

Religion and international humanitarian law

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Abstract

This article explores the interface between religion and international humanitarian law (IHL), and the degree to which they might complement and reinforce each other. It examines some of the challenges inherent in regulating armed conflict and the understandable limitations of IHL in this respect, and argues that re-engagement with IHL's religious roots can help to alleviate them. Engagement with religious circles mobilizes the vast resources of religions to increase knowledge of IHL and corresponding religious norms, thereby enhancing their legitimacy across religious and cultural divides. This is most effective when comparative study of IHL and religious teachings stimulates mutual learning and debate, in which both correspondences and differences are embraced. In the absence of a strong legal enforcement regime, religions can reinforce military ethics by tapping deeply into the identities, motivations and moral values of many belligerents, and possess

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powerful means to socialize the rules of war and improve voluntary compliance. Introspective religious practices encourage the moral self-reflection that is most effective at internalizing norms in this respect, as well as providing belligerents with the spiritual and psychological support needed to bolster their resilience and enable them to perform with precision and restraint.

Keywords: IHL, ICRC, humanitarianism, international law, religion, morals, moral psychology, military ethics, military training, warrior codes, compliance, armed groups, clergy, chaplains.



Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

The Lieber Code¹

In view of all this, why could not advantage be taken ... to solve a question of such immense and worldwide importance, both from the humane and Christian standpoint?

Henry Dunant²

Introduction

Nowhere are the limitations of the law more apparent than in the arena of war, and the implementation and enforcement of international humanitarian law (IHL) in anarchic and politically contested conflict zones is a perennial challenge. While the modern edifice of IHL is a remarkable achievement, and probably the most effective means so far developed to regulate armed conflict, it nevertheless has understandable limitations. The will and capacity of belligerents to follow IHL rules in the extreme circumstances of armed conflict are often severely compromised.³ Inevitably, IHL is also largely dependent on the States who are party to its treaties, and tends to privilege their interests over non-State actors who are not. Though great strides have been made to disseminate IHL in recent years, it is still relatively little known or understood in societies at large, and across cultural and religious divides. This affects how it is perceived, and therefore its legitimacy in many contexts.⁴

- 1 US Department of War, *Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863 (Lieber Code), Art. 15.
- 2 Henry Dunant, *A Memory of Solferino*, International Committee of the Red Cross (ICRC), Geneva, 1986, p. 116.
- 3 Toni Pfanner, "Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims", *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 280; Marco Sassòli, "The Implementation of International Humanitarian Law: Current and Inherent Challenges", *Yearbook of International Humanitarian Law*, Vol. 10, 2007, p. 46.
- 4 M. Sassòli, above note 3, p. 47; Thomas M. Franck, "The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium", *American Journal of International Law*, Vol. 100, No. 1, 2006.

This article will argue that the interface between religion and IHL is considerable, and that these limitations can be alleviated, and adherence to common humanitarian norms improved, by more energetic engagement with religious circles, thereby reconnecting IHL to its religious roots. Religions laid many of the foundations of IHL, and still possess the influence and moral authority to back it up.⁵ The immense resources of religions are thereby mobilized to complement and reinforce IHL, and to regulate armed conflict on their own terms. Whereas a positive law perspective is vital to maintain consistency and preserve the logic of the law against competing requirements, it can sometimes tend to detach IHL from its moral and ethical underpinnings, thereby increasing its dependence on the State. It should ideally therefore be balanced by natural and customary law perspectives that connect IHL to sources of religious and moral authority beyond it. Crucially, religion taps deeply into the identities, motivations, emotions and moral psychology of many belligerents – the roots of their behaviour – helping them to internalize rules where enforcement falls short.

The States party to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement would appear to endorse this approach, at least in principle. The IHL Resolution at the 33rd International Conference of the Red Cross and Red Crescent, in 2019, stressed “the basic value of respect for human dignity in times of armed conflict, which is not only enshrined in IHL but also in the rules and principles of different faiths and traditions, as well as military ethics”, and recognized “the importance of dialogue among relevant actors and ongoing efforts in this respect”.⁶

Compliance with IHL is often largely dependent on factors outside of it, and it is the interplay between IHL and diverse practical, strategic, socio-political, normative and psychological considerations at both group and individual level that determines its effectiveness.⁷ Possible avenues to improve compliance extend from military training into the domains of politics, education, psychology, science and the arts. They range from embedding IHL norms and creating the political will for States and non-State armed groups to implement IHL, through to influencing the motivations of individual combatants and boosting their psychological resilience.⁸ Religious circles cover most of these bases, and have the clout and resources, moreover, to make a significant impact.

Broadening the perspectives of belligerents is vital in this respect. Overemphasis on narrowly defined military objectives at the expense of humanitarian considerations and a truly strategic vision is counterproductive, and can be the difference between hollow short-term military success and ultimate

5 Michael Bryant, *A World History of War Crimes: From Antiquity to the Present*, 2nd ed., Bloomsbury, London, 2021 (Kindle ed.).

6 International Conference of the Red Cross and Red Crescent, *Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law*, 2019, preambular para. 13, available at: www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law (all internet references were accessed in May 2022).

7 M. Sassòli, above note 3, p. 73.

8 *Ibid.*, p. 52.

political victory.⁹ Normative elements dictate the field of what is politically acceptable within any particular context, and are, therefore, a key component of strategy.¹⁰ This is why even sober realists like Kautilya and Machiavelli understood the strategic importance of religion, and could also be advocates of restraint.¹¹ Indeed, the religious environment is often as important as factors such as the physical geography of the area concerned. Religious or sacred authority, rituals, time and space still profoundly shape the nature of armed conflicts and how they are fought, and true situational awareness requires comprehension of both the internal and external environments of the belligerents, and how these influence their behaviour.¹²

The first and second sections of this article explore the interconnections between religion, IHL and human psychology, and highlight the continued relevance of religion for the regulation of armed conflict today. The third and fourth sections then examine how aspects of religion might compensate for weak IHL enforcement in order to improve compliance with IHL or corresponding norms. The fifth and sixth sections explore the potential of religion to enhance military ethics and other dimensions of military training that promote restraint and bolster the resilience of combatants. Finally, the last three sections consider how religious actors and resources can contribute to more effective embedding of IHL and corresponding religious norms across cultural and religious divides, also drawing on the experiences of the International Committee of the Red Cross (ICRC).

Background

Most people in the world are religious, and religions have traditionally embodied the essence of entire cultures and civilizations, reaching into every aspect of human life. Of the 8 billion people in the world, around 84% identified with a religious group in 2015.¹³ 31% of these were Christian, 24% Muslim, 15% Hindu and 7% Buddhist, with many more adhering to personal religious beliefs.¹⁴ In two thirds of the countries of the world, over 95% of the population were religious in 2013, and religion is therefore particularly relevant to conflicts that might afflict them.¹⁵ Far

- 9 David Whetham, "The Just War Tradition: A Pragmatic Compromise", in David Whetham (ed.), *Ethics, Law and Military Operations*, Palgrave Macmillan, Basingstoke, 2011, p. 85.
- 10 Karin M. Fierke, "Constructivism", in Tim Dunne, Milja Kurki and Steve Smith (eds), *International Relations Theories*, Oxford University Press, Oxford, 2013.
- 11 M. Bryant, above note 5, p. 319; D. Whetham, above note 9, p. 67; David J. Lonsdale, "A View from Realism", in D. Whetham (ed.), above note 9, p. 39.
- 12 Ron E. Hassner, *Religion on the Battlefield*, Cornell University Press, Ithaca, NY, 2016, pp. 8, 11.
- 13 Conrad Hackett and David McClendon, "Christians Remain World's Largest Religious Group, But They Are Declining in Europe", Pew Research Center, 5 April 2017, available at: www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/.
- 14 *Ibid.*
- 15 Institute for Economics and Peace, *Five Key Questions Answered on the Link Between Peace and Religion: A Global Statistical Analysis on the Empirical Link Between Peace and Religion*, Sydney, 2015, p. 3, available at: www.economicsandpeace.org/wp-content/uploads/2015/06/Peace-and-Religion-Report.pdf.

from bowing to the forces of modernization, religion has been incentivized by them, and expanded rapidly into the vacuum left by the fall of communism. While there has been a decline in religiosity in predominantly higher-income countries over the past decade, the percentage of religious people as a share of the world's population is predicted to keep on rising.¹⁶ Most belligerents are therefore religious, and religion is on the front line of many armed conflicts today, including interconnected global insurgencies in which secularism itself comes under attack.¹⁷

Religion becomes even more important to people in times of crisis and insecurity, often helping them to cope with the stress, uncertainty and lack of control.¹⁸ Even those who are ordinarily sceptical can find themselves turning to religion and belief as other institutions and sources of support fail them, and to reconcile themselves with the possibility of their own death.¹⁹ Religion is therefore especially important for many of those who experience armed conflict, and the aphorism “There are no atheists in foxholes” reflects the reality that combatants often appeal to a higher power when under extreme threat.²⁰

Though it is often presumed that the religiosity and ritual of medieval warfare are a thing of the past, religion is still everywhere in the battlespace, and many belligerents are animated by similar chivalric or warrior ideals.²¹ Troops frequently described seeing visions of angels and saints in the trenches during World War I, and General Patton instructed his troops to pray fervently for the rain to stop in northern France during World War II.²² In many contexts, prayers, benedictions, fasting, absolutions and other religious rituals are as important to belligerents now as they have ever been. Combatants continue to pray to God (or gods) to protect them during the fighting, and some sacrifice themselves in their name. A study of religion in the US military revealed that, at moments of crisis, troops want simply to know that God is with them, or as one soldier in Iraq put it, “I wanna’ know that Jesus is in my Humvee.”²³

- 16 Even in Europe there are signs that religious visibility is increasing; see Ronald F. Inglehart, *Religion's Sudden Decline: What's Causing It, and What Comes Next?*, Oxford University Press, Oxford, 2020, pp. 1, 78, 81, 82; Ronald F. Inglehart, Jon Miller, Michael Dennis, Stephanie Jwo and Gergely Rosta, “Religion's Sudden Decline, Revisited”, *Center for Political Studies Blog*, 26 February 2021, available at: <https://cps.isr.umich.edu/news/religions-sudden-decline-revisited/>; Pew Research Center, *The World's Changing Religious Landscape*, 5 April 2017, available at: www.pewresearch.org/religion/2017/04/05/the-changing-global-religious-landscape/; Titus Hjelm, “Understanding the New Visibility of Religion”, *Journal of Religion in Europe*, Vol. 7, No. 3–4, 2014; C. Hackett and D. McClendon, above note 13.
- 17 Mark Juergensmeyer, Margo Kitts and Michael Jerryson, “Introduction: The Enduring Relationship of Religion and Violence”, in Mark Juergensmeyer, Margo Kitts and Michael Jerryson (eds), *Violence and the World's Religious Traditions*, Oxford University Press, Oxford, 2017, p. 6 (Kindle ed.).
- 18 Gladys Ganiel, Heidemarie Winkel and Christophe Monnot, *Religion in Times of Crisis*, Brill, Leiden, 2014; Dominic Johnson, *God Is Watching You: How the Fear of God Makes Us Human*, Oxford University Press, New York, 2016, p. 108 (Kindle ed.).
- 19 D. Johnson, above note 18, p. 107.
- 20 Stefan Lunze, “Serving God and Caesar: Religious Personnel and Their Protection in Armed Conflict”, *International Review of the Red Cross*, Vol. 86, No. 853, 2004, p. 69.
- 21 R. E. Hassner, above note 12, p. 113.
- 22 The rain stopped – a modern-day miracle. See R. E. Hassner, above note 12, p. 110.
- 23 Stephen Mansfield, *Faith of the American Soldier*, Frontline Publishers, Lake Mary, FL, 2005, pp. 61–62, quoted in R. E. Hassner, above note 12, p. 122.

