

9

How Humanity Can Be Found in the Midst of Conflict: Even Wars Have Laws

Phoebe Wynn-Pope and Pip Ross

The laws of war and the Red Cross

Just over 20 years ago, in a small ramshackle town called Goma on the border of the Democratic Republic of Congo and Rwanda, there was the most unimaginable human catastrophe. It was the concluding days of the war that saw over 800,000 men, women and children killed at the hands of the genocidaires — in those final days of the war 1.2 million people crossed the border from Rwanda to what was then called. The aid community was ill prepared and the cholera epidemic that followed took the lives of 70,000 people in just three weeks.

I visited a Red Cross hospital in that god-forsaken place, and found compassion — compassion for the innocent victims of disease, and compassion even for the perpetrators of genocide. There was no judgement; there was only a common humanity between the staff and the sick, even between the living and the dead. With the Red Cross flag flying high above the hospital, and in a brief pause from the chaos that surrounded us, I was told a story that shone a little light into the darkness that is armed conflict.

It is the story of an emblem — not a logo, or a trademark, but an emblem that means ‘don’t shoot’ — with humanity, impartiality, and neutrality at its bedrock. It is the story of an emblem that protects in armed conflict and succours in peace. And ultimately it is a reminder of how the Red Cross and Red Crescent Movement’s humanitarian work to this day rests in large part upon its commitment to educating, to spreading awareness, and to increasing understanding among all people affected by armed conflict of the laws that protect the most vulnerable. It is critical that all people understand that even wars have laws.

The Red Cross emblem came into being with the First Geneva Convention in 1854, but its story began five years earlier in 1859 when Henry Dunant, a Swiss banker was travelling to a business meeting in Italy, when his driver took a wrong turn and took him to the vicinity of the battle of Solferino.

Solferino was a bloody battle — of roughly 300,000 men fighting it is estimated that 40,000 lay dead or wounded once the hostilities had ended. Dunant describes with horror and disgust in his memoir *A Battle of Solferino* the gruesome deaths and horrific injuries he witnessed:

Here comes the artillery... the guns crash over the dead and wounded, strewn pell-mell on the ground — the soil is literally puddled with blood and the plain littered with human remains.¹

Dunant witnessed the kinds of suffering that is, tragically, unremarkable in war. However, what was remarkable was Dunant’s response. He took it upon himself to organise bands of local women to provide the most basic of care — food, water, and simple medical treatment — to relieve the suffering of the wounded. He worked to record the words of those who knew themselves to be dying — last messages to let their loved ones know their fate. And he did this with the voluntary and tireless help of local women, whose names history does not record, but who deserve acknowledgement as the forerunners of today’s Red Cross

volunteers, without whom today's Movement would not survive. These formidable volunteers endured to provide assistance in a simple field hospital set up in a local church until the fighting had died down, and casualties had been either moved to safety or had died.

This work would have been noteworthy of itself, even had it been done in a disorganised or incoherent way. But what made it remarkable, even world-changing, was the set of principles Dunant insisted upon, principles that continue to underpin the work of the Movement today. The first principle was Humanity, forming the core of his motivation to address and alleviate human suffering. The next was Impartiality: Dunant was insistent that humanitarian assistance had to be provided based solely upon need, and without consideration of any national, religious or political affiliations. He and the women who helped him cared not what side the wounded had fought on, nor what atrocities might be attributed to them or to their counterparts. All were treated side by side, with care given based on whose suffering was greatest.

And so, even today, we give assistance not to those to whom we feel the most kinship, nor to those whose demands are the loudest, nor even to those we consider to be the most worthy recipients. Dunant allowed a single question to be asked when prioritising who would receive care: At this moment, whose need is the greatest? And this is perhaps the most revolutionary idea to characterise the Red Cross and Red Crescent Movement: the idea that, no matter what our role, our beliefs, our affiliations, or even our prior actions, we all share by virtue of our common humanity a right to basic dignity even in the worst of times.

Following his experiences at Solferino, Dunant returned to Geneva and dedicated his life to the promotion of humanitarian ideals. And so we return to the emblem and the evolution of modern-day international humanitarian law. For Dunant recognised that, for these humanitarian ideals to be realised, there would need to be universal agreement among all belligerent parties to a conflict

that those who perform difficult and dangerous humanitarian work in wartime must be shielded from direct attack, and should be allowed access to those who need them most.

