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# Yearbook of International Humanitarian Law

2014



Springer

# **Yearbook of International Humanitarian Law**

Volume 17

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Terry D. Gill  
General Editor

Yearbook of International  
Humanitarian Law  
Volume 17, 2014



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ISSN 1389-1359                      ISSN 1574-096X (electronic)  
Yearbook of International Humanitarian Law  
ISBN 978-94-6265-089-3              ISBN 978-94-6265-091-6 (eBook)  
DOI 10.1007/978-94-6265-091-6

Library of Congress Control Number: 2015950975

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands [www.asserpress.nl](http://www.asserpress.nl)  
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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**Part I**  
**The Evolution of Warfare**

# Chapter 1

## The Evolution in the Legal Protection of Victims of Armed Conflict

Peter Maurer

**Abstract** As the means, methods and strategy of warfare have evolved over centuries, so have the effects of war on its victims. The changing nature of armed conflict, evolving means and methods of combat, and the definition of who is considered a war victim under the law are inextricably linked to the relatively new concept of legal protection of victims of armed conflict, which emerged only at the end of the nineteenth century. Both the definition of victims of conflict and the scope of legal protection may have to be revised as modern warfare changes the conditions and consequences of conflict. To date, the Geneva Conventions have lent themselves to reinterpretation as the nature of conflict has evolved, providing progressively extensive legal protection in different types and situations of conflict. However, it cannot be excluded that a revision or extension of the very foundations of IHL may be necessary at some point in the near future, further expanding the legal protection of victims of armed conflict. It is the duty of the ICRC as the guardian of IHL to consider and propose changes to this body of law to ensure that future victims of conflict will have the necessary legal protection.

**Keywords** International Committee of the Red Cross • ICRC • Geneva Conventions • Victims of armed conflict • Interpretation of international humanitarian law

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### 1.1 The Emergence of Legal Protection of Victims of Armed Conflict

As the means, methods and strategy of warfare have evolved over centuries, so have the effects of war on its victims. The changing nature of armed conflict, evolving means and methods of combat, and the definition of who is considered a war victim under the law are inextricably linked to the relatively new concept of legal protection of victims of armed conflict, which emerged only at the end of the nineteenth century. Codified legal protection of victims of armed conflict is of course a precondition for assisting those victims in an organised way that goes beyond charity.

This codification began with the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, signed by 16 States in 1864. Henry Dunant, moved to act by the masses of dead or wounded soldiers left abandoned to their fate on the battlefields after the Battle of Solferino in 1859, had embarked on a journey that—looking back—led to a lasting paradigm shift in the relationship between law and war. Although the 1864 Geneva Convention was limited to soldiers wounded in battle, it marked the first time that victims of armed conflict (other than medical personnel delivering assistance) gained recognition as a group deserving of special legal protection and, consequently, assistance and protection. This Convention marked the beginning of internationally binding rules for the protection of a group of persons—wounded soldiers—affected by conflict.

It did not, however, mark the beginning of the idea of protection in conflict. Religious texts and customary rules had governed the behaviour of arms carriers for centuries prior to the establishment of international humanitarian law (IHL). The Lieber Code, issued by Abraham Lincoln to his Union Forces in 1863, is largely considered the first national codified law that introduced the notion of ethical treatment towards civilians and prisoners of war. At The Hague Conferences of 1899 and 1907, international laws were enacted to recognise laws of war and the specific offence of war crimes, with corresponding institutions to oversee compliance with the law. The difference between acceptable and unacceptable behaviour during wartime shifted from the realm of ethics to that of law.

The distinction between the right to go to war, *jus ad bellum*, and proper conduct during war, *jus in bello* (international humanitarian law), together with the notion of the protection of victims of armed conflict, had thus come into play

before the First World War. Hand in hand with the emergence of IHL came the founding of the International Committee of the Red Cross (ICRC), with its role as both instigator and “guardian” of IHL.

The original Geneva Convention, the enactment of which marked the creation of the ICRC, had effectively been a response to a legal vacuum. What Dunant saw on the battlefields of Solferino was an overwhelmed military medical corps; in the absence of adequate medical assistance, those wounded in battle were most often abandoned to their fate. Similarly, no legal protection covered civilians affected by conflict; whether they were displaced by the fighting or their economic and manufacturing infrastructure was destroyed, they were often left in need of food, shelter and security.

## 1.2 Who Is a Victim of Conflict?

The original Geneva Convention of 1864 covered specifically those wounded in battle, excluding from the scope of protection anyone who was not a soldier, except for medical personnel tending to wounded or sick soldiers. The legal evolution of the protection of victims of armed conflict is therefore closely linked to the changing definition of who is considered a victim of war.

The scope of this definition was expanded by the Geneva Conventions of 1906 and 1929 to include wounded, sick and shipwrecked members of the armed forces at sea, and prisoners of war, respectively. Essentially, new laws were created every time there was a realisation that the realities of war went beyond the current legal framework. For instance, it was the naval battle of Tsushima in 1905 which prompted the extension of legal protection to wounded, sick and shipwrecked members of the armed forces at sea; and the huge numbers of prisoners of war in the First World War led to improved protection for this category. It was not until 1949 and the Fourth Geneva Convention that civilians gained specific protection under IHL. With the inclusion of civilians, the overall scope of protection had effectively grown to include all people directly affected by armed conflict, regardless of whether they had at any time taken part in the fighting. For the past 65 years, all these groups have been considered potential victims of armed conflict under IHL and hence enjoy specific rights and protection.

