

EDITORIAL

PROTRACTED CONFLICTS: THE ENDURING LEGACY OF ENDLESS WAR

Ellen Policinski, Editor-in-Chief, and Jovana Kuzmanovic, Thematic Editor and ICRC Delegate*

There is no instance of a nation having benefited from prolonged warfare.

Sun Tzu, *The Art of War*¹

When we think about the passage of time, especially as we get older, we may measure it in events—the birth of a child, anniversaries, holidays, or perhaps significant cultural or political events that we have observed and lived through. For many caught in seemingly endless wars, the milestones that mark time passing are more sombre. In testimonies of people affected by armed conflict, we see time also marked by grim events such as the beginning of a siege, the destruction of a home, the death of a family member, or the number of times they have had to flee. In Iraq, Om Nawwar recounts: “We spent our life here but now there’s nothing. We have to start from scratch. We have nothing left”.² Rebuilding becomes a way of life—as Mohammed in Syria tells us, “I realized that life has to go on; the war will not stop suddenly. We resumed our work We became older”.³

Ancient mythologies highlight the often destructive effects of time. According to Cicero, Kronos, the king of the titans, was also the god of time.⁴ Kronos was a destructive force, devouring his own children. When combined, the destructive forces of war and time can cause devastating effects on the population, which become even more severe as the war drags on. Wars, and their all-consuming destructive force, are becoming longer, more intractable and less likely to be resolved politically.⁵ In 2019, the International Committee of the Red Cross (ICRC) identified the needs of the civilian population in increasingly long conflicts as one of the main challenges related to international humanitarian law (IHL).⁶ At the time of writing, the average length of time that the ICRC has been present in each of its ten largest operations is forty-two years.⁷

Although war should be an exceptional circumstance, one feature of protracted armed conflicts is that they progressively become normalized. Rosa Brooks warns of the danger of wartime rules bleeding over into situations where they are not meant to apply, saying: “The distinction between war and non-war

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may be arbitrary, but we want it to be sharp and clear, because many actions that are considered both immoral and illegal in peacetime are permissible—even praiseworthy—in wartime.”⁸ For populations affected by war for years on end, decades in some cases, children are born and grow up in run-down cities, surrounded by the sounds of explosions, seeing their families and neighbours leave everything behind, struggling to access water, food and education. This becomes the norm.

The consequences of protracted armed conflicts are varied, including the cumulative effects of hostilities on infrastructure and health-care systems (among other systems), prolonged displacement, increased barriers to accessing services and support for groups facing specific risks among the population (including persons with disabilities), and interruptions to education, to name just a few.

The duration of humanitarian operations in protracted conflict settings has caused humanitarian actors to rethink their way of working, questioning the “linear and sequential continuum consisting of emergency aid—rehabilitation—development” and asking “for how many years can a situation be qualified as an ‘emergency?’”⁹ In light of the human suffering caused by the *uroboros* of seemingly endless wars, the *Review* has dedicated this issue to protracted conflict.

“Protracted”: A matter of law or a matter of time?

The term “protracted conflict” is one that defies precise definition, but the concept is not new. “Protracted social conflict” is a term that can be traced back to the international relations scholar Edward Azar, who characterized protracted social conflicts in terms of their intractability and longevity.¹⁰

- 1 Sun Tzu, *The Art of War*, Chap. II, para. 6, available at: <https://suntzusaid.com/book/2>.
- 2 See “Stretched: Protracted Conflicts and the People Living in the Midst of It All”, in this issue of the *Review*.
- 3 “Life in a War-Torn City: Residents of Aleppo Tell Their Stories”, *International Review of the Red Cross*, Vol. 98, No. 901, 2016, p. 19.
- 4 Marcus Tullius Cicero, *On the Nature of the Gods*, Oxford University Press, Oxford, 1997 (first written 45 BC).
- 5 Sebastian von Einsiedel, “Civil War Trends and the Changing Nature of Armed Conflict”, United Nations University Centre for Policy Research, Occasional Paper No. 10, March 2017, p. 2, available at: <https://cpr.unu.edu/civil-war-trends-and-the-changing-nature-of-armed-conflict.html>.
- 6 ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions”, *International Review of the Red Cross*, Vol. 101, No. 911, 2019.
- 7 In 2019, the top ten largest ICRC operations (in terms of expenditure) were in the Syrian Arab Republic, South Sudan, Iraq, Nigeria, Yemen, the Democratic Republic of the Congo, Afghanistan, Ukraine, Somalia and Myanmar. For more information on ICRC operations, see its annual reports available at: www.icrc.org/en/annual-report.
- 8 Rosa Brooks, *How Everything Became War and the Military Became Everything*, Simon & Schuster, New York, 2016, p. 21.
- 9 Marion Haroff-Tavel, “Do Wars Ever End? The Work of the International Committee of the Red Cross when the Guns Fall Silent”, *International Review of the Red Cross*, Vol. 85, No. 851, 2003, p. 469.
- 10 See Edward Azar, “Protracted International Conflicts: Ten Propositions”, *International Interactions*, Vol. 12, No.1, 1985; Edward Azar, Paul Jureidini and Robert McLaurin, “Protracted Social Conflict: Theory and