War is one of humanity's oldest and most enduring institutions, and the genealogy of IHL can be traced back thousands of years in provisions to limit its suffering.²⁴ IHL's closest ancestor is the Christian just war tradition, whose *jus ad bellum* and *jus in bello* architecture and core criteria are now embodied respectively in the UN Charter and IHL.²⁵ Inaugurated by St Augustine of Hippo (353–430) to reconcile early Christian pacifism with the Roman Empire's prerogative to wage war, it was elaborated by St Thomas Aquinas (1225–74) and a long line of Christian theologians over the centuries.²⁶ But just war and IHL principles of distinction and proportionality can be found in many religions and cultures, together with provisions to care for the wounded, prisoners and other victims of armed conflict.²⁷ The Christian tradition was fed by ancient Greek and Roman ideas, and informed by Jewish and Islamic scholarship. Indeed, rules of war in Islamic international law (*siyar*) were in advance of the West in many respects, and Mohammad Al-Shaybani's eighth-century treatise *Al-Siyar Al-Kabir* compares in complexity to the work of much later European writers.²⁸ Ancient Indian and Chinese traditions were particularly highly developed, and included a number of rules more humane than those found in modern IHL, challenging ideas of what is permissible in war even today.²⁹ The ethics of countless other warrior traditions, from Homeric heroes to Pacific Islanders, incorporate religious ideas, and the Christian faith of Henry Dunant and his collaborators was a motivating force behind their inauguration of IHL and establishment of the ICRC.³⁰ IHL has therefore been deeply influenced by religion, whose conceptions of morality are very much part of its DNA.³¹ Many policy-makers, military personnel and non-State armed group members who must apply IHL are animated by religion to this day.³²

24 David Whetham, "Ethics, Law and Conflict", in D. Whetham (ed.), above note 9, p. 10.

25 Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2016, p. 27.

26 M. Bryant, above note 5, p. 88.

27 *Ibid.*; Jonathan Fox and Shmuel Sandler, *Bringing Religion into International Relations*, Palgrave Macmillan, New York, 2004, p. 167.

28 David B. Burrell, "Thomas Aquinas and Islam", *Modern Theology*, Vol. 20, No. 1, 2004; Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar*, Edward Elgar, Cheltenham, 2018.

29 See, for example, L. R. Penna, "Written and Customary Provisions Relating to the Conduct of Hostilities and Treatment of Victims of Armed Conflicts in Ancient India", *International Review of the Red Cross*, Vol. 29, No. 271, 1989; Andrew Bartles-Smith *et al.*, "Reducing Suffering during Conflict: The Interface between Buddhism and International Humanitarian Law", *Contemporary Buddhism*, Vol. 21, No. 1–2, 2021; G. I. A. D. Draper, "The Contribution of the Emperor Asoka Maurya to the Development of the Humanitarian Ideal in Warfare", *International Review of the Red Cross*, Vol. 35, No. 305, 1995.

30 See ICRC, *Under the Protection of the Palm: Wars of Dignity in the Pacific*, 2009, available at: www.icrc.org/en/doc/resources/documents/publication/pwars-of-dignity-pacific.htm; Cédric Cotter, "The Religious Convictions of Henri Dunant, Founder of the ICRC", *Religion and Humanitarian Principles Blog*, 11 August 2021, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/the-religious-convictions-of-henri-dunant-founder-of-the-icrc/>.

31 J. Fox and S. Sandler, above note 27, p. 54.

32 *Ibid.*, p. 163.

Important considerations relevant to IHL and religion

IHL as a secular Western institution?

Despite this legacy, IHL is a secular body of law. Some experts are therefore hesitant to engage in comparative studies on IHL and religion for fear of muddying the waters or jeopardizing the neutrality of IHL or the ICRC. Having shed the religious trappings of the just war tradition, and having secularized religious norms now embodied in hard-fought IHL treaties, there is understandable apprehension about re-engaging with religion.³³ This is particularly the case where some religious teachings are not in conformity with IHL, or are regarded as non-rational or otherwise problematic.

But IHL implementation is not secured by retreating from the field of debate or shying away from other cultures. Given that law, religion and culture still interpenetrate in all but the most secular contexts, IHL frequently requires some degree of religious or cultural validation if it is to gain real traction in societies at large, and across religious and cultural divides. Interchange and debate are crucial for the development and propagation of the law, and while religions can sometimes pose challenges to IHL, they also offer a wealth of opportunities to support and promote it. Neglecting to take advantage of this religious inheritance, and the fact that the essence of IHL was pioneered by religious leaders and scholars in all cultures, cuts IHL off from the religious and ethical ideas from which it was distilled, and which might continue to nourish and feed it. Decontextualized universalism can be bland and self-defeating, and is a missed opportunity to enhance the legitimacy of IHL with many groups.³⁴

However universal its content, IHL is nonetheless, by design, an essentially Western institution, and engagement with non-Western traditions can help counter perceptions among some that it is “Western rules” or an outside imposition.³⁵ Religious resources and institutions can help to situate IHL with respect to local normative systems, thereby making it morally relevant to the context and enhancing rather than compromising its universal appeal. While care has to be taken that IHL does not give legitimacy to harmful practices, the consequences of failing to engage with religious circles, potentially sidelining IHL or making it irrelevant, should also be considered. Ignoring important religious stakeholders can sometimes show a lack of respect for the culture, and this can translate into indifference or opposition to IHL.

33 Such apprehension about engaging with religion is not confined to IHL, but is seen in international law more broadly. See, for example, David Kennedy, “Images of Religion in International Legal History”, in Mark W. Janis and Caroline Evans (eds), *Religion and International Law*, Martinus Nijhoff, The Hague, 1999.

34 René Provost, “The International Committee of the Red Widget? The Diversity Debate and International Humanitarian Law”, *Israel Law Review*, Vol. 40, No. 2, 2007, p. 39.

35 Salvatore Caserta, “Western Centrim, Contemporary International Law, and International Courts”, *Leiden Journal of International Law*, Vol. 34, No. 2, 2021; Brian-Vincent Ikejiaku, “International Law is Western Made Global Law: The Perception of Third-World Category”, *African Journal of Legal Studies*, Vol. 6, No. 2–3, 2014.

Secularism also has many meanings, encompassing world views whose impartiality can be challenged. “Soft” pluralist forms of secularism are generally tolerant of religion, embodying equal treatment for all regardless of belief and facilitating open debate between diverse religious, philosophical and scientific perspectives.³⁶ “Harder” forms of secularism are closer to atheism and can be antagonistic towards any expression of religion at all.³⁷ Indeed, some regard secularism as an anti-religious Western ideology, while others believe that it nevertheless bears the imprint of the Christian culture from which it emerged.³⁸ Secularism is not therefore necessarily unbiased, or perceived as such, and IHL must be amenable to both religious and non-religious perspectives.

While in recent years humanitarians have shown renewed appreciation for the importance of engaging with religious circles, the functional secularism of some organizations has tended to marginalize religion, often in the mistaken belief that neutrality necessitates keeping a distance from religious stakeholders.³⁹ Indeed, the idea of “neutrality” is associated with passivity or detachment in a way that “impartiality” is not, and can sometimes foster an aloofness which is inconducive to effective humanitarian action.⁴⁰

Of course, there are questions as to the degree to which the domains of law and religion can be compared at all, and how they are demarcated or defined. Comparing IHL with such an all-encompassing phenomenon as “religion” therefore risks overgeneralization, and is not to compare like with like. Accordingly, this article can only highlight a few intersections of particular relevance. In some respects, even the term “religion” itself is a modern Western construct, since it defines religion as something separate from the rest of human life, when historically, and still in many contexts, the two are deeply intertwined.⁴¹ Concepts of religion, law and culture are often still inseparable, and care must be taken not to view them through a distorting Western lens.⁴² In some cultures, for example, there is not even a word for religion, since there is nothing to define it against.⁴³

36 Barry A. Kosmin, “The Vitality of Soft Secularism in the United States and the Challenge Posed by the Growth of the Nones”, in Jacques Berlinerblau, Sarah Fainberg and Aurora Nou (eds), *Secularism on the Edge: Rethinking Church-State Relations in the United States, France, and Israel*, Palgrave Macmillan, New York, 2014.

37 *Ibid.*

38 Reut Yael Paz, “Religion, Secularism, and International Law”, in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law*, Oxford University Press, Oxford, 2016.

39 Alistair Ager and Joey Ager, “Why Humanitarianism Doesn’t Get Religion... and Why It Needs To”, in *Faith, Secularism, and Humanitarian Engagement: Finding the Place of Religion in the Support of Displaced Communities*, Palgrave Pivot, New York, 2015.

40 Dominick Donald, “Neutral Is Not Impartial: The Confusing Legacy of Traditional Peace Operations Thinking”, *Armed Forces & Society*, Vol. 29, No. 3, 2003, pp. 416–417.

41 Winnifred Fallers Sullivan and Robert A. Yelle, “Law and Religion: An Overview”, *Encyclopedia.com*, 2005; W. L. King, “Religion (First Edition)”, in Mircea Eliade (ed.), *The Encyclopedia of Religion*, Vol. 12, Macmillan, New York, 1987, p. 282.

42 *Ibid.*

43 Brent Nongbri, *Before Religion: A History of a Modern Concept*, Yale University Press, New Haven, CT, 2013.

Some religions are also more legalistic in nature than others. While Abrahamic religions, for example, tend to prioritize the laying down of rules to be obeyed, Buddhism is primarily an ethical system concerned with addressing the psychological roots of behaviour.⁴⁴ Each religion therefore has its own take on IHL and the regulation of armed conflict, revealing how IHL might be variously received and interpreted in different contexts. Indeed, it is this religious and cultural diversity that makes comparison with IHL so enriching.

IHL as a universal moral code?

At one level, law and religion express a moral consensus about what is right and wrong within a society, and are influenced by the particular environments and cultures in which they develop. But while there are important differences between the Judeo-Christian, Islamic, Indian, Chinese, African and Meso-American traditions, for example, laws of war that limit violence nevertheless exhibit striking similarities across religions and cultures.⁴⁵ Modern IHL therefore represents an unusual degree of cross-cultural consensus, embodying many rules that are close to being axiomatic universal norms. IHL rules are remarkably accommodating to other cultures, and the rich legacy of restraint in many non-Western traditions is increasingly being explored.⁴⁶

Though there has certainly been some degree of cross-pollination, and common structural factors in all wars naturally lead to similar solutions, these similarities are also a function of our shared moral psychology and the biological bases of our thoughts and emotions.⁴⁷ Recent findings in psychology and neuroscience suggest that the laws of war, particularly those concerning the protection of non-combatants, mirror universal moral sentiments.⁴⁸ Indeed, the core assumption of natural law theory is that we share a moral conscience that transcends cultures and informs the content of international law.⁴⁹ Research confirms, moreover, that morals are more powerful than law in influencing behaviour, and that people are more motivated to adhere to the law if it resonates with their identities and moral values.⁵⁰ Religion deeply informs both of these, and has powerful means to improve compliance with IHL and equivalent religious norms.⁵¹

44 Rebecca Redwood French, "What Is Buddhist Law: Opening Ideas", *Buffalo Law Review*, Vol. 63, No. 4, 2015; Damien Keown, *Buddhist Ethics: A Very Short Introduction*, Oxford University Press, Oxford, 2005 (Kindle ed.).

45 M. Bryant, above note 5.

46 Examples of this work over many years, including groundbreaking articles from the *Review*, are showcased on the ICRC's *Religion and Humanitarian Principles Blog*, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/>.

47 Richard Wrangham, *The Goodness Paradox: How Evolution Made Us Both More and Less Violent*, Profile Books, London, 2019.

48 David Traven, *Law and Sentiment in International Politics: Ethics, Emotions, and the Evolution of the Laws of War*, Cambridge University Press, Cambridge and New York, 2021, p. 5.

49 *Ibid.*, pp. 17, 266.

50 Alan Page Fiske and Tage Shakti Rai, *Virtuous Violence: Hurting and Killing to Create, Sustain, End, and Honor Social Relationships*, Cambridge University Press, Cambridge, 2014.

IHL's natural and customary law dimensions still preserve much of this religious legacy and arguably confer on it the character of a moral system in some respects – a “law of humanity” which can mitigate the power of States.⁵² Customary IHL extends the reach of core IHL principles beyond the lacunae of treaty law and embodies peremptory *jus cogens* norms that are somewhat akin to a moral code.⁵³ Concepts of chivalry and humanism are therefore integral to IHL, whose norms can be applied as both moral and legal requirements.⁵⁴ The Martens Clause, which first appeared in the preamble to the 1899 Hague Convention II, states:

Until a more complete code of the laws of war is issued ..., populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.⁵⁵

The Martens Clause thus provides a thin but crucially important thread linking the positive norms of IHL to natural law, and to the morals and inner life of belligerents.⁵⁶ While the law is necessary, it is not always sufficient for changing behaviour on the battlefield, and there seems to be little reason to underplay the moral force of IHL provisions if belligerents will be more likely to comply with them. This powerful moral quality also appeals to religious actors.⁵⁷

Some IHL rules, particularly those related to proportionality, are open to subjective interpretation, and also therefore entail a degree of moral deliberation.⁵⁸ Interpretations of IHL that are overly permissive or restrictive with regard to the use of force have sometimes tended to undermine it, and the role that religion can play in interrogating the conscience of decision-makers is clearly relevant, and overlaps with the field of military ethics.⁵⁹ Walzer argues with

51 Sam A. Hardy, Amber R. C. Nadal and Seth J. Schwartz, “The Integration of Personal Identity, Religious Identity, and Moral Identity in Emerging Adulthood”, *Identity*, Vol. 17, No. 2, 2017; Pamela Ebstyn King, “Religion and Identity: The Role of Ideological, Social, and Spiritual Contexts”, in James L. Furrow and Linda M. Wagener (eds), *Beyond the Self*, Routledge, London, 2019; A. Michael Maclean, Lawrence J. Walker and M. Kyle Matsuba, “Transcendence and the Moral Self: Identity Integration, Religion, and Moral Life”, *Journal for the Scientific Study of Religion*, Vol. 43, No. 3, 2004.

