

REPORTS AND DOCUMENTS

Changing world, unchanged protection? Seventy years of the Geneva Conventions

Speech given by ICRC President
Peter Maurer to the Graduate
Institute, Geneva, 13 March 2019

: : : : : :

It's always a pleasure to speak at the Graduate Institute and with an audience in Geneva. There may not be a topic closer to the heart of the International Committee of the Red Cross [ICRC] than tonight's discussion. Our mandate to protect and alleviate suffering in wartime effectively stems from the Geneva Conventions of 1949, even if our history dates back further.

For me, this discussion is not about anniversaries or debates on legal phrasing; it is about protecting people from the worst of the wars which rage today. It is about laws which assert that as long as conflict remains a reality, there also must be a limit to suffering.

Seventy years ago in this city, a diplomatic conference was convened by Switzerland. The conference opened on 21 April 1949 at the old Palais du Conseil Général, nowadays the Uni-Dufour. It brought together representatives from almost all States at that time and with the ICRC present as an expert.

Fresh in the minds of those present were the enormous horrors of the Second World War. The battlefields and the Holocaust had brought humanity to the edge of the abyss and laid bare the glaring gap in legal protection for civilians.

States shared a strong resolve to never see such destruction repeated, and binding obligations to protect civilians – everyday men, women and children – were set down in international laws in a comprehensive way.

Together the world agreed that even during armed conflict there remain limits as to what we – as nations, communities, brothers and sisters – can do to each other. This was a powerful concept brought into conventional law.

So strong was the humanitarian spirit, and the determination to reduce suffering, that the negotiations lasted only four months. This is almost unthinkable in today's shaky multilateral system – but it also shows us what is possible when States take responsible action and have the courage to uphold principles.

The success was of course also the result of professional long-term engagement, which allowed the drafters and negotiators to formulate a legal agreement that connected recent history with experiences, and in doing so, to transcend time and space.

The process was also not without difficulty. It recognized the dilemmas involved, including the legitimate rights for States to security, designing international humanitarian law [IHL] to navigate between military necessity and humanitarian concern, in order to achieve the best protection for people affected by conflict.

Today, the four Geneva Conventions are among the very few international treaties that have been universally ratified, not least because they reflect – more than just law – universal values of ethical behaviour.

While it is true that the Geneva Conventions are synonymous with the city of Geneva, they are designed for the dirty front lines of war.

International humanitarian law cannot be confined to words in glossy legal texts. Its power resides on the battlefields of the Syrias, Afghanistans, Iraqs, of the South Sudans and Central African Republics of our world.

It was militaries and humanitarians who devised these laws and principles for practical and pragmatic use in the field.

In February, I visited Mosul, the site of a key battle in the war in Iraq, which was characterized by intense, street-by-street, house-to-house fighting.

It is a shell of a city today and I was frankly shocked to see the extent of the destruction. Talking to families, I heard how the war has extracted a huge and painful toll. The whereabouts of so many people are unknown. I met many mothers desperately searching for their sons and husbands, feared dead or detained. Millions remain displaced within Iraq and in neighbouring countries.

Mosul, like Aleppo, Taiz or Maiduguri, is emblematic of the immense suffering that can occur when IHL is violated. Beyond the immediate impacts of death and injury, children have lost years of education; adults have lost their livelihoods and means of survival. Others suffer from mental scars. In this broken community, resentment and risks of reprisal lie under the surface.

When IHL is violated, it always bears the risk of cycles of violence.

Conflict shatters lives in so many ways. It ostracizes and it divides. Some people are shunned from societies – survivors of sexual violence, persons with disabilities. They are the ignored, the invisible, and the voiceless. They are excluded from basic services, from community life, education and work.

Others are excluded by design in the name of punishment – those accused of committing terrorist acts and detained without judicial process, those affiliated with the enemy, including families of foreign fighters.

These are enormously difficult dynamics to respond to, and we are seeing the world right now struggling to balance the security imperatives of States, justice for victims and survivors, legal obligations towards those associated with the enemy, and humanitarian needs.

But these are also the dilemmas where the robust frameworks of IHL and international human rights law can add great value. Like the ICRC, these bodies of law were built for these moments.

