

OPINION NOTE

International law and armed conflict in dark times: A call for engagement

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Abstract

This Opinion Note highlights the international humanitarian law (IHL) provisions mandating dissemination of the Geneva Conventions and the Additional Protocols to the civilian population. In referencing three dilemmas concerning contemporary challenges to international law in armed conflict and how each of those dilemmas may result in a “breaking point” or a “turning point”, the author argues that it is vitally important not only for armed forces but also for the general public to learn – and actively engage with – IHL both during war and in (relative) peacetime.

Keywords: IHL, dissemination, compliance, contemporary challenges.

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The world seems to be going through an especially grim period. Today, there are four “level 3” emergencies – defined as major sudden-onset humanitarian crises triggered by natural disasters or conflict that require system-wide mobilization around the world – spanning the Central African Republic, Iraq, South Sudan

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and Syria, not to mention the Ebola outbreak affecting West Africa.¹ According to some estimates, at the end of 2013, 33.3 million people were internally displaced due to conflict and violence – a record high number since such statistics have been maintained.² As the UN Secretary-General has recently said, “[t]he current state of the protection of civilians leaves little room for optimism”.³

There is, of course, always a tendency to think that one’s own era is the most challenging and presents the greatest threats to – take your pick – law, democracy, equality, and so on. To a certain extent, we all fall into this trap of thinking that our times are the most salient or the most meaningful. But the indicators noted above and others, particularly those focusing on armed conflict and humanitarian need, suggest that we are – today – living through a particularly complex and difficult period.⁴ There is also a feeling amongst many that things are getting worse, not only in terms of actual events but also in the way that the law restrains those in power.

In this Opinion Note, I would like to discuss where there may be opportunities for real change in the legal fabric, and where all of us might play a role in what international law means to the future of armed conflict. I would like to highlight an aspect of international humanitarian law (IHL) that is rarely the focus of academic inquiry or much urgent attention: the dissemination of IHL to the civilian population. Jean de Preux foregrounded part of my argument when he wrote, in 1967, that:

Dissemination of knowledge of the Geneva Conventions is not merely a long-term task – it is a permanent one. One age group succeeds another; generation succeeds generation; the students become teachers and forgotten lessons of the past fade into the background of a past which is itself forgotten.⁵

The obligation to disseminate IHL is rooted in States Parties’ duty to respect and ensure respect for the Geneva Conventions in all circumstances.⁶ In each of the

- 1 Kate Brannen, “Countries in Crisis at Record High”, *The Cable: Foreign Policy Blog*, 15 August 2014, available at: <http://foreignpolicy.com/2014/08/15/countries-in-crisis-at-record-high/>; Sayre Nyce and Patrick Duplat, “‘L3’ 101: The Basics of Level 3 Emergencies”, *International Rescue Committee Blog*, 22 September 2014, available at: www.rescue.org/blog/l3-101-basics-level-3-emergencies (all internet references were accessed in April 2015).
- 2 Sebastián Albuja et al., *Global Overview 2014: People Internally Displaced by Conflict and Violence*, report, Norwegian Refugee Council, Internal Displacement Monitoring Centre, Geneva, May 2014, p. 9.
- 3 Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc. S/2013/689, 22 November 2013, para. 8.
- 4 See, e.g., Annie Kelly, “Humanitarian Workers Unprepared for Decades of Conflict, Warns UNHCR”, *The Guardian*, 30 April 2013, available at: www.theguardian.com/global-development/2013/apr/30/humanitarian-workers-unprepared-decades-conflict.
- 5 Jean de Preux, “Progress in Dissemination of Knowledge of the Geneva Conventions”, *International Review of the Red Cross*, Vol. 7, No. 71, February 1967, p. 70.
- 6 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art. 1; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Art. 1; Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Art. 1; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 1 (common Article 1).

four Geneva Conventions of 1949, “[t]he High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries”.⁷ The International Committee of the Red Cross’s (ICRC) Commentary accompanying the Fourth Geneva Convention (which generally relates to the protection of civilians in international armed conflict) emphasizes – in the mode of political philosophy – that in addition to being disseminated to military personnel,

[t]he Convention must also be widely disseminated among the population so that its principles are known to all those who may benefit from it. *It is possible to go even further and to say that men must be trained from childhood in the great principles of humanity and civilization, so that those principles take deep root in their conscience.*⁸

