

# The Limits of Wartime Conduct



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## HUMAN RIGHTS



*HELEN DURHAM is the Director of International Law and Policy at the International Committee of the Red Cross (ICRC). She spoke at TEDx Sydney about her experiences in the field enforcing the laws of war.*

I became an international lawyer because of an insult. It was back in the 1990s and I was doing voluntary work with women's groups in Melbourne. A friend of mine went to the former Yugoslavia to assist women who were victims of sexual violence in the armed conflict there.

I wrote to her, it was pre-email days, asking what we could do back in Melbourne to assist the women over there. She wrote back that they wanted a clear legal precedent that rape was a war crime. I was surprised and a little shocked. It was not what I had expected. I replied "Couldn't we do a cake stall and raise money for the women?" "No," she responded. "They want rape deemed a war crime."

It is not something one does every day, but I thought: "let's investigate this." So the first thing I did was to make contact with the newly-established International Criminal Tribunal for the former Yugoslavia in The Hague. I found the number and rang it up and to my surprise I was put through to the deputy prosecutor. He advised that in fact, it would be useful if we could take information and evidence from the refugee population in Melbourne that had fled from the former Yugoslavia, and provided that to the Tribunal to assist to develop a precedent.

That seemed like a step in the right direction and I was sure there was a grown-up doing that somewhere, but I thought I would investigate it more. So I started ringing around. I rang my former university lecturers, the Federal Police, international legal experts. But only got dead ends. Finally I got through to the Department of Foreign Affairs and Trade and I must have been a little over enthusiastic because I got a very

blunt response from the bureaucrat. "Listen little lady," he said, "if you want this evidence taken, why don't you take it yourself?"

Well, I don't like being called "little lady", so I thought why not? Let's give it a go. I got together with a group of equally enthusiastic young lawyers. We did what lawyers do best and created a committee. But after that, we worked very closely together as a committee and engaged with the Tribunal in the former Yugoslavia and the refugee population. We came up with really important evidence that assisted in a range of precedents.

It was through that process that I came to know about the laws of war and international humanitarian law, most famously known as The Geneva Convention, and other treaties. And I started a lifelong love affair with the notion that even in the very worst of times, there is an area of law that seeks to create a space for humanity, a deep commitment to the idea that at the end of the day, what unites us is deeper and richer and far more profound than the things that try to divide us.

But working in this area has also filled me with heartbreak and I know as I stand here right now that across the globe, civilians or combatants are being maimed, are being tortured, are being killed by warring parties and I know that women's bodies continue to be used as battlefields. And I know that this world accepts the existence of weapons that can kill us many times over, and you all know this.

It has been forced upon us, that heartbreak, through YouTube, iPhones, Twitter. We see it on TV. We see it in our lives. We understand about it and sometimes I see it in the places I go to and in the work I do.

**“We only hear about any law when it is broken. We do not talk about it when it actually works and how we can make it work better.”**

I do wonder at the hubris of the legal framework that attempts to reduce suffering during times of armed conflict. But what I have learnt is that even wars have limits, and the laws of war are more than an aspirational framework for our better hearts. They actually do work and if you look and listen very carefully you can see the best of humanity at the worst of times. One can see the everyday miracles that the laws of war allow.

This happens every time there is a humanitarian pause in the fighting in Yemen, when thousands of civilians get access to humanitarian assistance. Every time my colleagues engage with both sides of the warring parties in Syria to ensure the provision of fresh clean water to 16 million Syrians. Every time my colleagues visit people detained, often in the darkest of places and last year there were 800,000 visits. This is the laws of war in action. It may not be headline news but I fear that sometimes we only hear about any law when it is broken. We do not talk about it when it actually works and how we can make it work better.

Last year I was privileged to go way up north in Iraq and sit with women who had fled terrible fighting to assist in the provision of small boxes of essential survival items that would help them get through the terrible winter.

Every time that the Red Cross trains the Taliban in first aid, stressing the importance of impartial medical care: This is the law of war in action and I had the privilege of seeing it work.

My first mission as an ICRC delegate was visiting people detained in a conflict environment and to do tracing work which is putting families back together

after the war has separated them. And I will never forget taking a small message from a detainee, getting into a four wheel drive, being driven for hours into the jungle, passed check points to deliver this small piece of paper to a family who had thought for five years that their son had died or been killed.

And as I saw the tears flow down the face of the stoic father and the mother overwhelmed with joy, it made me realise that the laws of war allow almost impossible things in difficult situations. Not long after that I was visiting women who were detained due to security issues.

I was there with my colleagues, a medical doctor and a nutritionist. I was there to register those women and engage with authorities on the conditions of detention. The conditions were harsh, limited food, hard labour, often in chains. But when I spoke to these women they said to me that they missed their family. That was the biggest concern they had and particularly they missed their children, and I happened to mention that I had a young son back home in Australia and how much I was missing him in my mission. To my astonishment they started to comfort me, patting me on the back, telling me how difficult it must be and I was deeply embarrassed as a naïve delegate, I assumed that I was there to assist them and that they would have little to offer me.

But what I learned was that they needed to know that someone cared. They needed us to get access but they needed the dignity of being able to care back, to care in response.

Even after a conflict is finished, the laws of war play a really important role in setting up a parameter about what is acceptable and what is unacceptable behaviour.



CHINA NANJING SEX SLAVE MUSEUM, DEC 1, 2015. Chinese soldiers attend the opening ceremony of the Nanjing Museum on the Site of Lijiang Comfort Stations in Nanjing city, east China's Jiangsu province. The memorial for World War II sex slaves is the first in mainland China dedicated to the group. PHOTO: LIU JIANHUA / IMAGINECHINA

A few years ago I went to talk to women in Asia who had been forced into sexual slavery during WWII. I was there to talk about the new legal precedent developed at the Tribunal for the former Yugoslavia and Rwanda, magnificently stating that “rape was not only a war crime, but genocide in certain circumstances and a crime against humanity.”

To be honest, I was nervous. These elderly elegant women who had suffered so much in the past, would never get justice themselves. What would they care about a legal precedent developed in a tribunal thousands of miles away from them?

I was wrong. As I told them about these developments, they cried, they clung on to me. They expressed incredible relief that what they had experienced was being treated seriously, because a crime against them, was a crime against us all.

Law does not revolutionise human behaviour. It is a clumsy tool for change, but it is a tool nevertheless. We put very heavy expectations on international law

and I think we are too quick to dismiss it all when we feel it fails us. And Australians are a particularly cynical lot.

Some research done a few years ago indicated that only one out of three Australian thought the laws of war would make a difference. When that same research was done in countries such as Afghanistan and Liberia the results were almost inverse. Sometimes I think deep cynicism is a luxury for those of us who have not experienced the horrors of conflict.

We spend a lot of time and rightly so looking at what is broken. But we need to spend more time looking at what works and how we can make it work better, how we can strengthen assistance, protection and particularly prevention.

The laws of war do not always work. Show me a law that always does. But they work enough to be worth fighting for. We can accept the heartbreak or we can be committed to something passionately that we believe may make a difference. What I have learnt is that they do make a difference, that even wars have limits. R