IHL makes no judgement on the motive of fighting. It states that every person who is not or is no longer actively participating in the hostilities is entitled to protection and must be treated with humanity. Everyone, even the enemy, must be seen as a human and protected.

What does this mean practically?

- No one shall be subjected to torture or other forms of ill-treatment;
- rape and other forms of sexual violence are prohibited;
- the wounded and sick must be given medical care;
- hospitals and medical personnel must not be attacked;
- people who are detained must be treated humanely;
- family members have the right to know the fate of their relatives; and
- the dead must be treated with dignity.

When IHL is respected, harm to civilians is drastically reduced. Every day we see IHL in action: when a wounded person is allowed through a checkpoint, when a child on the front lines receives food and other humanitarian aid, when the living conditions of detainees are improved or when they can receive contact with their families.

The 1949 Conventions were the first treaties to prohibit rape and other forms of sexual violence in armed conflict. In 1949, States made clear once and

for all that there is no place for the belief that sexual violence is unavoidable in war. Today, rape and other forms of sexual violence are recognized as war crimes in all armed conflicts.

We are painfully aware that this has not stopped sexual violence from being committed. It remains a brutal and unacceptable reality for women, men and children in many armed conflicts. But at the same time, continued violations of the law do not mean that the law is inadequate, but rather that efforts to ensure respect are inadequate. We can – and must – do more.

Indeed, in conflicts across the world we see enormous violations of IHL – tragic examples from Yemen, Somalia, Nigeria, Ukraine and elsewhere – which demonstrate that there are terrible failures to protect people every day.

These violations can lead to a perception that the principles of IHL are never respected or that they are not relevant. But it would be wrong – and indeed dangerous – to believe that IHL is always and only violated and is therefore useless.

The singular focus on violations of the law risks de-legitimizing the law over time and missing those hundreds and thousands of situations where the law is effectively respected: the hospitals and water systems not attacked, the civilians spared, the detained treated humanely.

Our collective challenge today is to find ways to ensure greater respect within the changing dynamics of conflict.

It is true of course that the wars of 2019 have changed significantly since the Second World War. We are all aware that there have been fewer international armed conflicts while non-international ones have multiplied.

Today, too, conflicts have become more intractable. The Second World War lasted six years – many of the conflicts we see today have lasted for years or decades, affecting generations.

Battles are fought in populated areas, risking too many civilian lives and destroying critical infrastructure. In protracted, urban wars we are seeing great numbers of people affected, for long periods and with deep needs: from food, water and shelter to health-care services, economic opportunities and the need for psycho-social support.

The global landscape of conflict has also changed. A vast array of armies, special forces, armed groups, private military and security companies, and criminal gangs now fight – directly or by proxy, openly or secretly. ICRC research shows that more armed groups have emerged in the last six years than in the previous six decades.

The ICRC talks to all parties to a conflict and strives to engage with an increasingly complex array of non-State armed groups. Currently we are in contact with around 200 groups worldwide linked to our operations or our humanitarian concerns, and we are discovering that the structure of these groups means we need new approaches.

Our research shows that decentralized groups, especially non-State armed groups, are often influenced by command structures but also by many other factors – community, political, spiritual. We need to do more to influence these networks, including at an informal level.

The ICRC must encourage groups to recognize that behaviour which flouts the law is against their own ideals: “It is not who I am.”

Today, wars also increasingly involve partners and allies who are outside of the theatre of conflict. Our contemporary experience shows us how this can lead to a dilution of responsibility, the fragmentation of chains of command and an unchecked flow of weapons.

As the trend towards allied and partnered warfare only increases, it has become urgent for States to look at how they can influence their partners and calibrate their support to ensure civilians are better protected.

And as States engage in new counter-terrorism activities, it is essential that their actions do not infringe on the vital work of humanitarian organizations, which seek only to help victims of armed conflict and violence.

While conflicts evolve in nature, likewise IHL is not static. Since its inception, the ICRC has observed the suffering caused by weapons and certain tactics of warfare and has sought to curb the worst excesses.

