

New Actors, New Conflicts, Old Laws

By: Natalie LaMarche

Session: 8B – Promoting the Compliance of Non-State Armed Groups with International Humanitarian Law – Syria, Iraq and Libya

Instability. Insurgency. Interstate conflicts. These are the terms we now commonly hear to describe contemporary conflicts. With new actors, come new forms of conflict, and inevitably, new strategies for addressing those conflicts. But what about new laws?

The current regime for international humanitarian law (IHL) was created to address the practices of war at the time. IHL is a state-centric approach, focusing on international armed conflicts. Warring parties have legitimate expectations of how war will be conducted, based on compliance with both treaties and customary international law. Two core principles of customary IHL are the humane treatment of enemy prisoners and the impartial care of wounded enemy fighters, including those of your enemies.

However, contemporary conflicts are taking on new forms and ensuring adherence to IHL is becoming increasingly challenging. The increased participation of non-state armed groups (NSAGs) has led to new war dynamics, particularly in the Middle East. Conflicts are largely intra-state and take place in urban areas. There is also significant variation among NSAGs in terms of the level of violence they employ and the extremity of their ideology.

There are two significant obstacles when attempting to disseminate knowledge to ensure that NSAGs comply with IHL. With the rapid rise and proliferation of NSAGs, it's difficult to keep track of them. For example, according to the Carter Center's Syria Database, more than four thousand armed groups have emerged during the conflict. It's clear that this large number poses logistical problems in identifying and

coordinating with these groups to provide them with knowledge of their customary IHL obligations.

Second, the structural organization within these groups differs from traditional militaries. In the past, many armed groups were more structured, and the International Committee of the Red Cross (ICRC) was able to communicate with a group's leadership. This model would allow ICRC to pass the information down the ranks. In contrast, many groups are now horizontally organized with more informal linkages. These networked groups are more fragmented, have looser ties of allegiance, and have constantly shifting alliances. These realities make dissemination of information regarding IHL very difficult because it's hard to identify key interlocutors that can reliably share the information with others.

Not only is sharing IHL challenging, but beyond that is the challenge of promoting the compliance of warring parties, including NSAGs. One benefit is the increase in acceptance among domestic populations. By complying with IHL, NSAGs must facilitate aid, which would likely increase their popularity. Additionally, complying with IHL can increase their legitimacy within the international community. By demonstrating their commitment to international standards, these NSAGs can distinguish themselves from other groups who may resort to more violent and aggressive tactics.

However, there are many NSAGs who reject complying with IHL for ideological reasons. Some groups feel it is a form of Western imperialism. Others view it as contrary to their religious ideological views. There are some that reject basic provisions such as the protection of women. These are significant barriers which those who work in the field of IHL dissemination have not yet been able to effectively respond to, though strong efforts to improve methodologies continue.

One opportunity to better encourage NSAGs to comply with IHL is crediting NSAGs when they do comply. As previously mentioned there are often a great number of

competing NSAGs in a geographic area and not all are alike. If certain NSAGs desire not to be labeled terrorists and seek to distinguish themselves from the others, IHL compliance is one way of achieving this goal. It can increase their legitimacy in the eyes of the international community. However for this strategy to be effective, it requires states not to blur the lines among NSAGs and paint them all with the same brush. States must distinguish compliant NSAGs and must not group them all together and label them all as terrorists.

It's clear that there are serious challenges to achieving compliance with IHL in the current conflictual environment in the Middle East. But what's at stake? Humane conduct of war is of central importance not only for combatants, but also for the innocents caught in the crosshairs of conflict. There is a responsibility on our part to do the best we can to ensure that some basic human protections are safeguarded in a sea of violence.