IHL protects those not or no longer taking part in hostilities. Defining which civilians are covered by IHL is in itself a question of interpretation. In addition to injury or death, civilians may be directly affected by conflicts if they are displaced, their homes or livelihood destroyed, or if they suffer a significant shortage of goods and services available prior to the conflict. However, entire communities can also suffer from the demolition of infrastructure, the establishment of a war economy and the long-term effects of destroyed agricultural land and equipment and disrupted educational systems. Of course, these harmful repercussions do not disappear with a ceasefire or peace treaty. They continue to burden people and hinder societal development long after the fighting has ended.

### 1.3 IHL and the ICRC

The fundamental aim of international humanitarian law can be summarised as protecting and assisting those who are not or no longer participating in hostilities: civilians; sick and wounded members of armed forces; and prisoners of war. Whenever the parties to a conflict do not respect this body of law, they can be held accountable. As IHL has evolved over the years, the standards of what is considered acceptable within conflict have also evolved. The distinction between collateral damage, regrettable side effects, unacceptable violations and outright atrocities is largely due to the principles underpinning IHL.

The ICRC performs a particular role as the guardian of IHL. It also provides aid and other support to civilians and other non-combatants when the authorities are unwilling or unable to do so themselves. As a neutral, impartial and independent humanitarian organisation, it acts exclusively to protect the lives and dignity of victims of conflict. In order to fulfil its mandate, the forms of assistance and protection it offers to victims of armed conflict have developed in parallel with the changing nature and methods of conflict.

The ICRC's wide array of activities in situations of armed conflict can be divided into three main categories: preventive, operational and post-conflict. The ICRC works with authorities and all arms carriers to make them aware of their legal obligations under IHL, in an effort to prevent suffering by strengthening respect for this body of law. Efforts to protect and assist victims of armed conflict can take various forms, including providing for basic needs like food, water, shelter, medical attention and other essential items. Particularly vulnerable people such as detainees may receive special assistance. When communications are cut off or families are separated by conflict, the ICRC seeks to restore contact and reunite families, often long after the fighting ends.

In its capacity as a neutral, impartial and independent organisation, the ICRC maintains contact with all parties to a conflict and works tirelessly to gain access to conflict zones. However, humanitarian workers themselves—including ICRC staff—are at times specifically targeted by weapon bearers, which can ultimately jeopardise operations by creating unacceptable security risks. In such cases the legal protection of victims of armed conflict reaches an impasse: when those whose task it is to protect the victims are prevented from doing so by life-threatening dangers, legal protection becomes an abstraction; and this despite States' responsibility to respect and ensure respect for the law.

Any analysis of the legal protection for victims of armed conflict and how it has changed over time must consider the evolution of on-the-ground assistance operations. Irrespective of advances, or the lack thereof, in the legal sphere, unparalleled financial and operational means and a global network of humanitarian actors have revolutionised the effective protection of victims of armed conflict. The law may have an all-encompassing ambition and claim, but in reality the feasibility and extent of operations often determine the actual implementation of the law.

During the First World War, for instance, 41 ICRC delegates carried out only 524 visits to detainees. During the Second World War, 11,000 detention visits by 150 delegates took place. And in 2013 alone, 750,000 detainees received ICRC visits. Greater operational and financial capacity today simply allow for a much broader implementation of the protection enshrined in IHL.

Throughout its 150-year history, the ICRC has shown its mastery of its unique status as an organisation whose mandate encompasses both developing the law and operating on the ground. When operational expansion makes sense within the legal framework, the ICRC expands on the ground. When the legal framework needs elaboration, the organisation pushes for that. Be it in the legal or operational sphere, the ICRC pursues its mandate to protect and assist the victims of conflict.

## **1.4 The Changing Nature of Conflict**

Since the end of the Cold War, the world has seen an increasing number of asymmetric conflicts in a multipolar world. Non-State armed groups, which themselves are often fragmented, together with the constant emergence of new armed groups raise new hurdles for IHL and related assistance and protection efforts.

During the First World War, countries declared war on each other, and each of the warring parties was clearly delineated. One hundred years later, the majority of conflicts are waged by non-State armed groups that do not necessarily accept their legal responsibilities under IHL. Indeed, these groups may not even be aware of their obligations, posing a new challenge to the ICRC, which in turn seeks to inform and educate all weapon bearers about their responsibilities under the law.

State armies function as the extension of States that have ratified the Geneva Conventions; non-State armed groups, operating in the vacuum left by weak States, may not recognise or know their duties under IHL. A current example is the public propaganda of ISIS, which deliberately calls for attacks on both soldiers and civilians.

This new paradigm forces the ICRC to rethink its approach to informing and educating all weapon bearers of their responsibilities under IHL.

## **1.5 Developments in Means and Methods of Warfare**

The evolving nature of warfare is not limited to changes in the parties engaging in armed conflict but also encompasses the means and methods of warfare. Warfare no longer looks much like the First World War, when opposing armies faced off bearing traditional weapons, and much of this is due to technological advances.

The focus of hostilities, for example, has shifted from battlefields to urban centres over the past century. Fighting that targets military objectives located in densely populated areas or takes place in urban settings where civilian homes and infrastructure are destroyed rarely complies with the IHL principles of distinction, proportionality and precaution.

Some new technologies may actually have a positive impact by reducing the numbers of potential victims of armed conflict. For instance, the use of targeted drones can minimise the effects on the civilian population compared to large-scale bombardments. However, technological advances, even when ushering in apparently positive consequences, pose a challenge as they may require the existing law to be reinterpreted, or even adapted.