“Protracted armed conflict” is not a legal category or legal classification of armed conflict – but does that mean the word “protracted” has no significance for IHL applicability? In this issue, Dustin Lewis looks at “protracted conflict” as it affects international criminal law’s jurisdiction to prosecute war crimes in non-international armed conflicts (NIACs) under the Rome Statute of the International Criminal Court, reflecting on what might be the implications of recognizing a separate legal category or subcategory of protracted NIACs.¹¹

There is no standard for how long a conflict must go on to be considered “protracted” in the colloquy, nor whether hostilities need be continuous. “Protracted” armed conflicts may be episodic, cyclical, “frozen”, long-lived insurgencies, long-standing situations of occupation, or wars between States where violence simmers at a relatively lower level than one might traditionally associate with armed conflict. Conflicts may appear to be resolved but later “relapse”, as is increasingly the case for civil wars. In 2017, a United Nations (UN) University Centre for Policy Research paper found that 60% of conflicts that ended in the early 2000s re-ignited within five years.¹² None of these are new phenomena, but some particular trends can be observed in today’s conflicts, such as settings that are increasingly urban, the role of new forms of technology, and the fact that these conflicts attract a large humanitarian presence.¹³

In line with the trend of wars (including so-called “long wars”) increasingly being fought in urban settings, both the destruction and the creation of urban infrastructure have become part of the way war is waged. In a previous issue of the *Review*, architect Eyal Weizman gives an example of how the role of the built environment in protracted occupation may be interpreted in the occupied Palestinian territories:

Violence operates according to various scales in terms of duration and speed. For instance, there is the slow violence of the settlement project, the slow encroachment of the land – transforming it, draining its water – which is lethal and destructive, but happens over years, if not generations. That slow violence sometimes converts into kinetic violence. The settlement projects require their own security: to have a settlement, you must be guarding it. You also need to patrol it – you need to raid the next town to discourage its population from resistance. This results in kinetic incidents like shootings, arrests, destruction of homes, *et cetera*.¹⁴

Practice in the Middle East”, *Journal of Palestine Studies*, Vol. 8, No. 1, 1978, p. 50. See also Mona Rishmawi, “Protecting the Right to Life in Protracted Conflicts: The Existence and Dignity Dimensions of General Comment 36”, in this issue of the *Review*.

11 See Dustin A. Lewis, “The Notion of ‘Protracted Armed Conflict’ in the Rome Statute and the Termination of Armed Conflicts under International Law: An Analysis of Select Issues”, in this issue of the *Review*.

12 S. von Einsiedel, above note 5.

13 ICRC, *Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences*, Geneva, 12 June 2020, available at: www.icrc.org/en/publication/4265-protracted-conflict-and-humanitarian-action-some-recent-icrc-experiences.

14 “Interview with Eyal Weizman”, *International Review of the Red Cross*, Vol. 98, No. 901, 2016, p. 23. See also Eyal Weizman, *A travers les murs: L’architecture de la nouvelle guerre urbaine*, trans. Isabelle Taudière, La Fabrique, Paris, 2008.