Around a quarter of a century after the adoption of the 1949 Geneva Conventions, States further refined and expanded these obligations. In Additional Protocol I, States undertook to disseminate the law “to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population”.⁹ These provisions were aimed, as stressed by an expert during the Final Plenary Meetings of government experts in 1972, at disseminating IHL at the national level “so as to reach all sections of the population and create a ‘collective state of mind’”.¹⁰

Dilemmas

I will focus on three dilemmas currently facing international law in armed conflict. These dilemmas, in my view, raise complex questions: will the law serve as a predictable, straightforward and universally applicable set of rules that members of the armed forces and others can apply in situations of armed conflict? And will the law protect war victims? I see each of these dilemmas as potentially soon facing a “turning point” or a “breaking point”.

By “turning point”, I mean the potential moment when States and their publics recognize that the dilemma poses new challenges that were not

7 GC I, Art. 47; GC II, Art. 48; GC III, Art. 127(1); GC IV, Art. 144(1).

8 Jean Pictet (ed.), *Commentary on Geneva Convention IV relative to the Protection of Civilians in Times of War*, ICRC, Geneva, 1958, p. 581 (emphasis added).

9 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (AP I), Art. 83(1). Pursuant to Article 19 of AP II, the “Protocol shall be disseminated as widely as possible” (emphasis added). Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1987) (AP II), Art. 19.

10 ICRC, *Report on the Work of the Conference, Conference of Government Experts on the Reaffirmation and Development of International Law Applicable in Armed Conflicts* (Second Session), Vol. 1, Geneva, July 1972, p. 201, para. 527.

necessarily anticipated during the drafting of international humanitarian law. Then, based on that recognition, those constituencies will adapt, and potentially even transform, IHL in a way that addresses these new developments while retaining the core spirit and purpose of the law, including to protect those who are not or are no longer participating in the fight.

By “breaking point”, I mean the potential moment when, faced with these dilemmas and tempted by the notion that the old law can no longer adequately regulate new problems, States no longer agree on the elementary foundations of IHL. Flowing from that lack of agreement, the legal framework will lose its capacity to meaningfully constrain force. Armed actors will no longer share an understanding of the set of rules applicable in armed conflict. As a result, the protective regime as we know it will collapse – perhaps to make way for something new, or perhaps to usher in an era of fragmented and atomized norms applicable in armed conflict.

After discussing the dilemmas and the directions in which I think each of them could go, I will return to the notion of dissemination of IHL in these turbulent times. My main suggestion is that dissemination is imperative to leading us toward turning points and away from breaking points.

First dilemma: The principle of distinction under IHL

The first dilemma is whether the blurring of the line between civilians and combatants on the contemporary battlefield will ultimately degrade the core rule of distinction in IHL, often thought of as the foundation of civilian protection in armed conflict.

Traditionally, IHL sees the battlefield as clearly divided between those things and people that can be lawfully targeted and those that cannot. It does so for a simple reason: it is militarily advantageous to defeat and destroy certain people and property in order to win the battle, but there are also people and property that have nothing to do with the fight, and the latter are protected from direct attack. In this way, in an international armed conflict members of the armed forces could not be held liable for conducting hostilities in conformity with the laws and customs of war – the so-called “combatant’s privilege”.¹¹ Combatants could be lawfully targeted based solely on their status as combatants. In the law, civilians are – purposefully – defined generally in the negative. They are those who are not combatants. The drafters were very careful to keep the rules simple and clear, stating that if there was any confusion regarding status, fighters should assume that people are civilians.¹²

11 See, e.g., AP I, Art. 43(2). For more on the debate on whether the “combatant’s privilege” should be extended to members of organized armed groups in non-international armed conflicts as a matter *de lege ferenda*, see Claus Kreß and Frédéric Mégret, “Debate: The Regulation of Non-International Armed Conflicts: Can a Privilege of Belligerency be Envisioned in the Law of Non-International Armed Conflicts?”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014.

12 See, e.g., AP I, Art. 50(1).

This binary distinction in IHL was meant to create a predictable and clear regime for everyone – for those who fight and those who are affected by the fighting. The distinction also allowed armed forces to explain to their publics their actions and their approach to targeting, as well as the framework they shared with their enemies.