New actors and methods within conflict raise new challenges for IHL. But the legal framework has always been and continues to be a living body of norms. While adapting IHL to the constantly shifting sands of conflict, we must take care to preserve what has been achieved and to safeguard the standards of protection that have stood the test of time.

IHL will be continually adapted to keep up with changes in warfare. The ICRC in turn will, in accordance with its mandate, continue to do what it has done for the past 150 years: serve as the guardian of IHL, upholding its current form and seeking to further develop and expand this body of law in the future.

## 1.6 The Way Forward

As the reality of warfare is constantly changing, new questions regularly arise for the interpretation and advancement of IHL.

One striking example is the legal vacuum exposed by the plight and status of the tens of thousands of people every year who risk their lives trying to cross the Mediterranean Sea to reach Europe. Their reasons vary; some are fleeing conflict in their home countries, while others are economic migrants trying to build new lives abroad. On those ramshackle boats crammed with people, we see a situation of grave humanitarian need where neither the security nor the dignity of the passengers is ensured. Government authorities, human rights organisations and the humanitarian sector have to face up to this new form of humanitarian crisis: a crisis that is temporary in nature for the victims; that is the culmination of a multitude of factors; and that features some of the same needs as conflict-related humanitarian crises. Humanitarian groups are being forced to consider whether their mission is keeping pace with a changing reality.

Both the definition of victims of conflict and the scope of legal protection may have to be revised as modern warfare changes the conditions and consequences of conflict. To date, the Geneva Conventions have lent themselves to reinterpretation as the nature of conflict has evolved, providing progressively extensive legal protection in different types and situations of conflict.

However, it cannot be excluded that a revision or extension of the very foundations of IHL may be necessary at some point in the near future, further expanding the legal protection of victims of armed conflict. It is the duty of the ICRC as the guardian of IHL to consider and propose changes to this body of law to ensure that future victims of conflict will have the necessary legal protection.

## Chapter 2

# One Hundred Years of Chemical Warfare and Disarmament: Then and Now

Ahmet Üzümcü

**Abstract** On 22 April 2015, we commemorate the turning of a tragic page in human history—the 100th anniversary of the first large-scale use of chemical weapons near Ieper in Belgium. In the wake of this attack and for the remainder of World War I, both sides unleashed similar weapons, as well as developed new and deadlier ones to inflict more than a million casualties. What made these events all the more tragic was the fact that an international legal instrument banning the use of poisonous gases in warfare was in place well before the outbreak of World War I. This was The Hague Convention of 1899. Now, as we contemplate what we have achieved in chemical disarmament since that time, it is worth asking what has contributed to our success, and what we need to do in order to secure the durability of this success into the future. As we commemorate the centenary of the chemical attacks in Ieper, we need to draw inspiration not only from the success of the Chemical Weapons Convention as a unique multilateral accord, but also from the political will that has driven its implementation. These form the axis of a comprehensive and effective regime, driven by close partnership with science and industry—a regime that will continue to address new and emerging challenges to make our hard-won disarmament gains permanent.

**Keywords** Organisation for the prohibition of chemical weapons • OPCW • Chemical warfare • Biological Weapons Convention • Chemical Weapons Convention

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On 22 April 2015, we commemorate the turning of a tragic page in human history—the 100th anniversary of the first large-scale use of chemical weapons near Ieper in Belgium. In the wake of this attack and for the remainder of World War I, both sides unleashed similar weapons, as well as developed new and deadlier ones to inflict more than a million casualties. The widespread use of chemical weapons stands as one of the First World War's most haunting legacies. For many, it marked the conflict as 'the chemists' war'.

What made these events all the more tragic was the fact that an international legal instrument banning the use of poisonous gases in warfare was in place well before the outbreak of World War I. This was The Hague Convention of 1899. Now, as we contemplate what we have achieved in chemical disarmament since that time, it is worth asking what has contributed to our success, and what we need to do in order to secure the durability of this success into the future.

Unusually in the history of multilateral arms control, the 1899 Hague Convention had anticipated the brutal impact of chemical weapons before it came to be experienced. It was an uncommon instance of diplomats and lawyers successfully defining inhumane weapons, and seeking to prevent them from being used, before they had actually made their debut on the scale that they did.

Failure to enforce this instrument in the course of World War I marked the beginning of an almost century-long effort to arrive at a comprehensive global ban against chemical weapons. This finally came in the form of the Chemical Weapons Convention, which was concluded in 1992 and entered into force 5 years later in 1997.

This was a difficult process. For unlike other types of weapons of mass destruction, chemical weapons were used with brutal regularity over the course of the twentieth century, from Africa to Asia. What is more, their use was not limited to the battlefield. The place names of Halabja in Iraq and Sardasht in Iran have become synonymous with the human misery resulting from peaceful civilians being attacked with these terrible weapons.

After the chemical horrors of the First World War, the 1925 Geneva Protocol sought to address ambiguities in The Hague Convention. But its shortcomings soon became apparent, when several signatories submitted reservations that left open the possibility of retaliating against chemical weapon attacks in kind. Further, while banning the use of chemical weapons, the Protocol failed to curb production, development and stockpiling of such weapons. In the absence of provisions for this, more than 70,000 metric tonnes of chemical agent—mainly deadly nerve gases such as sarin—had been stockpiled by the 1980s.