The combined effect of this “fast” and “slow” violence is felt most by the civilian populations living in places where armed conflict, including occupation, lasts for years or decades. The effects become more severe as time goes on. Exposure to conflict in childhood has lifetime effects on health, and negative health effects have been shown to be passed down through generations. Interruptions to education and lower lifetime economic productivity mean that, in socio-economic terms, conflict will be felt far into the future.¹⁵

Even where IHL is respected, the effects of hostilities can be devastating – even more so in protracted armed conflicts, where the effects of consecutive attacks are compounded over time, increasing the vulnerability of civilians, and can lead to the disruption of essential services, which is particularly visible in urban areas. In conflicts that last for years or decades, the cumulative effects of hostilities may degrade essential services beyond repair. There is as of yet no consensus on how far into the future a reasonable commander should look to comply with the rules on proportionality and precautions in attack, but determining the reasonably foreseeable effects of an attack can be more complicated in protracted conflicts, where essential services may already be degraded and damage to civilian infrastructure will have a greater impact on the civilian population.¹⁶

For organizations, operating in protracted armed conflict presents a range of challenges that has already generated much reflection, intrinsically linked to the decades-old discussion of how to bridge the “humanitarian–development divide” previously framed in terms of a “continuum” and now broadened and reconceptualized as a “triple nexus” of humanitarian action, development and peace.¹⁷ The search for coherence and complementarity between humanitarian, development and peace efforts in protracted conflicts challenges many aspects of the traditional operational and financial architecture of aid. It also raises mindset and identity issues among many of the stakeholders involved in these efforts. This is discussed by Filipa Schmitz Guinote in this issue’s Q&A, where she outlines the ICRC’s pragmatic approach to the nexus as an “ecosystem of actors of influence, resources and expertise” that can help to build sustainable humanitarian impact with and for affected populations.¹⁸

15 Paul Corral, Alexander Irwin, Nandini Krishnan, Daniel Gerszon Mahler and Tara Vishwanath, *Fragility and Conflict: On the Front Lines of the Fight against Poverty*, World Bank Group, 2020.

16 See Mark Zeitoun and Michael Talhami, “The Impact of Explosive Weapons on Urban Services: Direct and Reverberating Effects across Space and Time”, *International Review of the Red Cross*, Vol. 98, No. 901, 2016; Isabel Robinson and Ellen Nohle, “Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas”, *International Review of the Red Cross*, Vol. 98, No. 901, 2016, p. 125.

17 See Hugo Slim, “Joining what Belongs Together? The Triple Nexus and the Struggle for Policy Synthesis”, *Rural 21*, Vol. 53, No. 2, 2019, available at: www.rural21.com/fileadmin/downloads/2019/en-01/Rural21_1_2019.pdf; Filipa Schmitz Guinote, “A Humanitarian–Development Nexus that Works”, *Humanitarian Law & Policy Blog*, 21 June 2018, available at: <https://blogs.icrc.org/law-and-policy/2018/06/21/humanitarian-development-nexus-that-works/>. See also articles dealing with this topic in previous issues of the *Review*: Jonathan Moore, “The Humanitarian–Development Gap”, *International Review of the Red Cross*, Vol. 81, No. 833, 1999; Lucy Earle, “Addressing Urban Crises: Bridging the Humanitarian–Development Divide”, *International Review of the Red Cross*, Vol. 98, No. 901, 2016.

18 See the Q&A on “The ICRC and the ‘Humanitarian–Development–Peace Nexus’ Discussion” in this issue of the *Review*.

Given the pressures of providing adequate response over a long period of time, humanitarian action needs to be enabled to deal with the direct and indirect effects of protracted conflict. Relief, rehabilitation and development activities may occur concurrently based on the actual needs and capacities in a given context during a specific period of time.¹⁹ Indeed, which relief activities are humanitarian, in the sense that they are designed to respond to needs arising from an emergency, becomes impossible to define when conflicts last not only years but generations.²⁰ Nevertheless, some have raised concerns about blurring the lines between humanitarian and development work, emphasizing that their goals, methods and approaches differ.²¹ In this issue of the *Review*, Edoardo Borgomeo, in his article on delivering water services in protracted conflicts, considers just how delicate, yet important, the balance between the humanitarian and development spheres is prior to, during and after conflict for effective collaboration and coherent, mutually complementary programming. He unpacks the “barriers” that might impede a transition from emergency to development intervention and concludes that “an improved understanding and identification of these barriers can help development and humanitarian actors achieve better integration of their respective efforts and ultimately help them to accomplish their respective objectives without undermining each other’s work”.²²

With the trends of longer conflicts in mind and recognizing situations in which active hostilities have caused a real change in infrastructure and local population needs, Alexander Hay, Bryan Karney and Nick Martyn explore the topic of rehabilitation and resilience of essential infrastructure in their article for this issue of the *Review*. They propose a “common frame of reference for all stakeholders to ... understand what the current infrastructure situation is, and so inform the effective implementation of whichever rehabilitation approach is pursued”, thus enabling essential services that are resilient to temporary returns to violence and can support the overall rehabilitation of the local community.²³

Humanitarian actors are developing strategies to better respond to needs arising in protracted armed conflict, such as multi-year funding and programming, which can help to secure so-called “development holds”.²⁴ Similarly, development actors are looking for ways to do their work in conflict situations, to ensure that gains are not lost and that people’s lives do not descend into extreme poverty.