Today, there is a great deal of pressure on this clear distinction. In conflicts in Afghanistan, the Democratic Republic of Congo, the Gaza Strip, Libya and Syria, we increasingly see civilians taking a direct part in hostilities. States have argued that the law governing when these civilians can be targeted due to their behaviour is unclear, and that the current law creates a system where people can take advantage of their civilian status to target their enemies. This is sometimes referred to as the “farmer by day, fighter by night” dilemma, through which people will ostensibly be able to abuse the cloak of civilian protection. In many conflicts today, the understanding of when a civilian loses her immunity from direct attack by virtue of her behaviour, and when a member of an armed group becomes targetable in the same way as a traditional combatant, is subject to significant scrutiny and is under great strain. The ICRC’s efforts to explore the relevant legal issues – as elaborated in the 2009 *Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL* – succeeded in many respects but, in doing so, also cast a spotlight on a very wide spectrum of seemingly reasonable interpretations of this question.

Turning point

In this dilemma, my conception of the turning point is that States, in consultation with their publics, would revisit the legal understanding of combatancy, exploring whether some members of armed groups should be granted formal status and seeking to achieve a shared – and legally binding – understanding of the specific behaviour that would cause a civilian to lose her immunity from direct attack for such time as she takes a direct part in hostilities. This definition would take account of the changing security risks posed by those who function as “full-time” fighters, allowing States to meaningfully protect themselves from threats, would provide clear and simple rules for soldiers to implement when identifying lawful targets, and would also provide civilians with a clear understanding of what they must do in order to ensure that they do not lose their immunity from direct attack. This turning point would take into consideration not only the changing demographics of the battlefield but also the fact that targeting decisions are subject to more intense scrutiny and monitoring than ever before, as civilian casualties are counted down to the person in an increasing (though still relatively small) number of contexts and as video and photographic evidence of attacks is increasingly often available to the world within hours of a strike.

Breaking point

The breaking point here might be that the existing consensus (however flawed) on IHL’s core conception of the distinction between combatants and civilians, between

those who can be targeted and those who cannot be, will break down, where some States will define their targets in one way (and often in secret) and other States will do so according to a different set of criteria. Soldiers of various national armies will learn different and confusing definitions of status on the battlefield, definitions that may not be shared with their allies. In this outcome, civilians would be left to rely on their wits and whatever information they could piece together in order to try to keep themselves safe and separate from those being targeted by enemy forces.

Second dilemma: Humanitarian access

The second dilemma focuses on whether humanitarian access and impartial assistance as understood in IHL should give way to contemporary security concerns and the desire to prevent resources from reaching terrorists. The dilemma highlights the question of whether it is practical to continue to allow independent humanitarian organizations to reach those in need across fighting lines and in dialogue with all parties to conflict.

In the Geneva Convention of 1864, the drafters laid down the rather radical idea that States at war with one another, States seeking to destroy each other's armed forces, must respect the roles not only of military medical personnel but also of the inhabitants of the territory who, on their own initiative, bring help to wounded or sick combatants irrespective of nationality.¹³ In other words, in order to meaningfully protect wounded combatants, States agreed to allow a group of people who have no relationship to the fight (other than their proximity to it), a group of people whose only ambition is to help those in need, to *enter into the battlefield* in order to provide this assistance. It demanded of States (which were not necessarily inclined to allow such intervention) that they trust that there could be a space for life-saving assistance and medical care which would not threaten their military objectives and which would have to be respected by all sides. We sometimes take this idea for granted today, but it is crucial to remember that the notion of humanitarianism, of the efforts of volunteers and doctors and nurses to reach those harmed by armed conflict, was a new one as a matter of law between warring States a century and a half ago.

Today, this basic idea is under a tremendous amount of pressure and is being challenged in many quarters.¹⁴ Some argue that the threat of terrorism has simply made the Geneva Conventions' notion of humanitarian action a luxury that can no longer be afforded. In this view, the risk that *some* of the benefits of humanitarian relief could possibly fall into the hands of terrorists controlling territory demands that humanitarian action be tightly controlled, monitored or

13 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva (signed 22 August 1864), Art. 5(1). Article 10 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (signed 6 July 1906) extended protections for duly recognized and authorized personnel of voluntary aid organizations, so long as they were assimilated into the military medical service and were subject to military laws and regulations.