The next breakthrough came much later, when talks on a chemical weapons treaty began in the wake of the conclusion of the Biological Weapons Convention in 1972. If there was any consolation to be had from the brutal excesses of chemical weapons use during the Iran-Iraq War, it was that it focused minds in the course of negotiations on a global chemical weapons ban at the Conference on Disarmament in Geneva. These negotiations, assisted also by a new spirit of cooperation between the superpowers in the twilight of the Cold War, rendered a treaty with a uniquely comprehensive scope.

More than two decades since it was concluded, the Chemical Weapons Convention remains the most comprehensive disarmament and non-proliferation treaty in the history of multilateral arms control.

The Convention prohibits not only the use of chemical weapons, but also their development, production, stockpiling, transfer and retention—something that was missing in the chemical disarmament treaties preceding it. And, unlike the Nuclear Non-Proliferation Treaty, it is non-discriminatory. There are no haves and have-nots, given that no member is permitted to possess chemical weapons: those that do are obliged to destroy them, while those that do not are obliged never to acquire them. Finally, to hold the 190 members of the Convention to shared obligations, all are subject to an international verification regime administered by the Convention's implementing body, the Organisation for the Prohibition of Chemical Weapons (OPCW).

In short, the Chemical Weapons Convention is the only international treaty that not only bans an entire class of weapons of mass destruction, but also has the authority and mechanisms for policing this ban through international verification.

Diplomats and lawyers did not have a monopoly on the successful negotiation of this landmark treaty. Its extensive provisions were the product of participation in the Geneva negotiations by scientists and industry representatives on the basis of a simple but key fact: states' confidence in the Convention would depend on the effectiveness of its verification methods and on the integrity of its confidentiality arrangements. Given that many of the materials and technologies relevant to the development of chemical weapons also have legitimate commercial applications, scientists and industry were, and continue to be, key partners in global chemical disarmament.

These foundations have made the Chemical Weapons Convention the remarkable success that it is. In only 17 years, we have seen our membership swell to 190 States Parties, and the OPCW has verified the destruction of some 86 % of all declared chemical weapons and conducted more than 2500 inspections of industrial facilities in more than 80 countries. It is this record of achievement that in 2013 earned the OPCW the award of the Nobel Peace Prize.

Most recently, the unprecedented mission to eliminate Syria's chemical weapons has amply demonstrated the resilience of the Convention. Syria's accession to the Convention meant that there was no need for a specially mandated ad hoc arrangement to oversee the removal and destruction process—the Convention came into play as a ready-made, tried-and-tested vehicle for achieving Syria's complete chemical demilitarisation.

Nonetheless, the confirmed use of chemical weapons in Syria last year had made clear that our success can only be as broad as our reach. That is why one of our most immediate priorities is to persuade the six countries—Angola, Egypt, Israel, Myanmar, North Korea and South Sudan—that still remain outside the Convention to join it, without delay and without conditions. There should be no doubt in anyone's mind that, despite its not yet being universally adhered to, the Convention is a long-standing global norm which the international community has shown itself only too willing to enforce.

More also needs to be done to strengthen implementation of the Convention at the national level. Seventeen years since the Convention's entry into force, many States Parties have still not established mechanisms for meeting their obligations

or, in some cases, even adopted implementing legislation. This is a serious shortcoming, as we ultimately can only be as strong as our weakest link. However comprehensive the Convention is, its effectiveness derives from actions, not mere words on paper.

Looking into the future, the challenge for the Convention will be to maintain its relevance and effectiveness in the face of new advances in science and technology that could test its integrity and implementation. Thankfully, it was to avoid any ambiguity over what constitutes a chemical weapon that the Convention included a general-purpose criterion that defines chemical weapons in terms of their function rather than lethality. This should not, nonetheless, prevent the Convention from hosting informed discussion between stakeholders to make sure that practice keeps up with theory—something that we at the OPCW do through various formal and informal mechanisms.

In this regard, a decisive moment is looming for us as we rapidly approach complete destruction of declared chemical weapon stocks and begin to recalibrate our priorities to prevent the re-emergence of such weapons. The activities of non-state actors, especially terrorist groups in regions of instability and conflict, present an especially daunting challenge in this regard, given their often stated interest in acquiring and using such weapons. How to deal with players whose actions are not deterred by traditional disincentives presents a quandary for the international community that goes well beyond global non-proliferation norms. Part of our approach must be informed by the holistic nature of the mission that the Chemical Weapons Convention charges us with: while we are not an anti-terrorist organisation, we do have responsibility for ensuring chemical weapons do not spread in any form or in any guise.

As we prepare to commemorate the centenary of the chemical attacks in Ieper, we need to draw inspiration not only from the success of the Chemical Weapons Convention as a unique multilateral accord, but also from the political will that has driven its implementation. These form the axis of a comprehensive and effective regime, driven by close partnership with science and industry—a regime that will continue to address new and emerging challenges to make our hard-won disarmament gains permanent.

# Chapter 3

## Warfare 1914–2014: The Most Violent Century in Human History

Wim Klinkert

**Abstract** In the Spring of 1915 the French literary critic, journalist and theatre director Alphonse S  ch   (1876–1964) published a book on the Great War which was about six months old at the time. He called his extensive analysis *Les guerres d'enfer* (Wars of Hell) and this unlikely expert displayed a remarkable insight into the fundamental shift that warfare had experienced in the previous months. War is very multifaceted today. We have great difficulty to come to terms with it in a conceptual way. So many names have come and gone to describe the framework in which violence is used: peacekeeping, counterinsurgency, responsibility to protect, peace enforcing, low intensity conflict, ethnical or religious conflict, postmodern war, hybrid war, third-generation warfare, etc. Some terms are legal, others political or historical. The great diversity shows the confusion in how to interpret the influence of modern (digital) technology and new ideas on how and when to use violence.