52 Hilly Moodrick-Even Khen, “Aidōs and Dikē in International Humanitarian Law: Is IHL a Legal or a Moral System?”, *The Monist*, Vol. 99, No. 1, 2016.

53 *Jus cogens* means “compelling law” and describes peremptory norms or fundamental principles of international law from which no derogation is permitted. *Ibid.*; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005.

54 H. Moodrick-Even Khen, above note 52, p. 34.

55 N. Melzer, above note 25, pp. 24–25.

56 Rupert Ticehurst, “The Martens Clause and the Laws of Armed Conflict”, *International Review of the Red Cross*, Vol. 37, No. 317, 1997, available at: www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm.

57 Dale Stephens, “Behaviour in War: The Place of Law, Moral Inquiry and Self-identity”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014.

58 H. Moodrick-Even Khen, above note 52, p. 36; Laurent Gisel, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law*, International Expert Meeting, Quebec, 22–23 June 2016, p. 23.

regard to just war theory, for example, that simply not to intend the death of civilians is insufficient, and that collateral damage (the principle of double effect) is justified only when there is a double intention not just to accept the likelihood or possibility of collateral damage but to actively minimize it as far as possible.⁶⁰ “What we look for in such cases is some sign of a positive commitment to save civilian lives. Not merely to apply the proportionality rule and kill no more civilians than is militarily necessary.”⁶¹

Religion in war: Problem or solution?

Religion is commonly regarded as a driver or exacerbator of, rather than a solution to, armed conflict, and has often been instrumentalized to that effect. Most major religious traditions include ideas of sacrifice and cosmic war of good against evil that can be used to justify acts of real war, and history is replete with holy wars, whether in the service of States or to overthrow them.⁶² Some religious texts can be interpreted to discriminate against people on religious grounds, and to reinforce group identities to the exclusion of others. Non-believers have been stripped of religious protections and subjected to unlimited violence, and religion has frequently incentivized victimization rather than restraint.⁶³ In recent years religious extremism has been associated with terrorist violence, and it has long endorsed interpretations of religion in which messianic or apocalyptic ideas justify mass murder.⁶⁴ Richard Dawkins remarks of religion, “What a weapon! Religious faith deserves a chapter for itself in the annals of war technology”, and Samuel Huntington argued presciently in his *Clash of Civilizations* thesis that with the demise of communism, wars would again be fought primarily along the fault lines of religious and cultural identity.⁶⁵ Indeed, the few mentions of religion in the Geneva Conventions refer to how their provisions should be applied without “any adverse distinction based [on] religion”, among other criteria.⁶⁶

But religion is just one of many contributing factors to armed conflict, and while it is frequently an organizing principle, it is less often the dominant impelling

59 N. Melzer, above note 25, p. 9.

60 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed., Basic Books, New York, 1997, p. 156 (Kindle ed.); see also Ian Henderson and Kate Reece, “Proportionality under International Humanitarian Law: The Reasonable Military Commander Standard and Reverberating Effects”, *Vanderbilt Journal of Transnational Law*, Vol. 51, No. 3, 2018.

61 M. Walzer, above note 60; see also D. Traven, above note 48, pp. 5–6. Traven argues that IHL needs to be improved to compensate for traits of our moral psychology which assign disproportionately greater moral relevance to intentional as opposed to “unintentional” killing of civilians. Walzer’s call for a positive commitment to save civilian lives rather than devaluing them as “collateral damage” is therefore even more important.

62 M. Juergensmeyer, M. Kitts and M. Jerryson, above note 17.

63 *Ibid.*; Jenni Mitchell, *Rethinking Rebel Violence: The Incentives for Victimisation and Restraint in Modern Warfare*, Routledge, London, forthcoming.

64 M. Bryant, above note 5, p. 305.

65 Richard Dawkins, *The Selfish Gene*, Oxford University Press, Oxford, 1989, p. 331; Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, Simon & Schuster, New York, 1996.

66 See, for example, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 27.

force.⁶⁷ Statistically speaking, factors such as corruption, political terror, gender relations, economic inequality and political instability play a greater role in contributing to conflict, and religion has only limited explanatory power in this respect.⁶⁸ Many contemporary studies tend to fixate upon only a few religious indicators – often religious identity – as a cause of war, rather than studying how the full panoply of religious practice and experience affects war’s conduct.⁶⁹ Indeed, religion has long played a key role in reducing and regulating armed conflict, disseminating and institutionalizing the humanitarian norms upon which the instruments of international law are built. While religion is prone to instrumentalization and has often been used to facilitate conflict, or as a vehicle for the exclusion or oppression of other groups, its inclusive aspects have promulgated the universal humanitarian principles that have sought to prevent war and minimize the suffering that it causes.⁷⁰ Most religions are pluralistic, contain a spectrum of opinion, and are a ferment of dialogue and debate with which the humanitarian community should engage.

Whether expressed in religious, ethnic, nationalist or indeed scientific registers, the root causes of conflict are functions of our individual and group psychology, and religion can both inhibit and provoke violence depending on the situation.⁷¹

Though attention often focuses on IHL violations carried out in the name of religion, the good that it can do during armed conflict is frequently underplayed. While the term “humanitarian” as it is now commonly understood emerged only in the nineteenth century, the altruism it describes has a long religious lineage.⁷² Charity is a core component of the world’s major religions, and humanitarian values genuinely matter in religious circles, which have been engaged in charitable and humanitarian action for hundreds, if not thousands, of years.⁷³ In all significant respects, religious actors invented humanitarian action, and they have contributed to the establishment of secular organizations like the ICRC.

Faith-based organizations often still outstrip other humanitarian actors in the sheer scope and volume of their activities, whether at international or grassroots level. They are among the first and most effective organizations to deploy to conflict and emergency situations, and new religious charities are emerging all the time, many at the forefront of humanitarian innovation and entrepreneurship. In this

67 Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion*, Vintage Books, New York, 2012, p. 312.

68 Institute for Economics and Peace, above note 15. For a very brief insight into how gender issues can be a causal factor in conflict, see Jenny Birchall, “Gender as a Causal Factor in Conflict”, *K4D*, 28 February 2019, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/549_Gender_as_A_Causal_Factor_in_Conflict.pdf

69 R. E. Hassner, above note 12, p. 4.

70 Mashood A. Baderin, “Religion and International Law: Friends or Foes?”, SOAS School of Law Research Paper Series No.4, 2010, p. 649.

71 R. E. Hassner, above note 12.

72 Katherine Davies, *Continuity, Change and Contest: Meanings of ‘Humanitarian’ from the ‘Religion of Humanity’ to the Kosovo War*, Humanitarian Policy Group Working Paper, August 2012.

73 The Order of Malta, for example, has been engaged in humanitarian relief for over 900 years. See: www.orderofmalta.int/sovereign-order-of-malta/.

respect they represent both the past and future of humanitarian action, as well as being among the most important custodians of the humanitarian spirit and principles upon which humanitarian law and action have been built. While the proselytizing work of some faith-based organizations can do damage to other cultures, many are more respectful of local communities than organizations that have a secular agenda or believe that the “humanitarian imperative” gives them license to override local sensitivities.⁷⁴

Religion and the psychology of armed conflict

A propensity towards supernatural and religious thinking appears to be psychologically – indeed, biologically – hardwired. Humans are predisposed, for example, to perceive mind–body dualism and supernatural agency, as well as to believe in a just world.⁷⁵ Some cognitive scientists regard religion as a highly effective evolutionary adaptation, enabling large-scale cooperation in complex societies, not least to engage in war.⁷⁶

Psychological research indicates that most violence is morally motivated to regulate social relationships, and deep-seated motivations for unity, status, equality and proportionality underlie most moral behaviour.⁷⁷ These predispose people to form groups on the slightest pretext, and to favour the in-group, due to intuitive zero-sum rivalries for resources with other groups.⁷⁸ People fight, if necessary, to achieve belonging and status, both within their group and with respect to other groups.⁷⁹ Though the motivations of belligerents are of course complex, and many might be driven, for example, by more mercenary or monetary incentives, at a psychological level most armed conflicts can largely be attributed to the desire to belong to a group, and to moralistic sensitivity to the group’s status and to perceived injustice or offence.⁸⁰

According to the virtuous violence theory of Alan Page Fiske and Tage Shakti Rai, “[w]hatever its origin, group conflict does not produce violence without a consensus among the in-group, or at least its leaders, that another group has done something wrong and harmful, something dangerous”, leading to moral outrage.⁸¹ One particularly strong moral motivator is the desire for vengeance, to “put the other group in its place” or “teach it a lesson”.⁸² Atrocities

74 See, for example, ICRC, *Regional Conference on Humanitarian Access and Negotiation in Asia*, 2018, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/asia-regional-conference-on-humanitarian-negotiation-and-access/>; Nicholas Onuf, “Humanitarian Intervention: The Early Years”, *Florida Journal of International Law*, Vol. 16, No. 4, 2004; Hugo Slim, “Claiming a Humanitarian Imperative: NGOs and the Cultivation of Humanitarian Duty”, *Refugee Survey Quarterly*, Vol. 21, No. 3, 2002.

75 D. Johnson, above note 18, pp. 98–137.

76 R. Wrangham, above note 47; D. Johnson, above note 18, p. 170.

77 A. P. Fiske and T. S. Rai, above note 50, pp. 13, 18.

78 Pascal Boyer, *Minds Makes Societies*, Yale University Press, New Haven, CT, 2018, loc. 673, 696 (Kindle ed.).

79 Mike Martin, *Why We Fight*, Oxford University Press, Oxford, 2018, p. 1.

80 Mary Kaldor, “In Defence of New Wars”, *Stability: International Journal of Security and Development*, Vol. 2, No. 1, 2013.

81 A. P. Fiske and T. S. Rai, above note 50, p. 208.

such as genocide and ethnic cleansing are committed where in-group and out-group identities are so circumscribed that the out-group is seen as a threat to the purity of the in-group, and is dehumanized and regarded as a “filthy infestation”.⁸³ Therefore, far from killing because of a disintegration of morals, groups kill because it feels morally right, when the out-group is deemed guilty of a moral transgression.⁸⁴ Indeed, the very concept of just war is predicated on the need to redress injustice.

Religion has traditionally provided the moral framework that binds large groups or moral communities together, enabling them to cooperate with one another beyond the ties of kinship.⁸⁵ Religion also deeply informs ethnicity and nationalism, which perform a similar role.⁸⁶ Durkheim described religion as a “unified system of beliefs and practices relative to sacred things ... which unite into one single moral community ... all who adhere to them”.⁸⁷ Jonathan Haidt’s definition of a moral system gives a fuller idea of religion’s scope and relevance: “interlocking sets of values, virtues, norms, practices, identities, institutions, technologies, and evolved psychological mechanisms that work together to suppress or regulate self-interest and make cooperative societies possible”.⁸⁸

Religions both express and modify human groupism and morally motivated violence. Many religions have pioneered the expansion of in-groups or moral communities beyond the confines of ethnicity, or have rejected groups to embrace universalism, sometimes beyond the confines of humanity itself.⁸⁹ Since religions regulate the moral conduct of the group, they have also prevented, channelled and controlled expressions of morally motivated group violence, thereby regulating the conduct of war.

Traditionally, both religion and law have connected moral judgement to moral rules, assuming that so far as rules are mentally recalled and thought to apply to a particular situation, they will have a causal effect on moral or legal judgement and behaviour.⁹⁰ In recent years, this idea has been challenged in particular by Haidt’s social intuitionist model, which suggests that most moral judgement is unconscious and intuitive, and that conscious moral reasoning is largely employed *post hoc* to justify judgements already made.⁹¹ The important role that emotions play in cognition and moral judgment has also become clear.⁹²

82 *Ibid.*

83 *Ibid.*, p. 210

84 *Ibid.*, pp. i, 95–96; Richard Ned Lebow, *Why Nations Fight: Past and Future Motives for War*, Cambridge University Press, Cambridge, 2010.