14 ICRC, *International Humanitarian Law and Challenges of Contemporary Armed Conflict*, Doc. No. 311C/11/5.1.2, Geneva, October 2011, pp. 48–53.

even stopped.¹⁵ Others argue that, given the challenges of contemporary conflicts and the need to ensure that populations living under terrorists' control are "de-radicalized", we must bring humanitarian action under the control and oversight of security actors, and ensure that humanitarian goals are in line with national security objectives. Others simply argue that humanitarian action is too beneficial to the enemy, that it provides succour to those unfortunate enough to live under the control of terrorists, and that this prolongs their rule. We see an example of this type of thinking in Syria, where President Assad has denied the entry of humanitarian actors and medical supplies into rebel-controlled areas, arguing that their services would benefit terrorists.¹⁶ We may also see this in counterterrorism regulations that curtail the work of humanitarian organizations in territories controlled by designated terrorist groups, or in States that, it seems, increasingly paint humanitarian efforts as a threat to their sovereignty.¹⁷

Turning point

Here, I imagine the turning point is that governments, humanitarian organizations, the ICRC and the public will engage in a conversation about what humanitarian assistance is and why it matters. There will be a renewed engagement with what is at stake if humanitarian space diminishes to the point that efforts to work with all parties to conflict in order to ensure that the wounded or sick, whether military or civilian, have access to life-saving relief are constantly weighed against a zero-sum understanding of security. Recalling that the drafters of IHL and the founder of the Red Cross understood that every State at war may be compelled to see all humanitarian efforts as a threat to its military goals unless specific legal protections are laid down, the turning point here may well be that, looking at situations like South Sudan and Syria, we demand that States reaffirm and respect a space for principled humanitarian assistance. The turning point here might involve a reassertion of these core principles, and a strengthening of the law that undergirds the provision of life-saving aid to those in need by impartial and, often, independent actors.

15 18 USC 2339B (prohibiting the provision of material support or resources—except medicine (but not the practice of medicine) and religious materials—to designated foreign terrorist organizations); *US v. Shah*, 474 F.Supp.2d 492, 2007, pp. 498–499, holding that para. 2339B is not unconstitutionally vague as applied to the conduct alleged against Dr Sabir in the indictment (namely, that Dr Sabir conspired to provide, attempted to provide, and provided "medical support to wounded jihadists" including in the form of personnel (himself) and expert advice and assistance) and reasoning in part that "Sabir is not charged merely for being a doctor or for performing medical services. Here, Sabir is alleged essentially to have volunteered as a medic for the al Qaeda military, offering to make himself available specifically to attend to the wounds of injured fighters. Much as a military force needs weapons, ammunition, trucks, food, and shelter, it needs medical personnel to tend to its wounded."

16 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/28/69, 5 February 2015, Annex II, pp. 59–60, paras 261–264.

17 Jessica Burniske, Naz Modirzadeh and Dustin Lewis, *Counter-Terrorism Laws and Regulations: What Aid Agencies Need to Know*, Humanitarian Practice Network Paper No. 79, Overseas Development Institute, London, November 2014.

Breaking point

The breaking point here would be that counterterrorism and security concerns overwhelm the notion of humanitarian access and assistance, and that neutral, independent humanitarian action is no longer possible in the armed conflicts of the future. In this vision, militaries or counterinsurgency experts would devise relief schemes based not on need but on political and security imperatives, and States experiencing armed conflict would reject humanitarians seeking to cross borders or front lines in order to reach civilians and wounded fighters. Humanitarianism here, and certainly the founding concept of the Red Cross/Red Crescent Movement, would be reshaped as subsidiary to security, measured constantly against risk and threat assessments, and increasingly shifted away from the core objective of providing life-saving assistance in the midst of conflict.

Third dilemma: The notion of a boundary-less battlefield

The third dilemma is the question of whether the concept of so-called “global non-international armed conflict” will crystallize in international law such that it becomes a separate recognized category of armed conflict under IHL. This dilemma is informed by the threat posed by terrorist networks with cross-border capacities and highly classified counterterrorism operations. This dilemma asks whether the current legal framework regulating sovereign States and the limitations on the scope of armed conflict will remain effective and legitimate in light of this threat.