**Keywords** World War I • World War II • Violence • S  ch   • Total War

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In the Spring of 1915 the French literary critic, journalist and theatre director Alphonse Séché (1876–1964) published a book on the Great War which was about six months old at the time. He called his extensive analysis *Les guerres d'enfer* (Wars of Hell) and this unlikely expert displayed a remarkable insight into the fundamental shift that warfare had experienced in the previous months. War had lost all its romantic and chivalric connotations like courage and sacrifice, bravery and exemplary leadership and the moral qualities associated with the will to win for a greater good. War in the year 1915 was about technology, about indiscriminate violence against soldiers and civilians alike, it was about mass destruction—especially from the air—and it meant the end of any optimistic idea that rules of law could reduce random destruction in any way. In short, Séché saw industrial mass warfare and mass destruction of cities, not hindered by legal restraints, as the consequence of the modern age he lived in. He did not condemn this, but accepted it as the way of warfare befitting the industrial age. In practice it meant countries as a whole—military and civilians together—had to prepare economically, militarily and morally for this future in order to survive.

Séché was one of the first, but certainly not the only one, who concluded in 1915 that warfare had undergone a dramatic change. It was only months after the ‘rape of Belgium’ by the German army, it was the year poison gas, hand grenades, modern mortars and many new mass-produced weapons entered the battlefield. And it was the year airplanes were first used to deliberately attack cultural landmarks, when the Austrian army attacked Venetian church domes and that year both Germans and Allied bombed civilian centres in enemy territories from the air. For many contemporaries it seemed as if the war had shredded the whole structure of humanitarian and international law, as if the Nobel Peace Prize and the recently opened Hague Peace Palace had outlived their short existence already.

Séché did not use the term yet—it was only coined in 1918—but war had become ‘total’. Societies as a whole attacked their opponents not only on the battlefield but also inland, either from the air or through naval blockades. Hunger and the tenacity of the civilian population to withstand all this became as important as battlefield victories. The French Prime Minister Georges Clemenceau (1841–1929) declared in parliament on 20 November 1917: *Nous nous présentons devant vous dans l'unique pensée d'une guerre intégrale*. (We come before you in the one thought of an integrated war), by which he meant that the struggle of France was a struggle of all its citizens, in factories, in universities and in the military. At the same time the German generals more or less turned the country into a military dictatorship in order to peruse their war aims. The general's attempts to control all aspects of society failed, but the experience of *Totale Mobilmachung* (the title of the 1930 book by Ernst Jünger) would resound for decades.

Turning the battlefield experience into a ‘production line of death’ was one of the strong images that dominated Europe after 1918, as well as the idea that modern war meant destruction of population centres and cultural landmarks, as well as deportations and hunger. The purifying role of warfare, a popular notion at the end of the nineteenth century and the liberal optimism that globalisation and rational international juridical agreements between ‘civilised’ (which meant white)

nations promised a more peaceful future lay shattered in pieces. Radical ideologies of the right and the left, unleashed by years of massive brutality in Europa also seemed to predict a violent future. The Wilsonian appeals “to end all wars” and “to make the world safe for democracy” found less resonance than the fears of future aerial bombing of civilians with gas and ideologies that celebrated antagonism, notwithstanding the pacifism among many veterans of the trenches and the lofty ideals of the League of Nations. But the legacy of the more than ten million dead of the First World War was multifaceted.

On the one hand, international negotiations led to reductions in weaponry like at the Washington Conference (1921–1922) that prevented a new naval arms race and the Geneva Protocol banning the use of chemical and biological weapons (1925). Also, many powers reduced their defence spending considerably. Moreover, any war memoirs, which were published in huge numbers in all former belligerents, had a distinct anti-war message, the most famous being *Le Feu* by Henri Barbusse (1916) and *Im Westen Nichts Neues* (1929) by Erich Maria Remarque.

On the other hand, violence in many forms was rife in the 1920s and 1930s. The First World War had unleashed the airplane as a weapon and the British army in Somalia and Iraq made the first post-war use of it in 1919–1921. Encouraged by Winston Churchill, the Royal Air Force was deployed to bomb civilians in order to uphold British authority in these distant corners of the Empire. In Europe the combination of an aerial attack with bombs and gas against cities was the gloom-and-doom scenario, vividly portrayed in many anti-war publications. In the colonies things were different and both the Spanish and the Italians did not shy away from using airplanes to throw gas bombs on targets in Morocco and Ethiopia respectively.

In Europe itself, ideologically inspired violence was everywhere: from the Russian civil war, and the Russian-Polish War to the Irish struggle for independence and the Italian strife between fascists and socialists, which brought the country to the brink of civil war. In the new Turkish Republic the Greeks fought a war that, in the end, dislodged them from their ancestral homeland. All in all, violence and warfare had become very diverse in appearance and the ideological context it was used.

What was the real lesson of 1914–1918? Again, the answers varied considerably, but one thing was more or less certain to many observers: the Versailles Peace Treaty would not lead to a peaceful world. To a greater or lesser extent all European powers agreed on this. The League of Nations was not strong enough to solve fundamental differences; it had enough trouble with containing smaller disputes. The first time it established a multinational peacekeeping force was in 1920 to Vilnius, a city disputed by Lithuanians, Poles and Russians. This was no great success, but the League did prove its worth when it organised plebiscites and even administrated former German territories like Danzig (Gdansk) and Saar (Sarre).

