.

Peter Mauer: The slightly more disconcerting – and that’s the reason why I dare to say it – is that the worst in the poll were Switzerland and the United States – (laughter) – where the Geneva Conventions were most broadly questioned and most ill-understood. And I think you can take that as a positive or a negative thing. The positive thing is probably if you don’t are exposed to war you probably don’t
care too much on what the legal system about the war is. And that’s positive that people don’t need to know what the details of the Geneva Convention is and don’t need to engage in a society like Switzerland or the United States for the respect of international humanitarian law. The negative point is that they don’t know a global framework which has – it’s important, I think, in today’s world, and which is relevant in its effects and in particular the effect of this respect also to the society which do not so broadly know the law.

Stephen Morrison: Thank you.

Stephen Morrison: Well, Peter, thank you so much for taking time to be with us this morning, and for all of the leadership and commitment that you represent on this really important agenda and the organization that you represent. We’re all very grateful to you and to your colleagues, and we look forward to welcoming you back here again soon. The door is always open.

Stephen Morrison: Susan, we’re great admirers of your work, and we’re thrilled and you would come and be with us here and share with us.

Stephen Morrison: Cully, thank you so much. I apologize for neglecting the JAG career piece, which was my omission.

Stephen Morrison: Please join me in thanking these three wonderful speakers. (Applause.)

(END)