Today, there is an innovative concept of armed conflict that some argue is spreading in acceptance. This is the idea that non-international armed conflict is not limited to internal or civil war but rather also encompasses the idea that an armed conflict – including the law of war’s more permissive standards on the use of lethal force – follows a member of an organized armed group wherever she may travel around the world, even to territories where protracted and intense hostilities are not taking place between the State armed forces and an organized armed group, or between such groups. This expansive notion of global non-international armed conflict, seemingly crafted more by intelligence agencies than by militaries, puts pressure on the rules as we know them in at least three ways. First, this notion of global/boundary-less non-international armed conflict is often framed in a way that seems to conflate the rules that seek to limit the ability of States to resort to force (including war) – namely, the *jus ad bellum* – and the rules that bind States *in war*—namely, IHL. Second and relatedly, the use of extraterritorial lethal force is often framed neither as (solely) a policing measure nor as (solely) part of the hostilities in an ongoing armed conflict but rather, if implicitly, as both law enforcement *and* war under the label of “global counterterrorism operations”. Third and partly as a result, this expansive notion of global non-international armed conflict purportedly allows States – based on their internal assessments of threats and their (often classified) understanding of the ability of other States to

govern their own territories – to use lethal force against targets far outside of the territory of the State where the hostilities giving rise to the recognition of armed conflict are occurring.

We see this dilemma most vividly in the much-discussed US “targeted killing” programme, apparently devised by the Central Intelligence Agency. But the notion has far greater implications than the drone strikes in Yemen or Pakistan or Somalia that make it into the news.

The question of whether non-international armed conflict is geographically limited to the territory of a single State where protracted and intense hostilities are occurring, and whether States may expand some concept of armed conflict to new characterizations such as “areas beyond those of active hostilities” or “non-hot zones”, goes to the very heart of how international law regulates the use of force and war. A US legal scholar and former Defense Department official recently captured part of this sentiment when she wrote that

today it has become virtually impossible to draw a clear distinction between war and not-war – not just because of bad-faith legal and political arguments made by U.S. officials (though we’ve seen plenty of those), but because of genuine and significant changes to the global geopolitical landscape.¹⁸

The United States recently put forward a version of this argument in presenting its legal bases for attacking targets in Syria.¹⁹ It was a clear moment for the international community – including other States – to weigh in on this innovative approach to determining the boundaries of armed conflict. Few States objected to the US legal understanding as such,²⁰ yet few appeared ready to vocally support such a broad conception of where armed conflict can go and how that conception can and should relate to sovereignty.²¹

Scholars, government officials and humanitarian actors alike understand that this dilemma is very real and raises exceptionally complicated questions about the purposes and legitimacy of international law to regulate the armed conflicts of the future, particularly in the effort to fight diffuse terrorist organizations operating across multiple countries.

18 Rosa Brooks, “There’s No Such Thing as Peacetime”, *Foreign Policy Online*, 13 February 2015, available at: <http://foreignpolicy.com/2015/03/13/theres-no-such-thing-as-peacetime-forever-war-terror-civil-liberties/>.

19 Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations, addressed to the Secretary-General, UN Doc. S/2014/695, 23 September 2014, stating, among other purported legal bases, that “ISIL and other terrorist groups in Syria are a threat not only to Iraq, but also to many other countries, including the United States ... States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defence, as reflected in Article 51 of the [UN] Charter ... when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks.”

20 But see “Russia: Airstrikes Must Be Agreed with Syria or Will Fuel Tension”, *Reuters*, 23 September 2014, available at: www.reuters.com/article/2014/09/23/us-syria-crisis-airstrikes-russia-idUSKCN0HI0OU20140923.

21 See generally the sources cited in Louise Arimatsu and Michael N. Schmitt, “Attacking ‘Islamic State’ and the Khorasan Group: Surveying the International Law Landscape”, *Columbia Journal of Transnational Law Bulletin*, Vol. 53, No. 1, 2014, pp. 8–29.