In order to facilitate this, Dunant proposed the establishment of a universally recognised protective emblem that would be worn by military medical personnel and others, such as religious officers and humanitarian actors, whose role in conflict was the alleviation of suffering. The inverse of the Swiss flag, a red cross on white, was chosen as a symbol of Neutrality, the third core humanitarian principle, to signify that the bearer is apolitical and affiliated with no side to the conflict, but is merely present to alleviate the suffering of all. Along with the emblem, Dunant envisaged a network of humanitarian societies, present in all nations, and charged with providing neutral and impartial humanitarian assistance to all sides of all conflicts. And so the Red Cross Movement was born, and continues to this day.

The emblem is a visible manifestation of Dunant's second great achievement: the idea that the protection of the vulnerable in wartime cannot simply be a matter of charity, or reliant on goodwill on the part of combatants, but rather must be made legally binding upon all those who fight. Dunant, along with a group of colleagues in Geneva, took the revolutionary step of drafting the world's first binding treaty to set out limitations on conduct in war, limitations expressly designed to prevent and alleviate the kinds of tragic suffering he had witnessed at Solferino. This treaty, the first Geneva Convention, was both short and simple, containing only 12 articles, but set out the idea that fighters bear a humanitarian responsibility to distinguish between those who are fighting and those who are not; that once combatants are wounded or sick and no longer able to contribute to the battle, they acquire a newfound vulnerability and must therefore be protected from harm, treated with dignity and, where possible, provided with care. With this Convention, modern international humanitarian law (IHL) was born.

IHL is, simply, the body of law that protects those who are not or are no longer participating in the armed conflict (civilians, humanitarian workers, prisoners of war, and wounded or sick combatants), and that imposes limits on the means and methods used to wage war, in the interests of limiting suffering and protecting human dignity. It can be found in a rich and diverse range of treaties (including the four Geneva Conventions and their three Additional Protocols), in customary obligations derived from State practice, and in a growing body of case law from the various international tribunals. It is at its heart a pragmatic body of law, one that takes into account the realities of armed conflict and seeks to impose achievable limits on military practice. IHL does not seek to impede legitimate military goals, nor does it pass moral judgments on the legitimacy or otherwise of the use of force. Rather, it locates the most vulnerable, and places around them basic legal protections; intangible, and at times heartbreakingly difficult to enforce, but universally recognised by States, and often the strongest defence available to those who find themselves caught up in war. It bears mentioning that, while these specific laws happened to arise in their modern form in Geneva in the 19th century, the ideas they codify are truly universal in nature. Societies and cultures across the world and across the course of history have required limitations on behaviour and tactics in wartime, designed to protect people as well as objects that are valued, and to ensure that once hostilities are over, lives and communities can be rebuilt.

For example, in 634 AD, as the Muslim Arab Army set forth on the invasion of Christian Syria, Caliph Abu Bakr outlined rules for the conduct of his men. He said:

Do not commit treachery nor depart from the right path. You must not mutilate, neither kill a child or aged man or woman. Do not destroy a palm tree, nor burn it with fire and do not cut any fruitful tree. You must not slay any of the flock or the herds or the camels, save for your subsistence. You are likely to pass by people who

have devoted their lives to monastic services; leave them to that to which they have devoted their lives.²

These are rich and varied protections for the vulnerable in war, many of which can be linked directly to articles in today's Geneva Conventions. In Australia's own region, examples abound of traditional laws in Pacific societies, in place for generations prior to Dunant, that protect women and children, and grant safe passage to those who play no part in the fight. For example, both Fiji and Solomon Islands had traditional practices designed to warn civilian populations of impending attacks; namely, the exchange of heralds and the blowing of conch shells. These directly mirror the obligations found in Additional Protocol I to the Geneva Conventions, which require that civilian populations be given advance warning of attacks that may affect them, to allow them to flee or to adequately prepare to protect themselves. The laws that Dunant conceived and that the world has since embraced are not themselves the product of Swiss or even European values, but reflect principles and ideals that are central to all humanity — products of no single culture but the property of all.