Of a more fundamental nature were lessons drawn by the major belligerents. The French, for instance, thought a new war would be a long drawn out ‘total war’, to be fought by the entire population, either in the army or in the factory.

Also, the enemy was not to enter French territory again and destroy precious parts of it, like in 1914–1918. As trench warfare had been a French victory ('the line had held') but a very costly one, a new, well-prepared, modern trench line directly at the border had to be created: the Maginot Line, simultaneously stressing the 'Frenchness' of the returned provinces of Alsace and Lorraine. The French army invested in concrete, guns and strong defence lines.

The dominant British lesson was a completely different one. The impact and shock the war had had on the British Isles was such that support for the 'continental commitment' disappeared. To avoid future mass deaths, British strategic thinkers emphasised the role of the navy and, even more that of the air force to protect and to deter. Furthermore, the concepts of 'total war' and conscription were alien to most British, which gave free reign to ideas that focused on technology and professionalism in the armed forces, as most loathed the WWI mass army. Ironically, for this reason, well-known British military thinkers like Basil Liddell Hart (1895–1970) and John Fuller (1878–1966) stimulated ideas of modern technological warfare, thereby influencing Germans and Russians in their development of the modern mechanised battlefield.

It was the Germans and Russians—the two pariahs of 1918—that during the interwar years brought military thinking substantially many steps further. Ideologically opposed, but both interested in building a strong modern army based on modern technology, they even collaborated successfully in the 1920s. The German officers were driven by both a tradition of military scholarship of the highest level and by a desire to win the next war. Violating the limitations set by the allies in the 1919 Versailles peace treaty, the German *Reichswehr* analysed and experimented, both technologically and with army doctrine. When Hitler provided them with the money and goods to put ideas into practice, a modern army and air force were built up quickly. This did not mean the German military spoke with one voice on future warfare; they themselves were probably the most thunderstruck by their own victory over France in 1940, but by developing armoured armies based on speed and mobility they set a new standard in warfare.

The Russian contribution is twofold. First, the Russian officers thought it was possible to have a mass low-tech infantry army based on conscription together with a huge, modern armoured tank force, and combined with a huge air fleet with paratroopers and fast modern mechanised units on the ground. No other country had the potential to create an army like this on such a scale, using standardised modern armoured technology. Second, the Russians were extremely innovative in creating their army doctrine. They developed a new level between tactics and strategy: the operational level, theoretically defined by its intellectual father Alexander Svechin (1878–1938) as "the art of combining preparations for war and the grouping of operations for achieving the goal for the armed forces set by the war". It meant 'strategy' got a new meaning, having lost its classic connotation with major military campaigns. It is on these main developments in Germany and Russia that the American army would build its theoretical basis during and after the Cold War.



In the late 1930s the world drifted to another global conflict. The League of Nations could not live up to its promises and aggression paid off, be it by Japan in Asia or Italy in Africa. But war is never unavoidable, human choice is always involved. History is not deterministic. That the world had to live through another world war, many times more atrocious, deadly and boundless than the one fought by the previous generation was no ‘law of nature’. Hitler’s coming to power and the fact that he could employ the power of the German state in order to realise megalomaniac and extreme ideological war aims, put the world in flames yet again. Warfare reached unimaginable extremes in the largest land war seen in history, the battle between Germany and the Soviet Union (1941–1945). Mechanised warfare was waged in gigantic battles, from which military theorists—Americans and Israelis especially—drew their own ideas until far into the twentieth century. But by far the most radical feature of the eastern front of World War II was the openly declared ideological character of the struggle. War and genocide, war and racism were intertwined in an unprecedented manner. Hitler declared all laws of war null and void, as far as the Eastern Front was concerned, giving *carte blanche* for crimes against humanity on a massive scale. Stalin in turn fought a ruthless, massive battle for survival. How many millions died will never be known.

War and ideology were not only combined in the East. In the West the United States and Great Britain countered the Nazi-‘faith’ with the Atlantic Charter, a pivotal policy statement issued on 14 August 1941. The Charter stated the goals of the war in idealistic terms: no territorial aggrandisement; no territorial changes made against the wishes of the people; restoration of self-government to those deprived of it; reduction of trade restrictions; global cooperation to secure better economic and social conditions for all; freedom from fear and want; freedom of the seas; and abandonment of the use of force, as well as disarmament of aggressor nations. It was an extended version of the famous Fourteen Points of President Wilson dating from 1918. But now two major belligerents supported it. It is always difficult to ascertain how these ideological statements and ideas influenced the course of the war, or were even essential for its outcome. The fact is, between 1939 and 1945, as never before, fundamentally opposed ideological views on a future world order characterised war aims.

When we look closer at ‘why the Allies won’—to quote the title of Richard Overy’s famous 1995 book—ideology is only part of the story. As in World War I, victory has to do with economic stamina, technological innovation, organisation of command structures and ways to keep the morale of fighting men high. Overy convincingly shows that tactical mastery on the battlefield and even technological innovative weaponry—both German strengths—do not win a modern war. Standardisation of mass production, be it by force in a communist society or by pursuit of profit in a capitalist society, proved to be much more decisive. Also, the way Britain and the United States cooperated in command structures and on major projects like combating U-boats was a vital component for victory. This Allied military cooperation, unprecedented in history, would form one of the foundation stones for NATO.