19 For more information, see the forthcoming report *Joining Forces: How Humanitarian and Development Actors Can Support Water Supply and Sanitation Service Providers to Deal with Protracted Crises* by the ICRC, World Bank and UNICEF.

20 See ICRC, *Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War*, 2nd ed., Geneva, 2020 (ICRC Commentary on GC III), para. 1324.

21 See, for instance, Marc DuBois, “Don’t Blur the Lines Between Development and Humanitarian Work”, *The Guardian*, 12 May 2016, available at: www.theguardian.com/global-development-professionals-network/2016/may/12/dont-blur-the-lines-between-development-and-humanitarian-work.

22 See Edoardo Borgomeo, “Delivering Water Services during Protracted Armed Conflict: How Development Agencies Can Overcome Barriers to Collaboration with Humanitarian Actors”, in this issue of the *Review*.

23 See Alexander Hay, Bryan Karney and Nick Martyn, “Reconstructing Infrastructure for Resilient Essential Services during and following Protracted Conflict: A Conceptual Framework”, in this issue of the *Review*.

24 ICRC, above note 13.

The humanitarian world can no longer be seen as one of agencies swooping in during armed conflicts with quick, immediate emergency programming, and then handing the work over to development agencies.²⁵ This is simply not reflective of the reality on the ground, where humanitarian organizations have sometimes been present for decades. Responding to protracted conflict can seem like a Sisyphean task. Where war lasts for years or even decades, the humanitarian response must do the same in order to preserve the lives and dignity of the affected population. The humanitarian–development–peace triple nexus is one theoretical framework for humanitarian and development actors thinking about how to ensure sustainable impact and engender resilience. Owing to the reality of protracted conflicts and the fact that humanitarian needs in chronic situations of violence can evolve over time, the ICRC has coined the concept of building “sustainable humanitarian impact with people affected”. This concept is oriented towards maintaining the relevance and effectiveness of the ICRC’s action.²⁶

The consequences of protracted armed conflicts

Why is it important for a humanitarian organization to think within a “protracted conflict” paradigm?

One cannot know in advance that a conflict will be protracted. The nature of needs and vulnerabilities caused by armed conflicts will not necessarily be different in itself; however, the exacerbating effect of long-term conflicts on those needs and vulnerabilities, and the response needed to adequately address them and alleviate suffering from both a humanitarian and a development point of view, deserve a more thorough examination.

One of the drivers of the ICRC and other humanitarian organizations is the needs caused by armed conflict. What happens if such needs last for a long period of time? When they are compounded with conflicts’ long duration, intractability, mutability and constantly changing nature, the innumerable needs arising as a result of armed conflict are further exacerbated. Persons with distinct needs or facing particular risks, like detainees, migrants, internally displaced persons (IDPs), city dwellers in an economically disadvantaged situation, and people who are older and/or isolated, must deal with issues such as loss of livelihood, barriers for persons with disabilities, and famine or other food insecurity, to list just a few.²⁷ In some

25 *Ibid.*, p. 4.

26 See the Q&A on “The ICRC and the ‘Humanitarian–Development–Peace Nexus’ Discussion” in this issue of the *Review*.

27 “Famine is a symptom of protracted war. And when it manifests, it rarely manifests alone. Famine is accompanied by broken health systems, damaged infrastructure, and shattered economies, [and it] occurs when there is a basic disrespect for decency and the dignity of human life.” Peter Maurer, “Famine is a Symptom of Protracted War”, speech given at the UN General Assembly, 21 September 2017, available at: www.icrc.org/en/document/famine-symptom-protracted-war.

cases, infrastructure and essential services may deteriorate or even be completely destroyed.²⁸

Detainees are among the most vulnerable in any society, and this is particularly prominent in armed conflicts and other fragile contexts. Wars that seem without end can lead to detention that appears indefinite.²⁹ However, it is regretfully apparent that detention as a topic needs more of a spotlight in situations where the authorities are unable, unwilling or lack the resources to guarantee safe places of detention or proper treatment for detainees. This is especially true in situations where the detaining authorities are engaged in prolonged warfare, meaning that accompanying economic challenges are brought to bear on an often deprioritized penitentiary system.³⁰ The ICRC traditionally focuses on securing humane treatment and conditions of detention for all detainees, regardless of why they were arrested or detained.³¹ Detention should feature more prominently in ongoing discussions and implementation of humanitarian–development activities, but also in the triple nexus between humanitarianism, development and peacebuilding.