85 D. Johnson, above note 18.

86 Anthony Smith, “Ethnic Election and National Destiny: Some Religious Origins of Nationalist Ideals”, *Nations and Nationalism*, Vol. 5, No. 3, 1999; J. Haidt, above note 67.

87 J. Fox and S. Sandler, above note 27, p. 57.

88 J. Haidt, above note 67, p. 314

89 The common sentence of Buddhism, for example. See A. Bartles-Smith *et al.*, above note 29.

90 Ron Mallon and Shaun S. Nichols, “Rules”, in John M. Doris *et al.*, *The Moral Psychology Handbook*, Oxford University Press, Oxford, 2010, pp. 297–298.

91 *Ibid.*, p. 299; J. Haidt, above note 67, p. 367.

92 R. Mallon and S. S. Nichols, above note 90, p. 318.

In fact, it appears that both rules and moral intuitions are important, and that quick (intuitive) and slow (reasoned or rational) moral judgements work together in a dual process of conscious and unconscious moral behaviour.⁹³ As this process becomes overburdened or exhausted, however, subconscious moral intuitions tend to take over.⁹⁴ Such is the case during the extreme circumstances of armed conflict, when fatigue, high stress and strong emotions can impair or overload the cognitive and affective faculties, and instincts can tend to override reason.⁹⁵ Rules therefore remain important, but belligerents' ability to adhere to them can be compromised.⁹⁶

Religions have long probed deeply into the underlying emotions and motivations of those involved in armed conflict, and modern psychological and neuroscience research validates many of their insights. Indeed, both religion and psychology share a healthy appreciation for the limits of our human faculties, and of the assumption that we are always rational actors. Their awareness of the cognitive and emotional impairment caused by stress and trauma, and the solutions they have found to cope with them, are highly relevant to the conduct of war, and can bolster the resilience, moral fortitude and performance of combatants, better enabling them to act with precision and restraint.

Religious underpinnings of international law

Comparing religion with law interrogates the very nature of law itself and its relationship to the State and the individual, which can be understood and approached in different ways. Whereas legal positivism regards the existence and content of the law as dependent on social facts, and not necessarily on the law's merits or demerits, other philosophies and religions regard law as law only so far as it maps onto ethics and morality, or some conception of natural or divine law.⁹⁷

Law and religion have long been deeply interconnected, and the underpinnings of most modern legal systems can be traced back to religious and transcendental ideas – specifically, in the case of Western law, to those of the Roman Empire and Catholic Church.⁹⁸ Indeed, Christianity was used as an explicit justification and basis for Western law until recently.⁹⁹

The relationship between religion and law in the West, and in much of the rest of the world, has nevertheless been characterized by increasing separation and

93 *Ibid.*, p. 301.

94 *Ibid.*

95 Elizabeth A. Stanley, "Cultivating the Mind of a Warrior", *Inquiring Mind*, Vol. 30, No. 2, 2014, available at: www.inquiringmind.com/article/3001_16_stanley-cultivating-the-mind-of-a-warrior/.

96 R. Mallon and S. S. Nichols, above note 90.

97 Michael Sevel and Brian Leiter "Legal Positivism", *Oxford Bibliographies*, 10 May 2010, available at: <https://tinyurl.com/vexmhvw3>; Christopher P. M. Waters, "War Law and Its Intersections", in D. Whetham (ed.), above note 9, p. 90.

98 M. Bryant, above note 5, pp. 48, 256; Elizabeth Heger Boyle and John W. Meyer, "Modern Law as a Secularized and Global Model: Implications for the Sociology of Law", *Soziale Welt*, Vol. 49, No. 3, 1998, p. 214.

99 D. Johnson, above note 18, p. 188.

secularization, as nation-States have curtailed the power of religion and accrued power to themselves. This process accelerated in Europe in the wake of the Reformation and the Peace of Westphalia, before Western law was propagated around the world as an adjunct to colonialism, Western hegemony, and latterly globalization.¹⁰⁰

But though the framing of the law has been secularized, religious concepts and principles remain, translated into the language of rationality and universalism.¹⁰¹ Natural law – variously considered to be conferred by God, nature or reason – was central to this transition.¹⁰² Like religion, it continues to provide a source of overriding moral authority independent of the State, and is therefore a vital bridge between religion and international law. Where State authority is strong, as in some authoritarian regimes, natural and religious law resources might sometimes present the only significant challenge to it. Where State authority is absent, weak or disputed, as in the relatively anarchic realms of international relations and armed conflict, natural and religious law resources become even more important, due to the limited effectiveness of positive (State) law enforcement.

To whatever degree conceptions of divine or natural law are considered to apply universally in theory, or to an ever-wider circle of human beings in practice, they have been the impetus behind the pretensions to universality of international law and many of the world's major religions. Both have provided a degree of supra-State authority to regulate inter-State relations, not least with regard to the conduct of war. It is for this reason that they have frequently been the foundation and driving force for the development of IHL in particular.

Even in Western-style legal systems, much of the paraphernalia of religion survives.¹⁰³ Religion is still called upon to secure oaths and affirmations in court, just as it has long played an important role in sanctifying treaties.¹⁰⁴ Locke did not believe that society could function without religion, since “[p]romises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist”.¹⁰⁵ Indeed, religious injunctions to abide by treaties are still an important factor in persuading religiously motivated armed groups to respect IHL treaties to this day.¹⁰⁶

Like other laws, most laws of war were not invented wholesale but rather were created to codify established ideas and practice, and were religious rules and customs long before they were put into writing.¹⁰⁷ While a number of religious

100 E. H. Boyle and J. W. Meyer, above note 98.

101 *Ibid.*, pp. 214, 216.

102 *Ibid.*

103 *Ibid.*, p. 215.

104 D. Johnson, above note 18, p. 178.

105 John A. Locke, *A Letter Concerning Toleration and Other Writings*, Liberty Fund, 2010, pp. 52–53, available at: <https://oll.libertyfund.org/title/goldie-a-letter-concerning-toleration-and-other-writings>.

106 The duty to honour treaties is enshrined, for example, in Islamic law, and is an important factor in the endorsement of IHL by some Muslim non-State armed groups.

107 Stephen C. Neff, *War and the Law of Nations: A General History*, Cambridge University Press, Cambridge, 2005, p. 29.

legal systems, including Islamic law, Hindu law and the canon law of the Catholic Church, are still extant, much of this inheritance is enshrined in customary IHL, which preserves the legacy of religiously motivated restraint in war across diverse cultures. For all the importance of statutory or treaty law, customary law is often equally binding, and while some cultures might not have a legal system in the modern Western sense, it would be wrong to assume that customary laws are necessarily weak or are not complied with.¹⁰⁸

So far as customary IHL incorporates universal principles or cross-cultural convergence over particular practices, it also establishes common principles to which all parties to conflict should adhere. The Roman concept of *ius gentium* (“law of nations”), based according to Marcus Tullius Cicero (106–43 BCE) on “the customs of our ancestors” and “common consent of men”, was of fundamental importance in this regard. It inspired the law of nations as it re-emerged in seventeenth-century Europe, embodying international customary norms against the unlawful use of force, genocide and slavery that have since achieved peremptory norm status.¹⁰⁹

Religion to compensate for lack of State will and capacity

International law is largely reliant on the will and capacity of States, and consensus between them, for its implementation and enforcement. In situations of armed conflict, even this limited State capacity and propensity to uphold the law is eroded.¹¹⁰ Wars often cause government to break down entirely, or take place in deprived or relatively ungoverned peripheries, leaving the population to the mercy of militaries and non-State armed groups that can act with impunity. Often the State might be a relatively new colonial or post-colonial construction whose borders have been arbitrarily drawn across ethno-religious lines, the very reason for conflict in the first place. The stakes in war are very high for States – as Sun Tzu puts it, “the province of life and death; the road to survival or ruin” – and depending on the character of the conflict, there might be few incentives to follow the rules during such existential crises.¹¹¹ Though IHL is often implemented and complied with, it is frequently therefore thwarted in precisely the armed conflict situations where it is supposed to apply, when States and non-State armed groups are either unwilling or unable to abide by its provisions.¹¹²

While IHL applies, to some degree, to all parties to armed conflict, it is predominantly by and for the States that are party to its treaties, and non-State actors have been largely excluded from its formulation.¹¹³ Though most

108 M. Bryant, above note 5, p. 47.

109 H. Moodrick-Even Khen, above note 52; S. C. Neff, above note 107, p. 85; Cicero, Part. Or. 37.130.

110 M. Sassòli, above note 3, p. 56.

111 D. J. Lonsdale, above note 11, p. 32.

112 For examples of this, see the ICRC's *IHL in Action* website, available at: <https://ihl-in-action.icrc.org/>.

113 M. Sassòli, above note 3, p. 63.

contemporary armed conflicts are non-international in character, IHL is far more developed with regard to the regulation of international armed conflict between nation-States than it is to internal armed conflicts within them, when States have little incentive to grant rebel or opposition groups any legitimacy.¹¹⁴

Rules applicable to non-international armed conflict are relatively thin, the most important of them being encapsulated in a single article, Article 3 common to the four Geneva Conventions, and Additional Protocol II, which has not been universally ratified.¹¹⁵ While these instruments enshrine basic protections for the lives and dignity of non-combatants, non-State armed group members do not enjoy the same protections as State armed forces personnel, despite the fact that non-State groups make up more than half of all parties to armed conflict.¹¹⁶ This understandable State bias exacerbates the asymmetric nature of most internal armed conflicts (in which advanced State militaries are often pitted against poorly resourced guerrillas), potentially undermining reciprocal respect for IHL.¹¹⁷

Customary IHL and the Martens Clause compensate for the lack of provisions for non-international armed conflicts and non-State armed groups in treaty law.¹¹⁸ In doing so they often draw upon the “laws of humanity”, including the legacy of religious and just war principles with wider applicability than the treaty law that States have actually agreed to.¹¹⁹

Where the State is weak or lacks reach, or law enforcement mechanisms break down, religious institutions upon which communities and parties to conflict depend are often still functioning, and vast networks of churches, mosques, temples, schools, hospitals and charitable institutions extend even into the remotest, most war-torn peripheries. Indeed, religions still dominate in many societies affected by armed conflict, and are crucial to maintaining some vestige of moral and social order. Failure to engage with them in such contexts is impractical, and can hamstring efforts to reassert common humanitarian norms.

Religious courts and village councils often remain functioning when higher-maintenance law courts become unviable. While there are question marks with regard to the quality of justice that some informal mechanisms provide – which can be undermined by lack of procedural rigour, susceptibility to corruption and patriarchal discrimination against women, for example – there is often no practicable alternative in the absence of strong State authority.¹²⁰ Many traditional institutions are also better adapted to the particular context, and include restorative justice mechanisms which can be implemented when retributive justice is unattainable.¹²¹ Attempts to superimpose outside legal

114 *Ibid.*

115 N. Melzer, above note 25, p. 53.

116 M. Sassòli, above note 3, p. 48.

117 *Ibid.*

118 *Ibid.*, pp. 49–50; N. Melzer, above note 25, pp. 24–25.

119 However, if there is State practice and *opinio juris* which contradicts “the legacy of religious and just war principles”, the relevant customary norm is what the former say, rather than the latter. States are still in the driver’s seat. Customary law is not a tool for non-State entities to legislate without State consent.

120 Michael Newman, *Transitional Justice: Contending with the Past*, Polity Press, Cambridge, 2019 (Kindle ed.).

121 *Ibid.*

enforcement mechanisms in such an environment can be clumsy or may be resisted altogether, and more traction can sometimes be gained by collaborating with religious and other non-State institutions that have greater influence over parties to conflict and their communities. Where religious institutions are more powerful than State bodies, or are aligned with them, debate on correspondences between religion and IHL might more intelligently focus on bolstering religious laws of armed conflict by comparison with IHL, rather than the other way around, so long as those norms uphold or exceed IHL rules.

The proximity of religious institutions to affected communities, and the fact that they are among the world's most prominent non-State actors, means that they are also well positioned to influence non-State armed groups.¹²² This is particularly the case when non-State armed groups and their followers identify or align themselves with a religion, and are therefore bound at least to some degree by its norms. For some groups of an ethno-nationalist persuasion, commitment to abide by IHL can help them to achieve popularity and a degree of international legitimacy, marking them out for membership of the community of nation-States.¹²³ For those groups and communities of a more religious character, however, whether nationalists or adherents of more global religious ideologies, the correspondence of IHL with their religious teachings is a *sine qua non* for their acceptance of it, and engagement with religious leaders and teachings is therefore essential. Religious rules and sanctions mechanisms are often incorporated into their doctrines and codes of conduct.¹²⁴ Indeed, religion is often one of the core motivations of non-State armed groups, informing both how they fight and what they are fighting for.