The Second World War was, militarily speaking, less fundamentally innovative than the First World War. Nevertheless some major developments have to be mentioned: the computer, developed by Alan Turing (1912–1954), radar and sonar, the jet engine, the rocket and, the most fundamental of all, the nuclear bomb. It was only the last that really changed the face of war fundamentally. The other perfected ways of war that were, in essence, practised or developed during the First World War, submarine warfare and major bombing raids on cities, were brought to an extreme level of destruction and technological innovation.

The bombing of Hiroshima and Nagasaki in August 1945, using atomic bombs for the first time, formed a watershed in the history of warfare and in the thinking about strategy and war. One could argue aerial warfare had won WWII with the fulfilment of the air theorists' dream that a major air attack on population centres would make costly lands warfare obsolete. Or one could argue it was a logical next step in making carpet-bombing cheaper and more efficient, but the real meaning was seen already in 1946 by a professor at Yale, Bernard Brodie (1910–1978), who wrote the famous words: "Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them. It can have almost no other useful purpose". The book was *The Absolute Weapon: Atomic Power and World Order*, analysing one of the most fundamental new insights into the waging of war since Clausewitz. The road to the atomic bomb had started only seven years earlier when three Hungarian scientists, Eugene Wigner (1902–1995), Leo Szilárd (1898–1964) and Edward Teller (1908–2003) had convinced President Roosevelt to start the Manhattan Project. Brodie realised the outcome of this project had a fundamental impact on the way we look at war and how we conduct war. Nuclear bombs were political weapons, too dangerous to be controlled by the military alone and only their non-use meant victory.

The Cold War which developed from around 1947 onwards not only brought deterrence as an important concept to the forefront, it also led to the most peculiar strategic theories, sometimes bordering on the bizarre, explaining how nuclear armament led to stability and maybe even safety and security. Mutual Assured Destruction—the acronym MAD was first used by the Hungarian mathematician and physicist John von Neumann (1903–1957)—aptly describes this dangerous equilibrium the world lived on during more than four decades. For present generations it is hard to imagine how thinking of war and absolute destruction were part and parcel of any discussion of war and peace. Maybe Stanley Kubrick's black-comedy masterpiece *Dr. Strangelove or How I Learned to Stop Worrying and Love the Bomb* from 1964 summarises the Cold War thinking better than anything else. War was no longer something to be done on the battlefield, but it was the work of (rocket) scientists, strategic theorists and politicians. It was stability for a price and it gave us the space age. But the Cold War also led to protests against nuclear war already from the 1950s onwards, starting in Japan, the UK and the US. Pioneer was the American peace activist Norman Cousins (1915–1990). *Ban the Bomb* became a worldwide slogan for decades from the late 1950s. Never in history had anti-war movements been so massive, on all continents and over such a long period of time.

Nuclear armament shifted ‘real war’ to the periphery: some were ‘classic’ interstate wars like in Korea, the Middle East and between India and Pakistan, the majority were wars of decolonisation or national liberation. These ‘counter-insurgency’ wars resembled the colonial wars of the past—never taken seriously by Western military thinkers—and now showed Western impotence to fight entire populations, who claimed their right to self-determination. All these wars were called ‘limited’ meaning that the major powers did not fight among themselves, but only fought ‘by proxy’. But ‘limited’ in this sense is an euphemism if there ever were one: the Nigerian civil (1967–1970) war, the Cambodian tragedy (1975–1979), the Soviet invasion in Afghanistan (1979–1988) and the Iran-Iraq war (1980–1988) all rank among the most deadly conflicts of recent centuries.

The one Cold War-era conflict that has most profoundly influenced our perception of war is the Vietnam conflict (1946–1975). The impotence of first France and later of nuclear superpower US to crash a ‘people’s army’ that possessed comparatively inferior weaponry remains intriguing to say the least. Not only did Vietnam show the restraints the Cold War put on super powers, it also showed that advanced technology was not in all instances superior, and that technological solutions and kinetic escalation could not bring the desired results. As the European colonial powers had experienced earlier, a motivated people, given the right amount of external material support, can withstand a superior military opponent. In Vietnam the US lost more than just a battle, it lost faith in itself. For the first time, the US could not present itself as bearer of freedom and democracy. The world witnessed horrific suffering by the Vietnamese people and even war crimes committed by American soldiers. Symbolic is the news of November 1969: the American public was proudly informed on the Apollo 12 moon flight, while simultaneously on national television lieutenant William Calley (1943–) confessed the war crimes he had committed in My Lai 20 months before. Brutality and technological achievement are two faces of war. Vietnam also brought the world’s largest fighting force to a deep crisis, which it took two decades to overcome and it made war a media event, to be followed closely by the entire world. From Walter Cronkite (1916–2009) to Peter Arnett (1934–) to the video of the US marine killing an Iraqi in a mosque in Fallujah (2004), modern war can reach every home on the planet within days or even hours.

1989 was a watershed year in the history of warfare, as 1945, but in a very different way. With the end of the Cold War, the world seems to have said goodbye to large-scale interstate warfare. From Napoleon, so for almost two centuries, the benchmark for warfare has been massive land operations conducted by major powers. Although the Cold War prevented wars between major powers for the first time in history, the thinking of ‘war’ in its ideal form, still remained, on the operational level at least, the classic Western patron. Wars in the (former) colonies were looked down upon as not being ‘the real thing’. The end of the Cold War did not mean a return to major power military conflicts, as had been the case before 1945, in fact in meant confusion on what ‘war’ in the so-called post modern era is or should be. Even the word ‘war’ itself receded to the background in many countries, to be replaced by a variety of euphemisms.