The ICRC has recognized the needs of the civilian population in increasingly long conflicts as one of the principle IHL challenges facing the world today, looking specifically at IDPs, the protection of persons with disabilities and access to education.³²

During armed conflicts, violence – whether in violation of IHL or not – generally triggers displacement, but IHL violations may make such displacement even more likely. Better respect for IHL can protect displaced people and contributes to reducing the scale of displacement.³³ Cédric Cotter looks at causes of displacement in Iraq in this issue, concluding that

[v]iolations of the IHL principles on the conduct of hostilities lead to displacement, both directly when civilians flee to save their lives, but also indirectly when the cumulative effect of the violations, for example on vital infrastructure, forces civilians to seek better living conditions elsewhere.³⁴

28 See ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, Geneva, 6 October 2015, available at: <https://www.icrc.org/en/document/urban-services-protracted-conflict-report>.

29 See ICRC Commentary on GC III, above note 20, commentary on Art. 118.

30 Colin Walsh, “Deprived of Freedom: How Detainees in Conflict Zones Could Benefit from a ‘Triple Nexus’ Approach”, *Humanitarian Law and Policy Blog*, 9 July 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/07/09/detainees-triple-nexus/>.

31 ICRC, “Helping Detainees”, available at: www.icrc.org/en/what-we-do/visiting-detainees.

32 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2019 (2019 ICRC Challenges Report), pp. 38 ff.

33 ICRC, *Displacement in Times of Armed Conflict: How International Humanitarian Law Protects in War and Why it Matters*, Geneva, 2019. This exploratory study, which does not necessarily reflect the institutional views of the ICRC, deals with the role and contribution of respect of IHL in relation to displacement.

34 See Cédric Cotter, “From Operation Iraqi Freedom to the Battle of Mosul: Fifteen Years of Displacement in Iraq”, in this issue of the *Review*.

Numbers show that at the end of 2019, there were 50.8 million IDPs worldwide; 45.7 million of these were living in internal displacement as a result of conflict and violence, which is the highest figure ever recorded.³⁵ Many have been displaced for long periods or forced to move multiple times, including due to protracted conflicts. As conflicts are becoming increasingly protracted, so is displacement; likewise, as the world's population becomes more urban, people are increasingly displaced to, between or within cities, where the delivery of essential services may already be under pressure and the host community may experience the presence of IDPs as a burden.³⁶ Damaged or overburdened infrastructure may also mean that IDPs are displaced yet again.

Another part of the civilian population of particular concern during armed conflicts are persons with disabilities, for whom wars can exacerbate or create physical, communicational, attitudinal or other barriers to accessing essential services, support and systems. Persons with disabilities can be at greater risk during hostilities because it is harder for them to flee, because they are at greater risk of attacks and violence, and because they may face different forms of discrimination due to their disability as well as to other factors like age or gender.³⁷ As we have seen, the consequences of armed conflicts grow more severe with time, as infrastructure and services are impacted by the cumulative effects of destruction and displacement.

Education is often profoundly disrupted during armed conflict, and as conflict becomes protracted this becomes more likely. When education is disrupted, the effects can last for generations. In principle IHL provides protection for civilian schools, educational personnel and students that can help to prevent or mitigate the disruption of education. In addition, it contains provisions requiring parties to conflict to facilitate access to education in certain circumstances.³⁸ Humanitarian actors can work with affected communities to ensure that parties to armed conflict uphold these obligations, as well as to re-establish education services.³⁹

The bleak picture presented in this editorial becomes even more worrisome when one considers the outbreak of the COVID-19 pandemic and the restrictive measures taken by many authorities to curb the spread of the virus. The response has varied in terms of the introduction of restrictive measures,⁴⁰ which have ranged from travel restrictions, border closures and evacuation of citizens living

35 Internal Displacement Monitoring Center, *Global Report on Internal Displacement 2020*, Geneva, April 2020, p. 2.

36 ICRC, *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, Geneva, 2018, p. 45, citing Nicolas Crawford, John Cosgrave, Simon Haysom and Nadine Walicki, *Protracted Displacement: Uncertain Paths to Self-Reliance in Exile*, Humanitarian Policy Group, September 2015, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9851.pdf.