Religion to Improve IHL Enforcement and Compliance

Improving the regulation of armed conflict therefore requires reinforcing legal debate on the content of IHL with a closer examination of factors other than State power that might improve compliance with it.¹²⁵ Compliance with the law is generally approached from two perspectives: instrumental and normative. Instrumental means are concerned with immediate incentives of punishment and reward, such that law enforcement has a deterrent effect. Normative means are concerned with what people regard as moral or “the right thing to do”, and focus on generating voluntary compliance by socializing norms so that they become internalized and part of the population's moral identity.

122 Ioana Cismas and Ezequiel Heffes, “Not the Usual Suspects: Religious Leaders as Influencers of International Humanitarian Law Compliance”, *Yearbook of International Humanitarian Law*, Vol. 22, 2019.

123 This is often expressed by signing Geneva Call's Deeds of Commitment, for example.

124 See, for example, Muhammad Munir, “The Layha for the Mujahideen: An Analysis of the Code of Conduct for the Taliban Fighters under Islamic Law”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011.

125 D. Johnson, above note 18; M. Sassòli, above note 3.

A combination of these approaches is required for maximum effectiveness. The ICRC's 2018 *Roots of Restraint in War* study confirmed that while instrumental means remain important, humanitarian norms are better complied with the more they are internalized by combatants and resonate with their identities and moral values; this replicated the results of similar research in other fields of law.¹²⁶ The study highlighted, furthermore, the importance of informal means of socialization such as peer pressure and religious or community influence, particularly for less structured armed groups which are more embedded in the community. Whereas the ICRC understandably prioritizes military or armed group hierarchies and the integration of IHL into training, doctrine and sanctions mechanisms, the *Roots of Restraint* study went some way towards validating a more expansive and informal approach. This includes the ICRC's burgeoning engagement with religious circles, the effectiveness of which has been empirically manifest for many years.¹²⁷

Though religions often tend to get bracketed with normative means to promote compliance, they also frequently possess instrumental means to enforce religious law, sometimes meting out exemplary punishment. Religious and customary laws are often incorporated into State legal systems, and autonomous religious legal systems are often still binding on religious adherents and the groups they control or are associated with. Though following rules might sometimes consist only in instrumental cost-benefit calculations, religious rules often carry greater weight for religious adherents, who are strongly motivated to comply. Worldly enforcement of religious rules is backed up, moreover, by the threat of divine or supra-human punishment in this world or the next, whether by gods, supernatural entities or the workings of the cosmic or natural order.¹²⁸ For many religious adherents, divine monitoring and enforcement of rules is therefore omnipresent and inescapable, and many combatants continue to be haunted by the crimes they have committed in war long after the fighting has stopped.¹²⁹

Religious institutions also play a major role in education and the socialization of religious rules and principles from an early age, including those of relevance to the regulation of war. IHL can be integrated or attached to many of these educational programmes.¹³⁰ Insofar as religious actors and educational institutions also participate in interpreting IHL or researching correspondences between IHL and religious teachings, as is the case with a number of ICRC projects, this helps to better embed and acculturate IHL by situating it in relation to religious normative systems with which most people are more familiar.¹³¹ Religious organizations run many educational institutions relevant for teaching

126 Fiona Terry and Brian McQuinn, *The Roots of Restraint in War*, ICRC, Geneva, 2018; see also Oliver Kaplan, "Nudging Armed Groups: How Civilians Transmit Norms of Protection", *Stability: International Journal of Security and Development*, Vol. 2, No. 3, 2013.

127 See the ICRC's *Religion and Humanitarian Principles Blog*, above note 46.

128 D. Johnson, above note 18.

129 *Ibid.*

130 See the ICRC's *Religion and Humanitarian Principles Blog*, above note 46.

131 Harold Hongju Koh, "Internalization through Socialization", *Duke Law Journal*, Vol. 54, No. 4, 2005.

and research, including schools, universities, *madrassas*, monasteries and think tanks, and secular universities contain departments of both law and religious studies.

Religious or cultural norms relevant to the regulation of armed conflict are generally therefore more deeply internalized and rooted in the individual's religious and personal convictions than corresponding IHL rules, and can enhance their legitimacy and moral force, such that combatants become more self-regulating.¹³² This self-regulation is proven to be most powerful when it comes about as a result of precisely the kind of religious or moral self-reflection that religion encourages, such that moral behaviour becomes part of the adherent's self-identity.¹³³ Religion influences, furthermore, the interconnected reasons why people fight and how they conduct themselves against the enemy, and might also therefore have greater leverage in terms of changing behaviour. This internalization of rules and capacity for ethical thinking are particularly important when IHL rules must be interpreted and applied in highly complex armed conflict scenarios, all while coping with the raw emotions and mentally debilitating stress and fatigue engendered by war.¹³⁴

The internalization of good conduct is at the core of many religions, which teach that the intention behind an action is at least as important as the action itself. The conscience and inner life of individuals are therefore of central importance, as illustrated by introspective practices such as meditation, prayer and confession. For St Augustine, it was the intention behind killing in war, and whether or not it is motivated by love or charity in defence of the innocent, which determined whether it was sinful or not.¹³⁵ Similarly, Aquinas made right intention one of the key criteria of just war.¹³⁶ He assumed that if the intention of belligerents was correct, then good conduct would automatically follow, but if their intention was wrong, then no rules would adequately restrain their conduct.¹³⁷ This explains the lack of detailed rules on the conduct of hostilities (*jus in bello*) in his just war theory, since he regarded intention as the prime determinant of moral behaviour. A similar emphasis on intention rather than explicit rules of conduct can be found in many other religious and philosophical traditions, and is a central concern of ethics.¹³⁸

As a secular legal regime, IHL has inevitably gone the other way, developing detailed rules on the conduct of hostilities while underplaying the intention behind them. In the absence of reliable enforcement mechanisms, however, intention has even greater bearing on whether or not IHL rules are followed, suggesting that re-engagement of IHL with its religious origins might facilitate its implementation. Consideration of intent (*mens rea*) is not entirely absent from IHL, since it has a

132 Margaret Levi, Audrey Sacks and Tom Tyler, "Conceptualizing Legitimacy, Measuring Legitimizing Beliefs", *American Behavioral Scientist*, Vol. 53, No. 3, 2009.

133 Ted van Baarda, "The Ethical Challenges of a Complex Security Environment", in D. Whetham (ed.), above note 9, p. 164.

134 R. E. Hassner, above note 12.

135 D. Whetham, above note 9, p. 71.

136 *Ibid.*, p. 72.

137 *Ibid.*

138 For example, *cetanā* in Buddhism and *niyyah* in Islam.

direct bearing on whether belligerents choose to follow IHL's rules, and must be proven after the fact to prosecute perpetrators of war crimes. Moreover, while IHL does not necessarily comment on how intention supports compliance, this does not mean that there is a vacuum, since military ethics brings intention back into play.

Religion and Military ethics

Military discipline is undoubtedly paramount in order to ensure as far as possible that fighters follow IHL rules in the extreme circumstances of war, and the importance of integrating IHL into military doctrine, training and sanctions mechanisms has long been recognized. Care must be taken, however, that discipline does not promote an unthinking obedience and conformity that curtails the capacity for ethical reflection.¹³⁹ Even when IHL is clear in theory, it is quite another thing to apply it in practice to particular armed conflict situations. Indeed, war confronts soldiers with severe ethical dilemmas not generally confronted in peacetime, not least whether or not to kill some innocents in order to save others. Training that fails to factor in such ethical dilemmas and battlefield constraints will be of limited effectiveness.¹⁴⁰

Despite the moral precariousness of war, the teaching of military ethics today is often underdeveloped even in advanced militaries, and many have little or no capacity to teach it at all.¹⁴¹ Moreover, higher-ranking officers generally receive disproportionately more training in ethics than lower-ranking personnel, even though the latter are more commonly on the front line of military engagements, and often face the severest ethical challenges.¹⁴² Most militaries employ a mixed bag of approaches to military ethics, so that it is not always clear what they are trying to achieve, and some ethics training is more of a box-ticking exercise than a means to inspire.¹⁴³

A functional, rules-based approach predominates, the purpose of which is ultimately to improve military efficiency within the bounds of the law.¹⁴⁴ This generally involves the inculcation of IHL rules and military virtues, such as the "Values and Standards" of the British military, with the emphasis on promoting professional behaviour rather than ethics *per se*.¹⁴⁵ Aspirational military ethics

139 T. van Baarda, above note 133, p. 166.

140 C. P. M. Waters, above note 97, p. 91; Martin L. Cook and Henrik Syse, "What Should We Mean by 'Military Ethics'?", *Journal of Military Ethics*, Vol. 9, No. 2, 2010, p. 120.

141 Gwilym Williams, "Seeing Through the Fog of War: The Need for Professional Military Ethics Education", *Strife*, 24 September 2015.

142 Jessica Wolfendale, "What Is the Point of Teaching Ethics in the Military?", in Paul Robinson, Nigel De Lee and Don Carrick (eds), *Ethics Education in the Military*, Ashgate, Abingdon, 2008.

143 M. L. Cook and H. Syse, above note 140; J. Wolfendale, above note 142, p. 162.

144 J. Wolfendale, above note 142.

145 *Ibid.*, p. 164; M. L. Cook and H. Syse, above note 140. The Values of the British Army are courage, discipline, respect for others, integrity, loyalty and selfless commitment. Its Standards are lawfulness, acceptable behaviour and professionalism. See British Army, "A Soldier's Values and Standards", available at: www.army.mod.uk/who-we-are/our-people/a-soldiers-values-and-standards/.

training to develop combatants' capacity for moral autonomy and deliberation, making them better people as well as better combatants, is less frequent and usually the preserve of the officer class.¹⁴⁶ Most combatants are not therefore encouraged to consider the ethical rationale behind military virtues, or to properly rehearse, in advance of hostilities, how to put those values into practice, though strides are increasingly being made in this direction.¹⁴⁷

There is therefore a pressing need to strengthen or reinvigorate cultures of military ethics that embody the highest humanitarian and chivalric ideals and put the dignity and protection of non-combatants over force protection, particularly in unconventional wars fought among the people.¹⁴⁸ While IHL tells belligerents whether or not an action is legally permitted, ethics engage the intention and conscience or inner life of combatants, and are often influenced by religious ideas. Military ethics have historically been deeply informed by religion, including highly aspirational just war, holy war, pacifist and warrior traditions. Christianity informed both the theory and practice of medieval chivalry, for example, just as Buddhism contributed to the development of the martial arts.¹⁴⁹

Many religious and military virtues overlap.¹⁵⁰ While courage, loyalty and discipline – also admired religious qualities – remain important, modern armed forces are increasingly conscious of the fact that these traditional military virtues are not necessarily well adapted to contemporary wars, particularly to unconventional armed conflicts in which the crucial battle is over hearts and minds. Military effectiveness in such contexts depends upon being a sympathetic person as much as an effective fighter, and some militaries have therefore expanded the list to include virtues such as compassion, wisdom, patience, temperance and humility.¹⁵¹

Aside from the Christian influence on codes of chivalry and the just war tradition, Western military ethics is heavily influenced by ancient Greek precedents. The Aristotelean emphasis on character formation and the cultivation of individual virtue in the sense of functional excellence is regarded as particularly suited to military life.¹⁵² Otherwise, the rich legacy of restraint in many non-Western traditions has yet to be fully explored, and can provide fresh perspectives on what is expected of combatants.

Buddhist-inspired martial arts traditions are a case in point. Both a meditation technique and a means to protect, they enabled practitioners to

146 J. Wolfendale, above note 142.

147 See, for example, the military ethics playing cards and mobile phone application developed by King's College London, available at: <https://militaryethics.uk/en/playing-cards/military>; G. Williams, above note 141.

148 T. van Baarda, above note 133, p. 163.

149 Peter A. Lorge, *Chinese Martial Arts: From Antiquity to the Twenty-First Century*, Cambridge University Press, New York, 2011.

150 Shannon E. French, *The Code of the Warrior: Exploring Warrior Values Past and Present*, Rowman & Littlefield, Lanham, MD, 2017.

151 Peter Olsthoorn, "Military Virtues and Moral Relativism", in Michael Skerker, David Whetham and Don Carrick (eds), *Military Virtues*, Howgate Publishing, Havant, 2019, p. 45 (Kindle ed.).