At the close of the most violent age in the history of mankind, war is in crisis again. As the First World War led to new and very diverse ideas on what war in the modern age is, the end of the Cold War and the revolution in information technology, digitalisation and integration of all kinds of activities through electronic networks again brings us to a crossroads. In my opinion a fundamental one, because change is not only technological, but the whole idea of how and why violence can be used, on its juridical legitimacy, on the aims for which it can be used and on the role of people practicing violence, is shifting.

War since 1989 still has 'classic' characteristics in the sense that throughout history we can trace similar features: asymmetric warfare is as old as mankind, logistic support by civilian contractors was common in early modern times, combat as a human activity has always been stressful, religion and war are closely linked at all times and modern armies still have many features that date from nineteenth and twentieth century warfare, but on the other hand we see: network centric warfare, created by modern electronics, which revolutionised concepts of both time and space as well as of command and control and we see man as the carrier of arms moving to the background as machines are replacing him. It was the Vietnam War, in the early 1970s that triggered the idea of unmanned weapons. From the work of the Association for Unmanned Systems International (1972) came the Unmanned Air Vehicles (UAVs) now known as drones and part of modern war since November 2002 when a moving car occupied by four terrorists in Yemen suspected of bombing the USS *Cole* was destroyed by a Hellfire missile ejected from a UAV. Also, on the ground robotic warfare has become a 'normal' phenomenon. And 'war' has become more and more an array of different kinds of (semi) permanent interventions all with their own cultural, legal and military characteristics. We can see this diversity when we look at the 'belt of violence' that stretches from Mali via Somalia and the Middle East to Afghanistan. In this area, hugely important strategically and because of its resources, a variety of 'wars' and interventions from twenty-first century warfare will develop: highly technological and restrained in manpower on the one hand, extremely cruel and ideological on the other, in need of new concepts in international and humanitarian law as modern multinational coalitions engage in tribal warfare and structures alien to Western armies.

War is very multifaceted today. We have great difficulty to come to terms with it in a conceptual way. So many names have come and gone to describe the framework in which violence is used: peacekeeping, counterinsurgency, responsibility to protect, peace enforcing, low intensity conflict, ethnical or religious conflict, postmodern war, hybrid war, third-generation warfare, etc. Some terms are legal, others political or historical. The great diversity shows the confusion in how to interpret the influence of modern (digital) technology and new ideas on how and when to use violence. Stephen Metz (1956–), a prominent American thinker on future warfare has given us some guidelines, stressing the importance of psychological, ethical and cultural aspects that in cooperation with dedicated modern technology should make armies effective against a wide array of opponents. But maybe, to grab the essence of war, we should also look at the non-academic,

more visionary views on war. H.G. Wells' *War of the Worlds* (1898) predicted, and inspired, modern technological warfare at the start of the century and Isaac Asimov gave us, already in 1950, a view in the future of a robotic world in *I, Robot*. I started this short overview with the French writer Séché as an astute critic of war in 1915. Who is our present day Séché? Is it Tom Clancy (1947–2013) in books like *Against All Enemies* (2011) or is it the raw reality of a Sebastian Junger's 2010 impressive documentary *Restrepo*? Or is it both?

### **Recommended Books on the Evolution of Modern Warfare**

- S. Biddle, *Military Power: Explaining Victory and Defeat in Modern Battle* (2004)
- I. Duyvestein (ed.), *Rethinking the Nature of War* (2005)
- A. Gat, *War in Human Civilisation* (2006)
- J. Turrilo, 'Understanding warfare in the 21st Century' 18(3) *International Affairs Review* (Winter 2010)
- R. Smith, *Utility of Force. The Art of War in the Modern World* (2006)

**Part II**  
**The Law of Weaponry 1914–2014**

# Chapter 4

## The Prohibition to Use Chemical Weapons

**Thilo Marauhn**

**Abstract** A century ago, chemical weapons were used in World War I, with their use during the second battle of Ypres, in particular on 22 April 1915, demonstrating their nature as weapons of mass destruction. On 21 August 2013, during the Syrian civil war, sarin-filled rockets hit the Ghouta suburbs of Damascus, killing a large number of civilians. It is against the background of the indeed limited use of chemical weapons over the last century that the steps towards a nearly universal prohibition thereof are analysed. The starting point is early steps towards only prohibiting the use of chemical weapons (primarily focusing upon the 1899/1907 Hague Regulations and the 1925 Geneva Protocol) and their emerging customary law nature. With the adoption of the 1993 Chemical Weapons Convention, the prohibition of use was strengthened not only in scope but also by linking it to pertinent disarmament and arms control provisions. The latest steps address individual criminal accountability for using chemical weapons as a means of warfare, based upon the 1998 Rome Statute and the 2010 Kampala amendments thereto. As the concluding section illustrates, the effectiveness of a century of pertinent international law making depends on the universality of the prohibition to use chemical weapons and the common efforts of all stakeholders to ensure the integrity of the regime established by these various layers of international law.

**Keywords** Chemical weapons · Chemical warfare · Disarmament · International criminal law · Means and methods of warfare · Geneva protocol 1925 · Hague regulations 1899/1907 · Chemical weapons convention 1993 · Rome statute 1998 · Kampala amendments 2010

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