37 *Ibid.*

38 *Ibid.*

39 See Geoff Loane and Ricardo Fal-Dutra Santos, "Strengthening Resilience: The ICRC's Community-Based Approach to Ensuring the Protection of Education", *International Review of the Red Cross*, Vol. 99, No. 2, 2017.

40 See, for instance, the Coronavirus Government Response Tracker created by the Blavatnik School of Government and the University of Oxford, which provides an overview of policy responses by countries

outside of their home countries to specific measures within the health-care systems that have been overwhelmed in responding to serious cases. In situations where people and systems are already affected by conflict and violence, this pandemic creates even more pressure.⁴¹ The pandemic is not limited geographically, and as it spreads around the world, it compounds the fragility of places that have been entrenched in endless wars, which already have weakened health-care systems and where it may be very difficult to meet basic needs for clean water, or where physical distancing may be impossible (e.g. refugee camps or places of detention).

For the ICRC and some other actors, this might not be the first time they have provided support during an epidemic, and there are some lessons learned that may be useful in responding.⁴² Nevertheless, a pandemic of this magnitude can bring about horrifying consequences in already weakened contexts, making this public health crisis a humanitarian and development crisis as well. For this reason, the ongoing humanitarian, development and policy discussions have brought forth a request for an even more prominent “nexus approach” in dealing with the crisis.⁴³

Do endless wars end?

The nature of protracted conflicts makes it difficult to determine when they are over. When armed conflict drags on for years and then decades, the distinction between wartime and peacetime blurs and, especially in so-called “low-level” conflicts, the population is trapped in an Orwellian conundrum.

The point at which armed conflict ends for the purposes of determining the end of IHL applicability is still an underdeveloped area of the law. In this issue of the *Review*, Dustin Lewis looks at when wars end, cautioning that

an effort to encompass and address ‘the humanitarian–development–peace nexus’ within a legal (sub)category of ‘protracted armed conflict’ might operate in a way that unintentionally and/or unknowingly extends the applicability of IHL,

around the world, ranging from containment and closure policies to economic and health system policies. Available at: www.bsg.ox.ac.uk/research/research-projects/coronavirus-government-response-tracker.

- 41 ICRC, “Coronavirus: COVID-19 Pandemic”, available at: www.icrc.org/en/what-we-do/covid-19-pandemic.
- 42 For instance, the ICRC has experience in responding to disease outbreaks such as cholera in Yemen, Ebola in the Democratic Republic of the Congo, and tuberculosis in detention facilities in different contexts. See ICRC, “Responding to Disease Outbreaks in the Time of COVID-19”, 13 April 2020, available at: www.icrc.org/en/document/covid-19-coronavirus-disease-outbreaks-response. For a reflection on the 1918 Spanish flu and the lessons learned from it, see Cédric Cotter, “From the ‘Spanish Flu’ to COVID-19: Lessons from the 1918 Pandemic and First World War”, *Humanitarian Law and Policy Blog*, 23 April 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/04/23/spanish-flu-covid-19-1918-pandemic-first-world-war/>.
- 43 Damian Lilly, “What Happened to the Nexus Approach in the COVID-19 Response?”, *International Peace Institute Global Observatory*, 19 June 2020, available at: <https://theglobalobservatory.org/2020/06/what-happened-to-nexus-approach-in-covid-19-response/>. Also, for opinions on how imperative it is to develop a response to this crisis through a triple-nexus lens, see Sarah Dairymples, “Looking at the Coronavirus Crisis Through the Nexus Lens – What Needs to be Done”, *Development Initiatives*, 8 April 2020, available at: <https://devinit.org/blog/looking-at-the-coronavirus-crisis-through-the-nexus-lens-what-needs-to-be-done/>.

including its ‘enabling arrangements’, in lieu of other frameworks—such as [human rights law]—that might, on the whole, be considered to be more protective of, or otherwise beneficial to, affected populations.⁴⁴