152 Martin L. Cook, "Military Virtues", in M. Skerker, D. Whetham and D. Carrick (eds), above note 151, p. 2.

control their emotions, using only as much force as was absolutely necessary to overcome an opponent.¹⁵³ The conduct of war was thus intimately tied up with the practice of religion, and given the centrality of non-harming to Buddhism, the use of force was meant to be restrained to the maximum degree, with an emphasis on extreme self-sacrifice in the service of others. The Shaolin monastery, for example, became a centre of military training and innovation, while Zen Buddhism in Japan came to be known as the “religion of the warrior”.¹⁵⁴ In Buddhism, ethics are inseparable from its psychological insights and mindfulness technologies, since it understands that without proper training to enhance both psychological and physical self-control, practitioners will be under-equipped to act with restraint. This is highly relevant, of course, to military training, and martial arts have also been proven, for example, to reduce aggression in the young.¹⁵⁵ Though the degree to which Buddhist combatants actually put these martial arts ideas into practice during armed conflict is questionable, much can still surely be learned from this rich legacy.

Religion also therefore serves an important functional purpose in military ethics, and introspective religious resources such as prayer and meditation have long been utilized to enhance restraint and self-control in combatants. Indeed, mastering one’s base impulses is a central feature of many religions, and is of critical importance to military conduct.

The degree to which religion can be integrated into military ethics training depends, of course, on the context. In pluralistic societies, soldiers from different backgrounds must converge on secularized virtues to which they can all commit, just as the doctrine of religious restraint constrains religious arguments in the legislative sphere.¹⁵⁶ But this does not preclude military personnel from being motivated by their personal religious beliefs. Rather than purging religion from the military curriculum, military personnel are perhaps best exposed to a variety of religiously inspired military traditions, thereby promoting understanding and respect for other cultures, including the value systems of potential adversaries.

In mono-religious militaries and non-State armed groups, the teachings of the fighters’ religion in relation to the conduct of war are even more important, and can be integrated where appropriate into military and IHL training. Indeed, many armed groups include religious scholars among their leaders and combatants, some of whom also play a crucial role in drafting their codes of conduct.¹⁵⁷

153 A. Bartles-Smith *et al.*, above note 29; Peter. A. Lorge, *Chinese Martial Arts: From Antiquity to the Twenty-First Century*, Cambridge University Press, Cambridge, 2012.

154 *Ibid.*

155 Anna Harwood, Michal Lavidor and Yuri Rassevsky “Reducing Aggression with Martial Arts: A Meta-Analysis of Child and Youth Studies”, *Aggression and Violent Behavior*, Vol. 34, 2017.

156 Christopher J. Eberle and Rick Rubel, “Religious Conviction in the Profession of Arms”, *Journal of Military Ethics*, Vol. 11, No. 3, 2012.

157 For example, the Bangsamoro Islamic Armed Forces, the armed wing of the Moro Islamic Liberation Front in the Philippines, has an Islamic Call and Guidance department which oversees religious leaders in its ranks in order to provide Islamic guidance to all of its commands. See United Nations and Moro Islamic Liberation Front, *Children in Armed Conflict: Philippines: Action Plan on the Recruitment and Use of Children in Armed Conflict*, 2017, pp. 3–4.

Military religiosity and the warrior ethos

Military training also has an hortatory quality to galvanize combatants to uphold the highest military and patriotic ideals, and even secular militaries promote forms of religiosity that tap into the motivations of combatants at a deeper level than rational analysis.¹⁵⁸ In many militaries these revolve around a warrior ethos that binds combatants into a sacred covenant to fight and die for one another, and for the country or cause for which they serve, and that must necessarily inspire them to override their natural instinct for self-preservation.¹⁵⁹ The US Army has distilled the essence of its own warrior ethos into the following succinct formulation, which includes the famous injunction never to leave a comrade behind. All soldiers must internalize this during their basic training:¹⁶⁰

I will always place the mission first.
I will never accept defeat.
I will never quit.
I will never leave a fallen comrade.¹⁶¹

Military recruits take oaths upon enlistment, often containing appeals to divine authority.¹⁶² Basic training (boot camp) and further specialized training puts them through intense rites of passage – appropriately called “Hell Week” for the US Navy SEALs – which deconstruct their civilian identities and re-socialize them into the very different values of military life.¹⁶³ This includes, of course, the capacity to kill when required, and the subordination of their will to strict military discipline.

Parallel to professional rules and standards, recruits are indoctrinated by more informal means. Most military services and units have their own subcultures, elements of which might have a greater hold on combatants than more formal rules.¹⁶⁴ These often incorporate initiation rites and other rituals intended to foster conformity and an intense sense of belonging to the unit, and sometimes feature brutal and humiliating hazing rituals which might be informally tolerated by the hierarchy even when officially banned.¹⁶⁵

158 M. L. Cook and H. Syse, above note 140, p. 121.

159 Herbert Raymond McMaster, “Preserving the Warrior Ethos”, Hudson Institute, 1 November 2021, available at: www.hudson.org/research/17361-preserving-the-warrior-ethos.

160 *Ibid.*

161 US Army, “Warrior Ethos”, available at: www.army.mil/values/warrior.html. This website also includes pages on the US Army’s Values and the creeds, songs and oaths of its various services.

162 Such is the case even in some secular countries; in the US and British militaries, for example. See US Army, “Oath of Enlistment”, available at: www.army.mil/values/oath.html; British Army, “Oath of Allegiance – Christian Version”, available at: <https://tinyurl.com/ytp2bjrs>.

163 See, for example, “Hell Week”, *Navyseals.com*, available at: <https://navyseals.com/nsw/hell-week-0/>.

164 Scott A Fischer, *Army and Air Force Subcultures Effects on Joint Operations*. Army War College, Carlisle Barracks, Pennsylvania, PA, 2006.

165 Jonathan S. Landay, “Hazing Rituals in Military Are Common – and Abusive”, *Christian Science Monitor*, 11 February 1997, available at: www.csmonitor.com/1997/0211/021197.us.us.4.html; Kirsten M. Keller et al., *Hazing in the US Armed Forces: Recommendations for Hazing Prevention Policy and Practice*, RAND Corporation, 2015.

Quasi-religious warrior codes or “creeds” are an integral part of US military identity, for example, and are memorized and chanted by unit members.¹⁶⁶ Though they vary across the different services, and include the famous Ranger and Rifleman’s Creeds, all stress the virtues of bravery, honour, esprit de corps, loyalty and self-sacrifice, thereby reinforcing military comradeship and cohesion.

These creeds contain powerful and inspiring language likely to have a stronger impact on combatants’ behaviour than many more formal rules. The iconic Rifleman’s Creed, for example, which has guided US Marine Corps weapons training for over seventy years, anthropomorphizes the Marine’s rifle to striking psychological and practical effect:¹⁶⁷

My rifle is human, even as I, because it is my life. Thus, I will learn it as a brother. I will learn its weaknesses, its strength, its parts, its accessories, its sights and its barrel. I will ever guard it ... as I will ever guard my legs, my arms, my eyes and my heart against damage. ... We will become part of each other. We will.

Before God, I swear this creed. My rifle and myself are the defenders of my country. We are the masters of our enemy. We are the saviors of my life.¹⁶⁸

Interestingly, none of these creeds contain any explicit reference to rules of restraint. The accompanying US Army Soldier’s Code and US Army Values do refer to the need to treat others with dignity and respect, to act honourably, and to do what is right legally and morally, but protection of civilians, for example, is not explicitly mentioned.¹⁶⁹ IHL provisions are, of course, incorporated into the US Army’s ten Soldier’s Rules, the US military’s Code of Conduct and many other aspects of US military training.¹⁷⁰

Nevertheless, in many militaries there does sometimes appear to be a tension or disconnect between aspects of training which inculcate a warrior mentality, and those which teach IHL rules.¹⁷¹ Though the power of warrior

166 I use the US military as an example because its rules and values are so transparent and accessible. See US Army, “The Army Values”, available at: www.army.mil/values/index.html. See also Association of the United States Army, “The Code of Conduct”, available at: www.USA.org/code-conduct; Mick Howard, “A Military Tradition Institutionalized: Rhetorical Personification and Anthropomorphism in ‘The Rifleman’s Creed’”, *Journal of Military Experience*, Vol. 3, No. 2, 2013, pp. 121–122.

167 M. Howard, above note 166; see also “The Rifleman’s Creed”, *YouTube*, available at: www.youtube.com/watch?v=M11XkE6KBro.

168 “Setting the Tone for Each Service: Learning the Military Creeds”, *Military.com*, available at: www.military.com/join-armed-forces/military-creeds.html.

169 See the US Army, above note 166. For the US Army Soldier’s Code, see: www.uvu.edu/rotc/resources/soldiers-creed.html.

170 Chris Jenks, “The Efficacy of the U.S. Army’s Law of War Training Program”, *Articles of War*, 14 October 2020, available at: <https://lieber.westpoint.edu/efficacy-u-s-armys-law-of-war-training-program/>. Note that the “Soldier’s Rules” are less visible than the US Army Values and various creeds on the Internet. Interestingly, the US Military’s Code of Conduct invokes IHL provisions (specifically Article 17 of Geneva Convention III) for the benefit of US military personnel should they become prisoners of war, but not necessarily for anyone else: “Should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies.” See Association of the United States Army, above note 166.

171 *Ibid.* See also above note 166.

codes to motivate combatants lies in their simplicity, they have often traditionally been informed by religious teachings that emphasize restraint. There would therefore appear to be scope to incorporate more explicit IHL norms into warrior codes, and to translate them into language that is more motivational. The Round Table Oath from Thomas Malory's 1485 *Morte d'Arthur*, for example, explicitly states that knights should be merciful, "and always to do ladies, damosels, and gentlewomen and widows succour [and] strengthen them in their rights".¹⁷² Admittedly, this appears in a work of fiction, and was not necessarily reflective of contemporary practice.¹⁷³ Nevertheless, given the prevalence of conflict-related sexual violence and rape culture (of which men and boys can also be victims) in some militaries, the integration of similarly explicit prohibitions into their warrior ethos would perhaps not be amiss.¹⁷⁴

Warrior codes are supplemented by regimental mottos, songs, war cries and insignia which often have religious symbolism or content.¹⁷⁵ Weapons systems are still often named using religious terminology, and war cries of various regiments in the Indian military, for example, include exhortations to various Hindu gods, just as the Islamic *Takbir* – "Allāhu 'akbar", meaning "God is the greatest" – is commonly employed by Muslim fighters.¹⁷⁶ Religious symbolism among armed forces is on the rise in many contexts, as the consecration of the new Russian Orthodox Cathedral of the Armed Forces in 2020 illustrates.¹⁷⁷

Most militaries also encourage the honouring of former heroes or exemplars. Future officers at Westpoint Military Academy in the United States are enjoined to remember the "Long Gray Line" of former cadets, including great US generals of the past, while British Marines treasure the memory of those who have received the prestigious Victoria Cross, often when laying down their lives for their comrades.¹⁷⁸ Of course, this is problematic when war criminals are heroized, as is still the case for figures such as Ratko Mladić in the former Yugoslavia.¹⁷⁹ Religiously inspired war epics such as the Indian *Mahābhārata*

172 Felicia Ackerman French, "Never to Do Outrageousness nor Murder...": The Code of the Warrior in the World of Malory's *Morte d'Arthur*", in S. E. French, above note 150, p. 120.

173 Malory was himself a warrior, but he wrote *Le Morte d'Arthur* in prison and was hardly a model of good behaviour. Indeed, according to Shippey, he must be "the least politically correct author still commonly read". Malory was himself charged with rape, though the details of the case are unclear. See Catherine Batt, "Malory and Rape", *Arthuriana*, Vol. 7, No. 3, 1997, p. 79.

174 Contemporary warrior codes should also be vetted so as not to perpetuate unhelpful gender stereotypes. Women, Peace, and Security and feminist scholars have also critiqued aspects of IHL in this respect. See, for example, Orly Maya Stern, *Gender, Conflict and International Humanitarian Law: A Critique of the "Principle of Distinction"*, 1st ed., Routledge, Abingdon, 2018.

175 R. E. Hassner, above note 12.

176 Walter A. Dorn and Richard Rose, "Hindu References in the Indian Military: Weapons, War Cries and Insignia (Tables for Primary and Preliminary Research)", unpublished draft for ICRC, 1 December 2021.

177 Shaun Walker, "Angels and Artillery: A Cathedral to Russia's New National Identity", *The Guardian*, 20 October 2020, available at: www.theguardian.com/world/2020/oct/20/orthodox-cathedral-of-the-armed-force-russian-national-identity-military-disneyland.