Turning point

Here, States would engage in an open, honest and transparent discussion – with their domestic constituents and with other States – regarding whether to recognize this new classification/category of armed conflict. A new treaty may emerge (or it may not), but States, through the process of this open discussion, would engage with their publics regarding the implications of this approach to armed conflict. In a democratic debate on these complex issues, they would need to justify an approach to armed conflict and targeting that may go far beyond the public's support for a particular war and that may leave a tremendous amount of authority in the hands of government leaders to decide when, where and according to what rules lethal force is used. Most importantly, perhaps, States would need to justify to their publics how such a legal concept, once unleashed to every State in the world (each presumably with its own understanding of terrorist threats and its own understanding of how broadly armed conflict ought to be defined), could – if at all – be limited through international law. States, pushed by their publics, would recognize their responsibility to articulate their positions on international law, not simply to remain silent. States would be compelled to be honest about how their developing conceptions may threaten IHL as we currently know it. I wonder if such a discussion would lead to a re-centering of international law and would de-legitimize the argument for global/boundary-less war by clarifying the longer-term stakes of such a transformation of existing rules.

Breaking point

Alternatively, some States may continue to put forward this expansive conception of global non-international armed conflict, largely behind closed doors and only in limited discussion with the public or its representatives. Over time, as the notion of global counterterrorism operations takes hold and is embraced by many other States, those States might forsake shared conceptions of the application of IHL and instead pick and choose when to apply IHL targeting rules anywhere in the world at any time. In this future war invoked at any time and in any place, civilians would come to understand that they could be considered wartime “collateral damage” anywhere. It would become impossible to know if, relaxing in a café in the capital city of a country apparently at peace, one is sitting next to someone who has been identified by some State somewhere as a commander of a terrorist group that poses an imminent threat, a threat that such a State has determined the territorial government is unwilling to address. This breaking point, taken to its logical end, could undermine the foundations of the law governing the resort to force and of IHL. The notion of a boundary-less battlefield might thereby render our ability to regulate warfare effectively mute in the face of shifting and secretive “targeted operations” that we can only hope will spare those unfortunate enough to be in their path.

Dissemination: A call for engagement

These are heady and difficult challenges, to be sure. They are not merely problems of enforcement of the law as it is written, but ask us what we wish the law to be in response to threats and battles that we have yet to face, wars and warriors that the drafters may not have anticipated or even imagined at the time of the law's creation. Some would argue that breaking points are necessary: that sometimes, the law simply cannot meet the realities of the day. I would like to suggest that we should not be intimidated into accepting this conclusion just yet, and to further suggest that this is where that often underappreciated role of dissemination of IHL to the civilian population becomes so important.

To reiterate the obligation to disseminate captured in the law, States “undertake, in times of peace as in times of war, to disseminate the text of the Convention ... so that the principles thereof may become known to the entire population”. As understood by the experts from Iraq during the Final Plenary Sessions of the 1972 Conference, “[i]nstruction should be adapted to the level of each person and should deal not only with the texts at present in force but with any shortcomings that may exist and the need for further development”.²²

It appears to be a unique move in international law to explicitly require that those in power not only comply with the law themselves but that they *ensure that their broader publics understand and study the law*. I would like to suggest that this bold, even audacious obligation – and the crucial work of the ICRC and the National Red Cross and Red Crescent Societies – has three functions for how we will, as a global public, address these dilemmas, and whether we will move in the direction of turning points. The first is the creation of a public that, through the act of studying the law, becomes vested in IHL's interpretation; the second is the development of empathy; and the third is the fostering of an increasingly interconnected global citizenry.

First, dissemination and the study of IHL – the study not just of the *rules* but *why the rules were created* – foster a public that is not just more knowledgeable but is also engaged in a dynamic conversation about the law, about power, and about how States can live up to the spirit and purpose of IHL. Dissemination activities aimed at the civilian population, in seeking to encourage the understanding and study of IHL even amongst schoolchildren, develop publics which feel that they have a stake in the law, that they not only have a vital voice in its interpretation but that this interpretation does and should matter to them. My sense is that this requirement to encourage the *study* of the law protects us against the impulse – an impulse that we have seen so vividly in the past fourteen years – of those in power to make decisions about warfighting and about IHL in secret, behind closed doors, often providing only minimal information to the public. Publics who have knowledge about IHL, who are

22 ICRC, *Report on the Work of the Conference*, Conference of Government Experts on the Reaffirmation and Development of International Law Applicable in Armed Conflicts (Second Session), Vol. 2, CE/SPF/1 (Proposal by Iraq Experts), Geneva, July 1972, p. 191.

conversant with the law and, most importantly, who feel that they are *part* of the law will speak out against this, will demand access to legal decision-making, will demand to be part of the conversation. Publics who see the Conventions as *theirs* will demand that States have integrity in clarifying their approaches and will not accept silence or evasion. I do not claim to know what outcomes this will lead to. I do not know what the law of the future will or should look like. But I believe that this expansive understanding of who IHL belongs to, and what organizations like the ICRC have done with their dissemination mandate, may lie at the very centre of ensuring that IHL remains a force for protection in the twenty-first century.