Once the threshold of applicability is met, IHL applies regardless of the length of the conflict.⁴⁵ The difficulty comes in determining when the war is over and IHL no longer applies, which should not be done lightly, as the situation may relapse and violence may resurge.⁴⁶ Based on the ICRC’s experience on battlefields around the globe, there are a number of IHL rules that need to be applied to mitigate the long-term humanitarian consequences of protracted conflict.⁴⁷ In addition to those already mentioned, these norms include the prohibition of the destruction of objects essential for the survival of the population, including livestock, crops, water installations and irrigation works; the duty to protect the natural environment against widespread, long-term and severe damage; and the many rules protecting health care and the wounded and sick.⁴⁸

Another area where the duration of armed conflict may affect the way the law is applied is in situations of occupation. Occupations have traditionally been viewed as short-term, or temporary, but today there is no end in sight for many situations of occupation. Prolonged situations of occupation may affect how IHL is applied, and their long duration highlights the complementary role of human rights law in such circumstances.⁴⁹

Similarly, when non-State parties to armed conflicts control territory to the exclusion of *de jure* authorities over a long period of time, there are a variety of issues to consider, including which rules of international law apply to how these groups “govern” such territory. This has become particularly clear during the ongoing pandemic, as non-State actors have needed to take measures to protect

44 Dustin A. Lewis, “The Notion of ‘Protracted Armed Conflict’ in the Rome Statute and the Termination of Armed Conflicts under International Law: An Analysis of Select Issues”, in this issue of the *Review*. See also ICRC Commentary on GC III, above note 20, commentary on Art. 2, paras 307–317, and on Art. 3, paras 519–530; Dustin A. Lewis, Gabriella Blum and Naz K. Modirzadeh, *Indefinite War: Unsettled International Law on the End of Armed Conflict*, Harvard Law School Program on International Law and Armed Conflict, Cambridge, February 2017, p. 1, available at: <https://dash.harvard.edu/handle/1/30455582>; Julia Grignon, “The End of International Armed Conflict and Non-International Armed Conflict for the Purpose of the Applicability of International Humanitarian Law”, doctoral thesis, University of Laval, 2016, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2761840.

45 See Julia Grignon, “The Beginning of Application of International Humanitarian Law: A Discussion of a Few Challenges”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015; Sylvain Vité, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”, *International Review of the Red Cross*, Vol. 91, No. 876, 2009.

46 See Marko Milanovic, “The End of Application of International Humanitarian Law”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015; ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts”, Geneva, 2015, pp. 7–12.

47 ICRC, above note 13, p. 11.

48 *Ibid.*

49 Vaios Koutroulis, “The Application of International Humanitarian Law and International Human Rights Law in Situation of Prolonged Occupation: Only a Matter of Time?”, *International Review of the Red Cross*, Vol. 94, No. 885, 2012. For an analysis of when occupation begins and ends, see Tristan Ferraro, “Determining the Beginning and End of Occupation under International Humanitarian Law”, *International Review of the Red Cross*, Vol. 94, No. 885, 2012.

public health in territories they control.⁵⁰ In a previous issue of the *Review*, Kathryn Hampton explored the consequences for birth registration in areas controlled by insurgent groups,⁵¹ just one of many complexities that may arise in these circumstances. IHL continues to apply in these circumstances and provides essential rules on the protection of the population. However, there is some debate on whether and to what extent human rights law is relevant regarding measures taken by *de facto* authorities that are not governed by IHL.⁵²

Insurgencies are often perceived as an existential threat, and there can be a temptation to set aside the norms meant to prevent unnecessary suffering during times of war, especially when guerrilla tactics continue for decades. During such protracted insurgencies, people can end up fighting against compatriots, friends and loved ones. As Lt.-Col. Joven Capitulo of the Philippine Department of National Defense points out in his interview in this issue, “[t]he main challenge of the counter-insurgency campaign and the internal conflict [in the Philippines] is that it’s a war among Filipinos. ... It’s a long war, and the victims are the Filipinos themselves.”⁵³

Lt.-Col. Capitulo also observes the need for organizations like the ICRC to work with non-State armed groups in order to ensure those groups’ knowledge of, and induce their compliance with, IHL.⁵⁴ The ICRC has been engaged in this work for decades. Another organization that engages with non-State actors is Geneva Call, whose Director of Operations Hichem Khadhraoui writes about the lessons learned in developing and sustaining a meaningful protection dialogue. Such a dialogue needs to take into account the changes undergone by non-State groups, which may split, mutate or join larger movements. This can be challenging “when rapid mutations occur during armed conflicts that tend to last longer and longer”,⁵⁵ something the ICRC has also observed.⁵⁶