178 S. E. French, above note 150, p. 19.

179 Bruno Waterfield, "War Criminals Are Heroes in Balkans, Says UN Prosecutor", *The Times*, 6 June 2021, available at: www.thetimes.co.uk/article/war-criminals-are-treated-as-heroes-by-genocide-deniers-in-the-balkans-zkd5sjdpz.

(c. 400 BCE–300 CE) are at the core of many religions and cultures, and their heroes provide military role models that are more real for many of today’s combatants than their own flesh-and-blood contemporaries.¹⁸⁰ Historical accounts also contain inspiring religious role models; the fact, for example, that the Prophet Muhammad successfully commanded armies is of central importance to the Muslim conduct of war.

Many military experts, such General H. R. McMaster of the United States, maintain that a warrior ethos is “foundational to norms involving professional ethics, discipline, and discrimination in the use of force, [and is] essential to making war less inhumane”.¹⁸¹ Others regard it as a dangerous relic, or expression of toxic masculinity, which does more to undermine discipline and morale than reinforce it.¹⁸² Research shows that military personnel fight mainly for their comrades and to preserve their honour and that of their unit¹⁸³ – but this close-knit comradeship is often inconducive to empathy for outsiders, and consequently to restraint in the use of force against them. A downside to more informal cohesion dynamics is that they can degenerate into deviant behaviour, including complicity in IHL violations and in covering them up.¹⁸⁴ Combatants brutalized or degraded during training by hazing rituals that verge on torture are more likely to treat adversaries and civilian populations in a similar way.¹⁸⁵ Just as powerful religious resources can be channelled to either promote or override restraint, a warrior ethos can have both a positive and negative impact on adherence to IHL depending on its content and application.

Military ethics and warrior codes that emphasize restraint can help give nobility to a profession that would otherwise degenerate into senseless slaughter, acting, in the words of Shannon French, as “moral and psychological armor that protects the warrior from becoming a monster in his or her own eyes”.¹⁸⁶ The obverse of honour is of course shame, which is often a far more powerful deterrent to immoral acts than any sanctions mechanism since it impinges on the

180 S. E. French, above note 150, p. 254.

181 H. R. McMaster, above note 159.

182 Ryan Noordally, “On the Toxicity of the ‘Warrior’ Ethos”, *Wavell Room*, 28 April 2020, available at: <https://wavellroom.com/2020/04/28/on-the-toxicity-of-the-warrior-ethos/>; Gilbert Holleufer, “Heroic Memory and Contemporary War”, *International Review of the Red Cross*, Vol. 101, No. 910, 2019.

183 Christopher Hamner, “Why Do Soldiers Fight?”, *Historically Speaking*, Vol. 13, No. 1, 2012; H. R. McMaster, above note 159.

184 *The Inspector-General of the Australian Defence Force Afghanistan Inquiry Report* into unlawful conduct by Australian Special Forces in Afghanistan graphically illustrates these dynamics, and the dangers of units operating in an environment detached from proper military oversight and societal norms. Part 3 (p. 325 onwards) on “Strategic, Operational, Organisational and Cultural Issues” is particularly relevant. See *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report*, 2020 (Brereton Report), available at: <https://afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>.

185 Such was the case in the German and Imperial Japanese Armies during World War II. The brutality of the Russian military in Syria and Ukraine has also been partly attributed to the prevalence of *dedovshchina*, or hazing, in its ranks. See Bret Devereaux, “What Makes Armies Commit Atrocities?”, *Foreign Policy*, 6 April 2022, available at: <https://foreignpolicy.com/2022/04/06/russia-ukraine-atrocities-war-crimes/>; “Russia Leaves a Trail of Atrocities in Ukraine”, *Financial Times*, 5 April 2022, available at: <https://tinyurl.com/4fmh97py>.

186 S. E. French, above note 150, pp. 8, 12.

combatants' sense of moral self-worth, and is often alluded to in various military codes. Like IHL rules which uphold human dignity, restraint as self-protection is an important religious idea that helps to safeguard the well-being of combatants themselves.

Military ethics beyond the military

Conflict situations tend to reinforce the importance of group membership on individual behaviour and exacerbate dehumanizing rhetoric towards outsiders.¹⁸⁷ Military training and warrior codes can furthermore tend to detach military and armed group personnel from societal norms, loosening the restraints that would otherwise guide them in civilian life. The vital importance of loyalty and comradeship, since combatants depend on one another for their lives, means that armed actors often bond so tightly with comrades in their respective combat units that they risk losing their sense of community with other people.¹⁸⁸ Most militaries encourage the dangerous idea that fighters are a class apart, by dint of the sacrifices that they are prepared to make and the trauma they might experience. While it has been argued that this separation might help them to behave in a more detached and therefore professional manner, and this might perhaps be of some utility in more conventional military activity, it is likely to be a disadvantage in the non-conventional wars which predominate today, in which social skills and an ability to relate to people are at least as important as skill in killing.¹⁸⁹ Indeed, IHL violations are more likely to occur where unhealthy dynamics within close-knit combat units are shielded from the scrutiny of the population at large.¹⁹⁰

The behaviour of combatants hinges largely on their identity and moral values, and how they define themselves in relation to their adversaries, comrades and societies. Combatants have multiple identities, whether as military professionals, warriors or members of social, ethnic, national or political groups, and as far as possible these identities can be engaged to undergird an attitude of restraint. Though military training is vital, the behaviour of combatants is also influenced by their communities, and the religious identity of combatants is particularly salient, embodying moral values that are a potent motivational force.¹⁹¹ This is particularly important in armed forces or non-State armed groups where training in IHL and military ethics is absent or inadequate, or where conscripts or volunteers are mobilized to fight at short notice. Greater reliance must therefore be placed on religious or cultural values which are already

187 Emanuele Castano, Bernhard Leidner and Patrycja Slawuta, "Social Identification Processes, Group Dynamics and the Behaviour of Combatants", *International Review of the Red Cross*, Vol. 90, No. 870, 2008.

188 *Ibid.*

189 Shannon E. French and Anthony I. Jack, "Dehumanizing the Enemy: The Intersection of Neuroethics and Bioethics", in David Whetham and Bradley J. Strawser (eds), *Responsibilities to Protect: Perspectives in Theory and Practice*, Brill Nijhoff, Leiden, 2015. See also the Brereton Report, above note 184.

190 F. Terry and B. McQuinn, above note 126.

191 O. Kaplan, above note 126.

socialized, and religious and community leaders have played a significant role in moderating the behaviour of combatants in this respect.¹⁹²

Military chaplains and clergy

Military commanders have long appreciated the force-multiplying potential of religion to reinforce discipline and morale. The vital role of clergy and military chaplains in providing moral guidance and spiritual support to combatants, especially for their mental health, is therefore well understood.¹⁹³ The Duke of Wellington remarked, for example, that chaplains were important “not only from the desire ... of religious instruction, but from the knowledge that [they are] the greatest support and aid to discipline and order”.¹⁹⁴

IHL provisions for the protection of religious personnel reflect this, and respect for the clergy was enshrined in the first Geneva Convention of 1864. In the book that inspired it, *A Memory of Solferino*, Henry Dunant mentions the work of Napoleon’s chaplain, the Abbé Laine, at the battle of Solferino in 1859. Laine “went from one field hospital to the next bringing consolation and empathy to the dying”.¹⁹⁵

Crucially, clergy also administer the funerals and last rites of combatants and provide them with absolution, as well as providing a link and support to family members. Religion is central to the way that death is handled even in secular societies, and enables comrades, family members and communities to come to terms with it. Religion can also help reconcile people to following the rules of war, even when they allow the killing of loved ones, and often has a crucial bearing on future conduct against the enemy and the possibility of unlawful reprisals. Of course, some clergy have used religion to weaponize victimhood and encourage or instigate atrocities, but this is all the more reason why religious circles must be engaged.

Though military chaplains sometimes instruct soldiers on military ethics and IHL, they have been less willing to break rank and report atrocities committed by units they accompany, and clergy outside the military are generally more outspoken.¹⁹⁶ Some have therefore accused military chaplains of acting more like indoctrination agents than true clergy, suggesting that militaries might consider recruiting and supporting chaplains who are more forthright in upholding religious and IHL principles.¹⁹⁷ At a recent course for Catholic military chaplains at the Vatican, Pope Francis exhorted them to do just that.¹⁹⁸

192 F. Terry and B. McQuinn, above note 126.

193 R. E. Hassner’s *Religion on the Battlefield*, above note 12, contains numerous examples from modern wars.

194 *Ibid.*, p. 108.

195 H. Dunant, above note 2, p. 31.

196 R. E. Hassner, above note 12, pp. 87–88, 94, 98.

197 *Ibid.*, p. 98.

198 See this address by Pope Francis to military chaplains: “Audience with the Participants in the Fifth International Course of Formation of Catholic Military Chaplains on International Humanitarian Law”, Holy See Press Office, 2019, available at: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/10/31/191031a.html>.

Religion to bolster the resilience of combatants

The extreme conditions produced by armed conflict test the character, morale and resilience of belligerents to the limit, impairing their cognitive and emotional capacities and tending to obfuscate or override calls for humanity and restraint.¹⁹⁹ The “fog of war”, an uncertainty and confusion in the battlespace that impairs situational awareness, can hamper combatants’ ability to distinguish between legal and illegal targets. This is exacerbated by fatigue, stress, intense peer pressure, and strong emotions such as fear, anger, hatred, grief and euphoria, which erode morale and military discipline and compromise combatants’ ability to make proper judgements in the complex, fast-moving and morally precarious situations where they need it most.²⁰⁰

Much of military training also runs counter to restraint, tending to brutalize or dehumanize soldiers and override their natural predispositions not to kill except in self-defence, and producing an inuredness to killing that is easily misdirected in the heat of battle.²⁰¹ The clash between the very different values that soldiers are expected to comply with in the military and those that govern civilian life means that many fail to cope with their reintegration into society once the fighting is over.

Apart from physical death and injury, increasing attention is now being paid to the mental trauma that combatants experience. In recent years, research in the United States in particular has examined the phenomenon of moral injury in combat veterans, a constellation of shame- and guilt-based disturbances caused when they perpetrate, fail to prevent or witness events which transgress deeply held moral values, the symptoms of which range from social isolation through to depression, post-traumatic stress disorder (PTSD) and suicide.²⁰² Research by Shay and Grossman has shown that combatants who held the enemy in respect, not least due to the latter’s courage and fighting prowess, suffered fewer psychological problems when they returned home than those who dehumanized or disparaged the enemy.²⁰³ Honouring the enemy, as in religiously inspired warrior codes, is thus an important step in recovering from combat PTSD.²⁰⁴

Insufficient attention has been paid to supporting combatants and bolstering their psychological resilience in this regard, thereby boosting their ability to fight with the requisite self-control and restraint. Many religious practices such as meditation, prayers, blessings and benedictions are proven to

199 T. van Baarda, above note 33, pp. 156–157.

200 *Ibid.*

201 David Livingstone Smith, *Less Than Human: Why We Demean, Enslave, and Exterminate Others*, St Martin’s Press, New York, 2011; S. E. French and A. I. Jack, above note 189; Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Open Road Media, New York, 2014.

202 Sheila Frankfurt and Patricia Frazier “A Review of Research on Moral Injury in Combat Veterans”, *Military Psychology*, Vol. 28, No. 5, 2016; Hannah C. Hamrick, Michelle L. Kelley and Adrian J. Bravo, “Morally Injurious Events, Moral Injury, and Suicidality among Recent-Era Veterans: The Moderating Effects of Rumination and Mindfulness”, *Military Behavioral Health*, Vol. 8, No. 1, 2020, p. 109.

203 S. E. French, above note 150, pp. 6–7.

204 Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character*, Simon & Schuster, New York, 2010, p. 115.

help relieve stress and manage trauma, and their repetitive and contemplative nature appear to be important in this respect.²⁰⁵ The only systematic survey of prayer in the military conducted in World War II found that 70–83% of soldiers were “helped a lot” by it.²⁰⁶ More recent research with US troops has shown, for example, that Buddhist-inspired mindfulness therapies can reduce stress and enhance soldiers’ resilience, situational awareness and working memory, better enabling them to perform calmly and effectively under pressure and to adhere to norms of restraint.²⁰⁷ Preliminary mental health research supports the link between religiosity or spirituality and resilience, particularly with regard to coping with shock and trauma, resulting in lower probability of depression, anxiety, and abuse of alcohol and drugs.²⁰⁸ Among Sri Lankan Buddhist veterans with combat trauma, for example, a belief in reincarnation acted as a buffer to prevent further traumatization.²⁰⁹

Disseminating knowledge of IHL and corresponding religious norms

IHL cannot be followed if it is not known or understood, and a lack of knowledge also affects how it is perceived, and therefore its legitimacy and acceptance. Though much effort has been made to ensure that States integrate IHL into their national legislation and training for their lawyers and armed forces, knowledge and understanding of IHL outside a narrow band of government, military, legal, academic, humanitarian and non-State armed groups is still limited. While commendable efforts have been made to disseminate knowledge of IHL to a wider audience in recent years, many important constituencies have yet to be brought on board. More clearly needs to be done to engage not just those directly concerned with IHL, but the constituencies on which they depend and to which they are more or less accountable.²¹⁰

This is not to say that the fundamental humanitarian norms contained in IHL are not well known and accepted, since they are embodied in religions and cultures around the world; rather, it is to note that most people do not know what IHL is, or that it codifies these norms. Wherever this gap is not bridged, and IHL is not seen to correspond or resonate with people’s own value systems, its acceptance and legitimacy will be thin. The ICRC *People on War* study in 2016 surveyed 17,000 people in sixteen countries affected by armed conflict, as

205 R. E. Hassner, above note 12, p. 125.

206 *Ibid.*, p. 119.