Despite that, day by day the cruelty and brutality of today's conflicts are evident. In light of the suffering and brutality we witness, it is of course reasonable to ask what has happened to these humanitarian principles and the laws of war? Is it even possible, in today's world, to find humanity in the midst of armed conflict? Clearly, the challenges are enormous: the complexities of today's conflicts, the rise and increasing influence of non-state actors, the asymmetry of modern conflict, combined with increased access to pictures, news and daily reports from the battlefield, mean we are all bombarded with horrendous images of what appear to be violations of the laws of war. But despite these violations, in many instances armed actors do make an effort to distinguish between civilians and combatants, and do try to ensure that any attack made is proportional to the military advantage gained. Some examples include:

- Reports in the Australian press of fighter pilots cancelling air strikes as they have been either unable to verify the military nature of their target, or because their target has moved into villages, and therefore targeting is impossible to distinguish from the civilian population.³
- Many belligerent forces today are non-state armed actors that do not have the legal status required to sign or ratify international treaties that are only between states. Geneva Call is an organisation specifically working with non-state armed groups and encouraging them to sign a code of conduct, based on the principles found in the Geneva Conventions. Many groups have chosen to sign the informal code of conduct because of a desire to have some form of recognition of their capacity and willingness to abide by the principles of IHL; by agreeing to the basic principles of the laws of war in a code of conduct, they have an opportunity to increase their legitimacy, and to indicate that they are prepared to fight based on internationally agreed standards. Although the signing of such a document does not automatically result in compliance, Geneva Call observe that, by and large, once armed groups sign these commitments they tend towards respect for their contents.
- In Syria today, the Red Cross Movement talks to all sides of the conflict. This dialogue enables the Red Cross to provide food and other materials, restore water supplies, and support medical facilities for millions of Syrians on both sides of the battlelines, with this access granted in accordance with parties' obligations under the Geneva Conventions.
- In 2002, the first permanent International Criminal Court was established in The Hague. This Court is charged with the hugely difficult task of bringing the perpetrators of the world's most heinous crimes — war crimes, crimes against

humanity and genocide — to justice. As the first verdicts slowly roll through the Court, we are seeing a new era of accountability, one in which every armed actor, to varying degrees, must live with the idea that there exists a permanent body that may ultimately scrutinise their behaviour. Although there are certainly disparities between armed actors in terms of their likelihood of facing the Court (noting in particular the capacity of the permanent members of the Security Council to veto the Court's investigations should they wish to), the potential of the Court to enhance compliance with and develop norms of IHL is vast, should it be able to embed its presence in the international environment in coming years.

These are simple examples of international law in action. And while they may not seem much in the face of the atrocities we see on television and the atrocities in many parts of the world that we never see, they do represent a vision for a better world: a rule-based world that has a structure around what is, and what is not, acceptable conduct in armed conflict.

Since those early days in Geneva in 1864, the laws of war have expanded beyond recognition. In addition to the first Geneva Convention protecting the wounded on the battlefield, we now have three additional Conventions to protect wounded and shipwrecked soldiers at sea, prisoners of war, and, crucially in today's conflicts, civilians. These conventions have been ratified by every country in the world, making them universally binding, and form the backbone of modern IHL.

International humanitarian law is a body of law that continuously evolves and changes to reflect today's realities — issues that were neglected or unthinkable in 1863 and 1949 are clearly and meaningfully addressed in today's IHL landscape. For example, there are prohibitions on landmines and cluster munitions, legal recognition that rape is a weapon of war and a war crime, and

regulation of the sale and transfer of conventional weapons to prevent them from falling into the hands of those who would use them to commit atrocities, to name a few.

Despite the depth and breadth of modern international humanitarian law, the common humanitarian principles remain at the core of all these treaties. The purpose of the law is to ensure that the balance between military necessity and humanity is maintained, to ensure that those outside the fight — the wounded, sick, and civilians — are protected, and that needs for the survival of the civilian population are met.

The development of international humanitarian law has not happened in a vacuum; rather, it requires concerted effort on the part of those who bear witness to war to apply their learning, to work to further enhance the law, and to expand and broaden the humanitarian mission to reflect conflict's evolving realities.

Today, the Red Cross and Red Crescent Movement has expanded beyond its modest beginnings to become the world's largest humanitarian movement, operating in almost every corner of the globe. Moreover, it has, among all humanitarian actors, unparalleled access to the world's most vulnerable populations and to armed actors in conflicts. By virtue of the Movement's neutrality, and the trust that this engenders even in the darkest of settings, the Red Cross is often the last to be turned away, and at times the only organisation that has the opportunity to bear witness. However, the Red Cross Movement continues to work as Dunant worked at Solferino: not sitting in judgement, nor bringing people to account for their wrongdoings, but simply alleviating suffering wherever it is found.