In times of war, when suffering is inevitable, IHL provides fundamental protection to those that are affected and allows humanitarian organizations to provide protection and assistance. Colombia has contributed greatly to the development of IHL norms in practice going back as far as 1820,⁵⁷ and in 2019 there were no less than five ongoing NIACs in Colombia, even after the signing of a peace agreement between the Colombian government and FARC-EP.⁵⁸ Decades of conflict have led Colombia to explore the protection of minors, the

50 See Geneva Call’s COVID-19 Armed Non-State Actors’ Response Monitor, available at: www.genevacall.org/covid-19-armed-non-state-actors-response-monitor/.

51 Kathryn Hampton, “Born in the Twilight Zone: Birth Registration in Insurgent Areas”, *International Review of the Red Cross*, Vol. 101, No. 911, 2019.

52 See 2019 ICRC Challenges Report, above note 32, p. 53.

53 See the interview with Lieutenant-Colonel Joven D. Capitulo PA in this issue of the *Review*.

54 *Ibid.*

55 See Hichem Khadhraoui, “Fragmentation of armed Non-State Actors in Protracted Armed Conflicts: Some Practical Experiences on How to Ensure Compliance with Humanitarian Norms”, in this issue of the *Review*.

56 See 2019 ICRC Challenges Report, above note 32, p. 51.

57 See Marcela Giraldo and Jose Serralvo, “International Humanitarian Law in Colombia: Going a Step Beyond”, in this issue of the *Review*.

58 ICRC, “Colombia: Five Armed Conflicts – What’s Happening?”, 30 January 2019, available at: www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening.

meaning of the principle of precaution, the compensation of armed conflict victims and the creation of some rather sophisticated transitional justice mechanisms that can serve as an example for other States. Marcela Giraldo Muñoz and Jose Serralvo discuss these contributions in detail in their article for this issue of the *Review*.⁵⁹

The purpose of IHL is to balance military necessity with humanity, thus sparing the civilian population from unnecessary harm. The longer a conflict lasts, the greater is the likelihood that other bodies of law, especially human rights law, will be read into the situation to fill gaps in the law.⁶⁰ In this issue of the *Review*, Mona Rishmawi examines the right to life in protracted armed conflict, looking specifically at the UN Human Rights Committee's General Comment 36, which clarifies that individuals are entitled not only to be protected from acts or omissions that could cause unnatural or premature death, but also to enjoy a life with dignity.⁶¹

Unpacking the realities of armed conflict can make addressing the challenges discussed in this issue seem an impossible task – but at the bottom of Pandora's box is hope that the future will bring lasting solutions.



Also in this issue are contents that are not related to the main theme but which nonetheless make significant contributions to the discussion of international humanitarian law, policy and action. Robert Kolb and Fumiko Nakashima examine “The Notion of ‘Acts Harmful to the Enemy’ under International Humanitarian Law”, making specific recommendations on how the law governing the special protection of hospitals should be interpreted. Andrea Harrison reviews Kubo Mačák's *Internationalized Armed Conflicts in International Law*, which she concludes demonstrates why conflict classification, far from being an abstract exercise, is “both meaningful and necessary”, in addition to proposing a new approach to determining the applicable legal regime in “internationalized” armed conflicts. Andrew Carswell reviews Yishai Beer's *Military Professionalism and Humanitarian Law: The Struggle to Reduce the Hazards of War*, which re-examines some of the most basic underpinnings of international law governing armed conflict in light of the gap between the law and the practice of State militaries. Last but not least, the report of the first expert meeting on “The Development of Guiding Principles for the Proper Management of the Dead in Humanitarian Emergencies and Help in Preventing Their Becoming Missing Persons” (30 November–1 December 2018) highlights the need for guidance to help practitioners and decision-makers ensure respect for dead persons and human remains in humanitarian contexts.

59 See Marcela Giraldo Muñoz and Jose Serralvo, “International Humanitarian Law in Colombia: Going a Step Beyond”, in this issue of the *Review*.

60 For more on how IHL and human rights law complement each other, see Cordula Droegge, “Elective Affinities? Human Rights and Humanitarian Law”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008.

61 See Mona Rishmawi, “Protecting the Right to Life in Protracted Conflicts: The Existence and Dignity Dimensions of General Comment 36”, in this issue of the *Review*.