Second, I would like to suggest that dissemination activities do not only develop a public that has a stake in the law. They also encourage the notion of empathy in armed conflict. When you first learn IHL, particularly as a young person, you do not only imagine yourself as a soldier driving a tank down the street, or as a pilot in an F-16 deciding when to release a bomb. You also, perhaps even more readily, imagine yourself as a civilian, or as a wounded combatant. Dissemination activities invite you, as an elementary student in Geneva or a banker in Zurich, to put yourself in the shoes of the child whose parents are rushing to gather their belongings as they flee a neighbourhood that is being shelled; they ask that you imagine yourself as the detainee, relying on your captors to provide you with life-sustaining food and medical care; they welcome you to think about why we demand that soldiers must treat their wounded enemies as though they were their own fellow warriors.

Empathy can be a powerful force. Empathy, coupled with knowledge, can ensure that societies – publics that must support their States in fighting wars – demand that their governments abide by the basic protections that IHL requires, even when they unleash lethal force against their enemies. Empathy ensures that societies see other, foreign civilians not as nameless enemies or huddled hordes of refugees, but as people just like them.

At this point, you might say that I am overly optimistic about what people are capable of when they are at war, or when they are attacked. Here is where I think the third element of dissemination becomes so crucial. The law does not only require that a nation at war must understand and study the law. In fact, it is quite explicit that the obligations of the Geneva Conventions are just as vital to understand and share in *peacetime*.²³ By doing so, the obligation of dissemination evokes the idea of a global citizenry that is invested in the principles of the law. When one society is tempted toward breaking points, when one nation or group of nations is drawn to declare that the threats are simply too great or too new to indulge in the protections offered by a law drafted in previous centuries, there are other societies, other publics that can call for fealty to internationally agreed legal frameworks applicable in war. Knowledge of IHL compels us to raise our voices across national boundaries, and to understand that the decisions of our

23 GC I, Art. 47; GC II, Art. 48; GC III, Art. 127(1); GC IV, Art. 144(1); AP I, Art. 83(1). Art. 19 of AP II does not make a distinction between dissemination during armed conflict and during peacetime.

governments may affect the decisions of other governments – and that the breaking down of our commitments may cause a breakdown of the system as a whole.

International humanitarian law, this limited but revolutionary set of rules that seeks to protect humanity even when we are at our most violent and destructive, is approaching a fascinating and challenging moment. In many ways, we are being asked what the law means in dark times. We are living through an age where many settled concepts are being reopened and where many rules are being questioned. And we are living in an age where we see and know more about faraway conflicts than ever before: we see YouTube videos captured by civilians, satellite and drone images of targets, images of tragic atrocities committed by governments and by armed groups.

None of us can fully and accurately predict the outcomes of the dilemmas I have discussed here, or the many others that the application of IHL in armed conflict may face in the future. Whether we are close to turning points or breaking points remains to be seen. As I think about the role of dissemination to civilians in fostering a public that is more knowledgeable, more engaged, more empathetic and more connected, I believe that each of us has a part to play in the vital conversations we must have about the future role of the law in protecting those who are caught up in war. Each of us has a stake in these debates, and each of us will be affected by their outcomes. A premise underlying the dissemination obligations of IHL is that we must all *know* more in order to *demand* more.

Hidden in this modest body of international law is an exhortation to knowledge, a call to study and understand, a demand that we take part in the rules. As de Preux recognized nearly half a century ago, the task – *our* task – of disseminating knowledge of IHL is a “permanent one”.²⁴ To ensure a role for international law even in times of great brutality, we – the *public* – must fulfil that responsibility.

24 J. de Preux, above note 5, p. 70.