Education and dissemination of the laws of war

In striving for a rule-based world such as that presented by the very presence of the laws of armed conflict, one of the most extraordinary things states did when agreeing to the Geneva Conventions and their Additional Protocols was to agree, in times of peace and

in times of armed conflict, to disseminate the rules of the Conventions and Protocols as widely as possible and to encourage the study of them both by defence forces and also by the civilian population.

This is an unusual obligation, unprecedented in any other international convention or treaty. It creates an obligation on states to make sure that not only in times of armed conflict, but also in peacetime, everyone — military and non-military alike — knows and understands the laws of war.

The question is why? Why did states feel compelled to include the need for broad public education and dissemination of the laws of war? The commentary from the international conferences that decided to commit states to this vast education enterprise drew a direct link between education and peace, between understanding and fellowship.

At the end of World War II, the United Nations Educational Scientific and Cultural Organisation's (UNESCO) Constitution noted that 'since wars begin in the minds of men it is in the minds of men that the defences of peace must be constructed'. Three years later the *Universal Declaration of Human Rights* considered that education should 'promote understanding tolerance and friendship among all nations, racial or religious groups'. The global importance of education was front and centre of the development of what was then, the new United Nations, borne from a desire — and let me quote briefly from the UN Charter:

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to promote social progress and better standards of life in larger freedom.

In 1968, the *Proclamation of Tehran*, at the International Conference on Human Rights, again espoused the idea that education should 'promote understanding, tolerance and friendship among all nations'. And the commentaries to the Additional Protocols to the Geneva Conventions tell us that from the beginning of the discussions, it was the unanimous view of the experts that the dissemination of the treaty rules was of primary importance, and that education was considered a better guarantee of respect for these rules than any sanction could ever be.

Central to the idea that even laws have wars are the core principles found in the Geneva Conventions that remain a constant 'reminder to everyone that the adversary too, is a human being'. The values found in international humanitarian law are key to enabling us as individuals to identify a common humanity that binds all the peoples of the world. Indeed, the obligation to disseminate the Conventions and their Protocols provides an opportunity to promote humanitarian values of common understanding not only among all nations, but also among all peoples.

States, by fulfilling their educational obligations under the Conventions and Protocols, can play a crucial role in building strong, stable, caring and compassionate societies. There are 190 Red Cross and Red Crescent National Societies throughout the world working tirelessly with their governments to this end. In 2010, Australian Red Cross devised an Even Wars Have Laws campaign to prompt public education about the importance of the Geneva Conventions, following a survey that showed that nearly half of all Australians believed that the laws of armed conflict make no difference in war. This level of scepticism may come as no surprise, but it is noteworthy to contrast the Australian responses with those from a global survey of war-torn countries, including Afghanistan and Liberia. In these countries, surveying people who had directly experienced the brutalities of war, up to 85% of respondents said that the Geneva Conventions had made a real difference in their protection.

Australian Red Cross works to achieve a more empathetic and strong society, a society that measures itself not by its wealth in riches, but by its wealth in compassion, inclusion, and protection for the most vulnerable. This is done through our programs and services, and also in the education and dissemination of international humanitarian law. For Red Cross:

peace is not simply the absence of war, but rather a dynamic process of cooperation among all States and peoples; cooperation founded on freedom, independence, national sovereignty, equality, respect of human rights and a fair and equitable distribution of resources to meet the needs of all people.

The Movement's principles are universal; the messages of humanity, impartiality, neutrality and protection for the most vulnerable are the same in every Red Cross Red Crescent office from Kabul to Melbourne. These humanitarian principles were born on the battlefield of Solferino, defined in Geneva, and adopted by the world.

Endnotes

- 1 H Dunant, *A Memory of Solferino*, 1862, ICRC.
- 2 See 'Under the Protection of the Palm: Wars of Dignity in the Pacific', ICRC, 2009.
- 3 See, for example, F Walker, 'RAAF aborted dozens of missions', *The Age*, March 14 2004, retrieved from <http://www.theage.com.au/articles/2004/03/13/1078594614500.html?from=storyrhs>