

# CIVILIANS IN WAR

Edited by **Simon Chesterman**

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# Foreword

*Vartan Gregorian*

In an obscure corner of the International Court of Arbitration in the Hague “Peace Palace” hangs the portrait of the long-dead Nicholas II, the variously revered and reviled czar of the Russian empire who was the inspiration behind the first Hague International Peace Conference in 1899. Tour guides at the Peace Palace report that few contemporary visitors can identify the visage of the man whose motives in calling for an international conference to both curtail the resort to war and to mitigate its most inhumane effects have long been questioned. Some argue that the czar promoted the conference because he was painfully aware of his nation’s inability to compete in a global arms race. Others, more charitably, point to an influential meeting between the thirty-year-old czar and the Polish railway magnate Ivan Bliokh, who published a six-volume work in 1898 that graphically quantified the horrendous casualty rates and other havoc that would result from a future war.<sup>1</sup>

Just as Robert Frost once maintained that a poet can take credit for anything a reader may find in one of his poems, even if unintended, modern observers can look back at Czar Nicholas’s inspiration regarding the Hague International Peace Conference as transcending his motives, whatever they might have been. The czar’s recent canonization by the Russian Orthodox Church, decidedly not for his irresolute, inept, and autocratic record as monarch but rather for his death as a “martyr for faith” at the hands of the Bolsheviks in July 1918, only underscores the deep ambiguity that continues to haunt his legacy. It is an ambiguity that still haunts the Peace Conference more than one hundred years after it was convened.

The letter of invitation to The Hague sent by the Russian foreign minister, Count Mikhail Mouravieff, on behalf of the czar proclaimed that “this conference should be, by the help of God, a happy presage for the century

which is about to open. It would converge in one powerful focus the efforts of all States which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord.”<sup>2</sup> As this volume documents, all the well-intentioned platitudes and solemn pronouncements against war and its consequences that emanated from the conference did not prevent the ensuing century from being the most sanguinary and violent in human history. Indeed, even as the participating nations in the conference accepted their invitations, the major powers of the day were already laying the groundwork for the conflagration that would engulf Europe and the world in fifteen short years. And yet, as I will propose at the conclusion of this brief foreword, despite some of the grim evidence to the contrary there remains reason to believe that what was wrought at the first Hague Conference, and the second that took place in 1907, remains very much a work in progress.

Andrew Carnegie, the visionary and beneficent industrialist and philanthropist whose foundation I currently have the honor of serving as president, was, as is well known, an ardent champion of the Hague Peace Conference. His personal acquaintance with and even affection for some of the leading statesmen and potentates of the day (including Nicholas II) only reinforced his conviction that reason and sound policy would triumph over bellicosity, “the foulest fiend ever vomited forth from the mouth of Hell.”<sup>3</sup> Schooled in the optimistic worldview of such eminent international pacifists as Nobel laureate Norman Angell, Baron d’Estournelles de Constant, Baroness Bertha von Suttner, and U.S. merchant and career diplomat Oscar Strauss, as well as his own deep and wide reading of history and philosophy, Carnegie was a firm believer in the power of international treaties and agreements to triumph over war. He—like the seventeenth-century father of modern international law, Hugo Grotius, whom he revered—believed that nations are bound by natural law, independent of God, and based on humankind’s own fundamentally pacific nature. It was, in Carnegie’s view, the responsibility of the civilized and enlightened nations of the world to weave a dense web of legal instruments and institutions to codify this natural impulse and thus enable the new century to be free from the scourge of war.

In his outstanding biography of Carnegie, Joseph Frazier Wall recounts the philanthropist’s abiding faith in the mastery of civilization over barbarism and his hope for a pacific future as expressed in an address he made in 1905 to inaugurate his second term as rector of St. Andrews University:

It is possible to point to many bright rays, piercing the dark cloud, which encourage us. . . . Non-combatants are now spared, women and children are no longer massacred, quarter is given, and prisoners are well cared for. . . . There is great cause for congratulations. If man has not been busily striking at the heart of the monster War, he has at least been busily engaged drawing in some of its poisonous fangs. . . . Thus even in the savage reign of man-slaying, we see the blessed law of evolution increasingly at work performing

its divine, making that which is better than that which has been and ever leading us on to perfection.<sup>4</sup>

Carnegie backed up his evocative, if naïvely optimistic, words with the carefully cultivated fruits of his vast personal fortune. With the persistent encouragement of Frederick Holls, secretary of the U.S. delegation to the Hague Conference, and Andrew White, then U.S. ambassador to Germany, Carnegie was persuaded to finance the building of a Peace Palace in The Hague that would house an International Court of Arbitration and a legal library, the largest of three peace monuments that he would build to advance the cause that had become his life's work (the others were the Pan American Union Building in Washington, D.C., and the Central American Court of Justice in Cartago, Costa Rica). The cornerstone of the magnificent building was laid in the summer of 1907 at the opening of the Second Hague International Peace Conference. It would finally be completed, with much fanfare, six years later.