It made a public call against the use of chemical weapons during the First World War, and against nuclear weapons after Hiroshima and Nagasaki. It worked to expand the protective scope of IHL from combatants to civilians with the Fourth Geneva Convention. The inclusion of common Article 3 on non-international armed conflicts in 1949 somehow anticipated the massive shift to that type of conflict, with further development of those protections in Additional Protocol II.

In today’s battlefields, some particularly challenging developments have emerged:

- armed actors and civilians intermingling and individuals changing from fighters at night to civilians by day;
- different forms of violence blending together, on increasingly fuzzy battlefields, with military use of force, criminal violence and inter-community violence coexisting in the same space;
- the blurring of lines between international and internal armed conflict, between physical and virtual forms of violence, and between those participating in hostilities and those not;
- asymmetric warfare emerging as a predominant conflict environment;
- distinctions between weapons and dual-use goods and between military and civilian activities blurring;
- terrorism and counter-terrorism entrenched in dynamics of conflict;
- the increasing instrumentalization of humanitarian action for political purposes; and
- humanitarian action criminalized as strategic support for the enemy.

This means that it is increasingly difficult to look at IHL in isolation and forces us to also consider other sources of law when operating in complex environments –

human rights law, national and regional legal frameworks, soft law and policy guidance.

Today, we are also seeing rapidly developing technologies create new front lines in cyberspace, and new ways to fight, such as autonomous weapons systems and remote technologies. The ICRC is particularly concerned about the potential human cost of cyber operations and is therefore engaged in clarifying the significance of basic IHL concepts in view of these developments.

IHL is clear and prohibits cyber-attacks against civilian objects as well as indiscriminate and disproportionate attacks. But in cyberspace, which is almost entirely dual-use, what do these rules mean? How can we attribute attacks in cyberspace? What triggers a conflict? More tailor-made rules to protect civilians from conflict's future front lines may be needed.

Seventy years on, the Geneva Conventions are much more than a legacy, or simply something to be proud of and commemorate. A lot has been achieved since 1949 in spreading knowledge of the law, ensuring its implementation and incorporating it into military doctrine, education, training and sanctions mechanisms, and preventing its violation.

But much more needs to be done. This is what ICRC staff strive to do every day across the globe, as they witness the plight of children, women and men whose humanity and dignity is denied.

We would be worse without the Conventions. They are, at seventy, still fit for purpose in many respects, but they need better support, more powerful advocates and a spirit of innovation to charter new ways forward for enhancing the protection of populations through law in a new world.

The Conventions were made for all of us in the name of humanity. While States and belligerents first and foremost have the responsibility to implement them, the Conventions are also our collective responsibility to watch over.

On this anniversary, the ICRC calls on States and non-State actors to universally and unequivocally respect, implement and ensure respect for IHL.

But appeals do not suffice. What is most needed today is at the core of the ICRC's work at the front line of contemporary warfare: the ability to build more trustful relationships between belligerents so that a consensual space for enhanced behaviour is reclaimed and rebuilt.

Fierce public defence of these practical rules is crucial too. We all know how easy it is to be overwhelmed and turn away from ongoing suffering around the world.

When the ICRC last surveyed the public about their attitudes to IHL, we found that over two thirds of people think it makes sense to impose limits to war and violence. But we also saw how people are becoming resigned to the death of civilians as an inevitable part of war. We need champions for humanity – at all levels – to step forward.

We need people and organizations to support the humanitarian mission with their skills and knowledge, with their resources and with their voices. Students and the scientific community can greatly contribute to upholding respect for IHL. We need cutting-edge research to inform evidence-based humanitarian action and diplomacy.

We need scientists to help put innovations at the service of humanity and avert new means and methods of warfare eroding the protection enshrined in the Geneva Conventions.

And in this light, it is positive to see so many of you here tonight, to see strong academic engagement in so many universities around the globe and so many students and researchers engaging on IHL.

Let us remember that the spirit of the Conventions – to uphold human dignity even in the midst of war – is as important now as it was then. Let us always remember that the Conventions are law – but somehow transcend law – as what they require is not only legal but also just and right. Let all of us do what we can to ensure that this spirit prevails.