207 Claire Braboszcz, Stéphanie Hahusseau and Arnaud Delorme, “Meditation and Neuroscience: From Basic Research to Clinical Practice”, in Roland A. Carstedt (ed.), *Integrative Clinical Psychology, Psychiatry and Behavioral Medicine: Perspectives, Practices and Research*, Springer, New York, 2010; Amishi P. Jha *et al.*, “Minds ‘at Attention’: Mindfulness Training Curbs Attentional Lapses in Military Cohorts”, *PLoS One*, Vol. 10, No. 2, 2015.

208 R. E. Hassner, above note 12, p. 124.

209 *Ibid.*, p. 125.

210 O. Kaplan, above note 126.

well as the five permanent UN Security Council (P5) countries and Switzerland, to assess how attitudes to IHL have changed over the past two decades. While over two thirds of those surveyed still believed that the law mattered, the effectiveness of IHL was increasingly being questioned. People were more tolerant towards the use of torture on enemy combatants, and those living in P5 countries had become more resigned to civilian deaths in war.²¹¹ Respondents also believed that, after military leaders and fellow combatants, religious and community leaders were more important in influencing the behaviour of combatants than the threat of punishment by national or international courts.²¹²

Engagement with religious circles leverages the vast followings and political, governmental, educational, legal, humanitarian and business resources of the world's religious traditions. These include some of the world's largest and most powerful organizations, and are among the few actors capable of holding States and non-State armed groups to account. While a minority of religious leaders might exacerbate conflict between communities, most embody the religious values and humanitarian concerns of their respective religions, and are genuinely interested in and supportive of IHL. This is no surprise given the proximity and deep commitment of religious circles to affected communities, and their long involvement in charitable and humanitarian action. Humanitarian values really matter to them and are embedded in religious teachings.

While engagement with religious circles is an important dimension of the humanitarian localization agenda, according to which local communities are more empowered to initiate and direct humanitarian activities, religious circles are also characterized by their ability to straddle national borders and have long been at the forefront of globalization. Indeed, they include some of the world's oldest international organizations, such as the Buddhist Sangha, which can trace its history back 2,500 years.²¹³ Religious leaders are still among the world's most frequent travellers, with congregations that extend across the globe, and religious diaspora communities are often highly relevant to humanitarian action, particularly with regard to engaging with non-State opposition groups.

Given the nature of their work and the respect in which they are held, religious organizations are frequently better networked and more knowledgeable about their respective contexts than other actors, and are exceptionally well placed to navigate armed conflict situations, influence those involved and mobilize communities. Indeed, religious actors are often well connected to all sides in a particular conflict, and can promote adherence to IHL and corresponding religious norms.²¹⁴ Where, as is often the case, religious organizations have political influence or are part of governments, opposition

211 ICRC, *People on War: Perspectives From 16 Countries*, Geneva, 2016, available at: www.icrc.org/en/document/people-on-war

212 *Ibid.*

213 Kulatissa Nanda Jayatilleke, "The Principles of International Law in Buddhist Doctrine", *Académie de Droit International: Recueil des cours*, Vol. 120, 1967.

214 This is borne out by long ICRC experience in the field, and the frequent role of religious leaders as mediators.

groups or international bodies, they can also help to lobby for better integration of IHL principles into those actors' respective legal regimes.

Religious institutions are popular and effective communicators, and are therefore ideal mediums for disseminating, translating and contextualizing IHL messages into languages and idioms that people can understand. Indeed, norms must be expressed in the language and culture of those for whom they are relevant if they are to resonate. Religious organizations also possess arrays of multimedia communication channels, many of which broadcast across the globe.

Comparing IHL and religious resources

However, the power of religion is not fully exerted if it is engaged only to promote IHL or otherwise facilitate the agendas of humanitarian organizations. Moreover, if religious organizations perceive themselves to be instrumentalized, then enthusiasm will be low and engagement might also backfire. Advocates of IHL must therefore have a sincere desire to learn about religion in order to properly enlist their support. This works both ways, of course, since religious leaders must have an interest in learning about IHL to achieve mutual dialogue built on trust.

One of the best ways to disseminate IHL is by comparing it with the religious normative systems that inform most peoples' lives and are far older, more extensive and more deeply entrenched across the world. Insofar as IHL and religious teachings or practices converge or otherwise endorse one another, the legitimacy of IHL and the relevance of corresponding religious teachings will be reinforced, helping to regenerate rather than displace traditional cultures. Exploration of religious resources can furnish insights on how to develop or better implement IHL rules, while IHL can demonstrate how religious resources might be repurposed to regulate contemporary armed conflicts.

Such two-way debate is more effective at embedding key concepts and ideas than decontextualized IHL training and promotion, or cherry-picking from religious texts in order to obtain endorsement for IHL. Research has demonstrated that individuals are more likely to converge upon impartial norms when they are able to empathize with the perspectives of others and engage in explicit moral reasoning and argument in support of their respective positions, ideally by meeting face to face.²¹⁵ Whether common sense or something approximating to Habermasian practical discourse, such fora help to dissolve mutual misconceptions and develop significant convergence around common norms, without alienating and drowning out divergent voices.²¹⁶ Multi-sectoral debate on correspondences between IHL and religious principles is particularly fruitful, bringing together religious leaders, military or armed group personnel,

215 David Traven, "Moral Cognition and the Law and Ethics of Armed Conflict", *International Studies Review*, Vol. 17, No. 4, 2015.

216 *Ibid.*

legal experts, academics and humanitarians who might otherwise confine themselves to their respective spheres, and whose thinking might therefore be rather one-dimensional.²¹⁷ This helps not just to build consensus around common humanitarian norms, but also to develop collaboration on how to put them into practice.

While convergence on some core principles, such as protecting civilians, is clearly important, the differences between IHL and various aspects of religion are as enlightening as the similarities, generating mutually beneficial dialogue which is far more effective at promoting genuine ethical reflection than superficial consensus in which difficult issues are not even raised. Discussion of more intractable problems undoubtedly benefits from the injection of diverse religious, philosophical and cultural perspectives, not least on how IHL might be enhanced. Indeed, debate is the goal as much as the means of this process, since IHL and religious ideas must be challenged and critiqued in order to be properly understood, and to bring contentious or unexplored issues out into the open. Where the resources within religions to regulate armed conflict have not been highlighted or explored, comparison with IHL helps moreover to revivify them and bring them to the fore. Comparative work on religion and IHL has highlighted some religious teachings that were not common knowledge before and has contributed to the excavation of otherwise neglected texts, thereby reinvigorating the study of religious regulation of war.²¹⁸ Expectations on both sides must of course be managed, since this is a long process. Religious leaders should not feel pressured to make changes based on recommendations from IHL scholars or practitioners, just as religious leaders should not expect IHL experts to promote their particular interpretations in international fora.

Engagement with religion to counter real or perceived Western bias

Insofar as religion embodies traditional ideas and cultures, this enables it to help legitimize and socialize IHL across cultural divides, while injecting fresh perspectives to counter its Western framing.²¹⁹ This is not to suggest that Western nations are not sometimes the worst IHL offenders, or that other cultures do not have their own norms that are often more effective, but that knowledge of IHL as an institution is not always effectively communicated to them.

217 See, for example, ICRC, above note 74; ICRC, “Sri Lanka, Global Conference on the Interface between Buddhism and IHL”, 13 September 2019, available at: www.icrc.org/en/document/sri-lanka-global-conference-interface-between-buddhism-and-ihl.

218 See, for example, A. Bartles-Smith *et al.*, above note 29.

219 See, for example, this interview with religious scholars who have worked with the ICRC: ICRC, “Swiss Radio Broadcast: ‘Le CICR à l’écoute des religions’”, *Religion and Humanitarian Principles Blog*, 17 May 2021, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/french-swiss-radio-broadcast-le-cicr-a-l-ecoute-des-religions/>.

Religious groups are prominent among many non-Western and non-State actors who resist rules which they perceive to embody secular or Western values.²²⁰ Aspects of the human rights agenda are often a particular bugbear – indeed, the very concept of individual rights, as opposed to duties, is itself contested, since many fear that unbridled Western influence might undermine the traditional social order.²²¹ Given the bitter legacy of colonialism, which displaced or degraded many traditional value systems, and continuing concerns about the impact of globalization, these values are often associated with Western hegemony, and some groups see themselves as part of a global confrontation or rebellion against the secular State.²²² So far as these perceptions and concerns are not addressed, effective engagement will not be possible, and international law’s legitimacy with a broad swathe of non-Western and non-State actors will be undermined. While there are legitimate concerns that engagement with religions might sometimes reinforce patriarchies which discriminate against women, homosexuals and other groups, or other manifestations of bigotry and intolerance, disengagement is not an option if these issues are also to be effectively addressed.²²³ Religions are not generally monoliths, moreover, and they often contain within themselves the resources to address these issues and to adapt.

IHL is nevertheless distinct from human rights, and its genealogy includes many religious antecedents. Primarily framed as a set of duties rather than individual rights, it is generally more palatable to even very conservative religious constituencies, and the vast majority of religious leaders are prepared to endorse it once its content is explained, due to its compatibility with their own religious teachings.²²⁴

Conclusion

Religions possess remarkable resources both to broaden and deepen knowledge, understanding and acceptance of IHL across religious and cultural divides, and to imbue it with moral force. The scale of the challenge means that the regulation of armed conflict should not be left entirely to the States and non-State armed groups who are bound by this body of law. IHL will have limited traction if it is reduced solely to an instrument of State, or to a code of conduct for State militaries or non-State armed groups that are sometimes laws unto themselves.

220 See, for example, James V. Spickard, “Human Rights, Religious Conflict, and Globalisation: Ultimate Values in a New World Order”, *International Journal on Multicultural Studies*, Vol. 1, No. 1, 1999; William A Stahl, “Religious Opposition to Globalization”, in Peter Beyer and Lori G. Beaman (eds), *Religion, Globalization, and Culture*, Brill, Leiden, 2007.

221 This is a frequent concern of many religious scholars and others with whom the ICRC engages.

222 Helen M. Kinsella and Giovanni Mantilla, “Contestation before Compliance: History, Politics, and Power in International Humanitarian Law”, *International Studies Quarterly*, Vol. 64, No. 3, 2020.

223 I. Cismas and E. Heffes, above note 122.

224 ICRC engagement with religious circles has been characterized by the remarkable energy and enthusiasm with which religious circles have engaged. With regard to acceptance of basic IHL norms, the so-called Islamic State group has so far been a notable exception in rejecting them.

Instead, all people need to feel that they have investment in it, so that it is seen to serve humanity in all its religious and cultural diversity. Religions possess particularly important resources to influence belligerents, modify their behaviour and hold them to account, and are an effective shortcut to improving knowledge and endorsement of IHL in societies at large. Often they have the power to keep States and armed groups in check to some degree, not least when these actors seek to instrumentalize religion for their own ends.

Of course, religions also have the potential to undermine adherence to IHL or humanitarian norms, and engagement with religious circles is not equally appropriate or effective in every context. Given the pluralistic nature of religion, each religion contains an array of resources that are more or less adapted to particular situations, and actors who are more or less eager to engage with humanitarians and explore correspondences with IHL. Given their powerful motivational quality, religions can also trigger strong emotions that have to be negotiated with care.

The institutions that underpin the international order are likely to come under increasing pressure in the years to come, as rising non-Western powers seek to stamp their own mark on them and a backlash to globalization threatens to erode the consensus behind international law worldwide. The rich legacy of restraint in all religions and cultures must therefore be embraced, both to legitimize IHL and to inspire its further development.²²⁵

225 A. Bartles-Smith *et al.*, above note 29, p. 4.