Just as the bricklayers and engineers were erecting the physical edifice that would serve to symbolize the quest for peace, so, too, was Carnegie constructing the institutional edifice that would represent his principal legacy to his deeply held beliefs. From 1903 to 1914, in addition to the three Peace Palaces he constructed, Carnegie established and endowed four U.S.-based foundations dedicated to the cause of peace, including the policy research center, the Carnegie Endowment for International Peace in 1910, and the philanthropic Carnegie Corporation of New York in 1911.

Tragically, it would not take very long for the more bellicose impulses of nations to overwhelm, yet again, the pacifism that Carnegie so fervently championed. By 1905, the Russo-Japanese War had demonstrated to the world the potency of a Japan that had eschewed the mobilization of a narrow professional army in favor of a nationwide effort to create a "total war machine"—a lesson that was not lost on the other great powers of the day, whose rhetoric in the cause of peace was belied by their methodical preparations for war.

However, it was a later series of small but exceedingly vicious wars—the object of one of the Carnegie Endowment's first international inquiries—that served as both a grim precursor of the wider violence looming on the horizon and a poignant disavowal of the Panglossian perspective voiced by Carnegie at St. Andrews. The 1913 endowment-sponsored "Report of the International Commission to Inquire in to the Causes and Conduct of the Balkan Wars" catalogued such brutalities and depredations visited upon both combatants and civilians alike in this beleaguered corner of the once powerful Ottoman empire that it shocked the adherents of European and North American peace movements, including Carnegie himself. The report highlighted a malevolent force to which neither Carnegie nor his pacifist brethren had given proper due, a force that disregarded the strictures of international norms and law with

reckless and violent abandon. As the authors of the commission report described, it was the "megalomania of the national ideal"<sup>5</sup> that served to both ignite and sustain the barbarity that characterized the two Balkan Wars of 1912 and 1913 (to say nothing of its contemporary manifestations) and would provide the impetus for World War I, which would soon follow.

Even as the storm clouds gathered in the years before the "Great" War, Carnegie persisted in his efforts to avert conflict through his personal appeals to the monarchs of Europe, particularly Kaiser Wilhelm of Germany. Although an earlier plan orchestrated by Carnegie to promote a "league of peace" through a meeting involving the kaiser, King Edward VII of England, and former U.S. President Theodore Roosevelt had foundered in the wake of King Edward's death, Carnegie remained a preternatural optimist even as the guns of August blazed in 1914. But such optimism could not be sustained in the face of the grim reports from the front and the harrowing accounts of German atrocities and the genocide against the Armenians in the Ottoman empire in 1915. An exasperated Carnegie, the man whose lifelong motto was "All is well since all grows better," had decided by 1917 that "Germany [was] beyond reason"<sup>6</sup> and that the only hope for world peace was for the United States to enter the war to help defeat Germany and its allies. Thus it was that a man devoted to the cause of peace found himself a defender of "the foulest fiend ever vomited forth by Hell," albeit in the name of a "war to end all wars." Carnegie died in 1919, spared the indignity and pain of seeing the League of Nations rejected by the United States Senate and with it the hopes of yet another generation of disappointed pacifists.

What then of the legacy of Carnegie's Peace Palace, the Hague Conference, and the dreams that inspired them? Pessimists have ample reason to point to the bloody and tumultuous history of the past century, punctuated as it was by a seemingly unrelenting stream of brutality against civilians, including the massacre of the Assyrians, the Armenian genocide, the Spanish Civil War, the Italian assault on Ethiopia, the Japanese "Rape of Nanking," the unspeakable horrors of the Holocaust, and the atomic bombings of Hiroshima and Nagasaki. What is more, the past fifty years have seen no diminution in the scope and intensity of such barbarity, even as modernity marches confidently forward. From the killing fields of Cambodia and the mass graves of El Salvador to, more recently, the genocide in Rwanda and the massacres in Bosnia, human beings do not seem to have learned anything from these collective obscenities except how best to murder one another. Technological advancements, although amply enlisted in the cause of such malevolence, have not even been necessary to further its prosecution—as the machetes and pick axes of Sierra Leone so gruesomely give testament.

As a historian, I am compelled by training and temperament to take the long view. In many ways, the violence perpetrated during the twentieth century was no more intense and deadly to civilians than that of the Romans laying waste to Carthage (or the Vandals and Visigoths sacking Rome centuries

later), the decimation wrought by Genghis Khan and his hordes, or the religion-fueled massacres of the Thirty Years War. The absolute number of violent deaths in the twentieth century was clearly unprecedented, but in relative terms, the long march of history is abundantly littered with the corpses of men, women, and children who were victims of war.

And yet, something did change in the past century. The concept of total war first pioneered by Napoleon in his mass mobilization of "the people" reached its apogee in the twentieth century during World Wars I and II when "the people" became, more than ever, both an instrument and a target of combatants. But along with this increase in the victimization of civilians and the blurring of lines between combatant and noncombatant also came a revived recognition of the need to rein in the dogs of war, particularly as they threatened the lives of the innocent and the vulnerable. And so, in spite of—and perhaps more accurately, in response to—the depredations of the past century came the body of international humanitarian and human rights law, given early voice at the Hague International Peace Conference in 1899 (and detailed in this volume) that offered a normative and legal rationale for mitigating the worst impulses of the human condition.

It was not so much that Andrew Carnegie overstated his case at St. Andrews in 1905 when he heralded "the many bright rays, piercing the dark cloud, which encourage us," but that his judgment was premature. It would take the bitter crucible of the total wars that were waged with increasing lethality during the ensuing decades to shake humanity out of its dangerous stupor and to "draw in some of the poisonous fangs" of war. The record of the past one hundred years, to say nothing of the past ten, is a distressing reminder that the world still has far to go to realize the enlightened vision of the first Hague Conference. But the legal and institutional scaffolding first erected at that conference has allowed latter-day proponents of peace to contribute the intellectual bricks and mortar to the construction of an even more lasting and glorious monument, as yet unfinished, than Carnegie's heralded Peace Palace. Thus, although Czar Nicholas's portrait may hang in relative obscurity in a darkened corner of that palace, and contemporary Russians may debate his checkered legacy, his compelling *cri de paix* first uttered on the eve of the twentieth century still echoes in the untrammelled recesses of a new and hope-filled millennium, along with the abiding promise of Carnegie's optimistic dictum that "all is well since all grows better."

## Notes

Vartan Gregorian is president of the Carnegie Corporation of New York.

1. Michael L. Nash, "A Century of Arbitration: The International Court of Justice," *Contemporary Review* (May 1999), pp. 1, 5. "Ivan Bliokh" is the Russian spelling of the Polish-born "Jan Bloch."



2. Avalon Peace Project of the Yale Law School, "The Hague Peace Conference," p. 7, available on the Internet at [www.yale.edu/lawyerweb/avalon/lawofwar/hague99/hag/99-01](http://www.yale.edu/lawyerweb/avalon/lawofwar/hague99/hag/99-01).

3. Joseph Frazier Wall, *Andrew Carnegie* (Pittsburgh: University of Pittsburgh Press, 1989), p. 916.

4. Ibid.

5. *The Other Balkan Wars: A 1913 Carnegie Endowment Inquiry in Retrospect with a New Introduction and Reflections on the Present Conflict* by George F. Kennan (Carnegie Endowment for International Peace, 1993), p. 11.

6. Wall, *Andrew Carnegie*, p. 1033.

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## Acknowledgments

This volume had its genesis in the conference *Civilians in War: 100 Years After the Hague Peace Conference*, held in New York in September 1999. The conference was generously sponsored by the Carnegie Corporation of New York, whose president, Vartan Gregorian, cochaired the event with Rita E. Hauser, Esq., chair of the Board of the International Peace Academy (IPA), and David M. Malone, president of IPA. Elizabeth M. Cousens, also from IPA, designed the original project, which was ably brought to fruition with the assistance of Charles K. Cater.

The involvement of the Carnegie Corporation of New York went well beyond the role of sponsor. In addition to the critical and much appreciated role of David C. Speedie in conceiving the project and Stephen J. Del Rosso Jr. in encouraging the transformation from conference to edited volume, Dr. Gregorian has helped shape the agenda in this important emerging field of international concern and action. To him and all the staff at the Carnegie Corporation, warmest thanks.

Most of the contributors to this volume have built upon papers presented at the conference. Their work was enriched by the interventions of the many able and eminent persons who attended. It is not possible to list all these interventions, but special mention should be made of the keynote address by Canadian Minister for Foreign Affairs Lloyd Axworthy and the address by U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor Harold H. Koh. Building upon the discussion that took place at the conference (both on- and off-the-record), further chapters were solicited. It has been a rewarding experience to work with all these authors in the final development of their contributions.

At the production stage, Karin Wermester at IPA provided invaluable assistance that made it possible to edit the volume from Belgrade, a hurdle lowered still further by the efficiency and professionalism of our publisher, Lynne Rienner, and her team.

—*Simon Chesterman*

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# Introduction: Global Norms, Local Contexts

*Simon Chesterman*

The origins of modern international humanitarian law, the problematic body of rules designed to limit suffering in time of war, can be traced back to the Austro-Italian War of 1859. Jean-Henri Dunant, a Swiss businessman, happened to arrive in Castiglione della Pieve on the same day that the Battle of Solferino was fought nearby—a “mere tourist,” as he wrote in the memoir of what he witnessed. The brutality of the battle was not untypical of its time, but Dunant’s depiction of the human misery was graphic and pointed. In particular, he focused on the aftermath of battle, the wounded men whose numbers overwhelmed the army medical services and began to fill the town:

Men of all nations lay side by side on the flagstone floors of the churches of Castiglione—Frenchmen and Arabs, Germans and Slavs. Ranged for the time being close together inside the chapels, they no longer had the strength to move, or if they had there was no room for them to do so. Oaths, curses and cries such as no words can describe resounded from the vaulting of the sacred buildings.<sup>1</sup>

Dunant called for the establishment of “relief societies for the purpose of having care given to the wounded in wartime” and “international principles” to serve as the basis and support for these societies—precursors to the International Committee of the Red Cross (ICRC) and international humanitarian law. This set the stage for the more formal convention on the laws and customs of war adopted at the Hague International Peace Conferences of 1899 and 1907.

A century later, what is striking about these conventions is the near absence of provisions for the protection of civilians. This reflected the nature of wars in Europe at the time, dominated by set-piece battles between professional standing armies. At the same time, one concern of negotiators at The Hague was to limit the application of the new laws of war to such profession-

al soldiers—excluding, for example, the population of an occupied territory who might rise up against their new rulers.

War, of course, has changed. In World War I only 5 percent of all casualties were civilian; in World War II that number was 50 percent; and in conflicts through the 1990s, civilians constituted up to 90 percent or more of those killed, with a high proportion being women and children.<sup>2</sup> The adoption of the Fourth Geneva Convention on the Protection of Civilians in 1949 was a recognition of the changing face of war, but it does not appear to have reversed the trend. Fifty years after the Nuremberg Trials, Europe once again convened a war-crimes tribunal to examine atrocities in the former Yugoslavia, while a parallel institution was established to look at the still more bloody events in Rwanda.

Clearly, more than reliance on rules is needed. This book seeks to expand the tools available to national and international actors to protect civilians in times of war. It brings together the work of academics, policymakers, and field practitioners from the legal, security, and humanitarian fields. Part 1 provides a normative framework for the volume, situating international humanitarian law in its historical and political context. Part 2 then looks at the question of how humanitarian actors can and should engage with belligerents to encourage respect for these norms. In situations where this fails, Part 3 examines legal and military options available to the international community to compel compliance. Finally, Part 4 proposes a reevaluation of protection strategies, drawing strategic and analytical conclusions from the preceding chapters. The focus is not on the development of new norms or institutions but on making better use of what is currently available. Much of the present volume, therefore, concerns case studies of conflicts, with a particular emphasis on the intrastate conflicts that characterized the late twentieth century. Understanding why international humanitarian law is disregarded in many armed conflicts, and the successful methods that have been used to induce or compel belligerents to respect the law, are important steps toward limiting suffering in future battles.

Part 1 begins with a chapter by Karma Nabulsi on the legal and historical development of the category “civilian.” There is a widespread misconception that international humanitarian law was developed in large part to protect the civilian population in times of war. In fact, the category of civilian was originally defined in order to *exclude* such persons from protection that was accorded to belligerents. Nabulsi argues that the changing status of this term reflects competing ideologies underlying efforts to regularize or mitigate war. The continuing relevance of these debates can be seen in the many intrastate conflicts of the present period. In a conflict where the criterion of distinction between armies is ethnicity, who is a civilian and who is a belligerent?

In Chapter 2, Guy Lamb explores the question of why belligerents violate the rules of international humanitarian law, using the examples of the war of



liberation in Namibia (1960–1989) and the ongoing conflict in Angola. He examines violations by both state and rebel forces in these two conflicts, noting the particular circumstances that explain some abuses against civilians and establishing two sets of common themes. The first set concerns the possibility of observation, with abuses being more likely to take place in geographically isolated environments. Lamb also establishes a correlation between lack of monitoring and continued abuses: the media and human rights groups are typically prevented from gaining access to areas in which civilians are alleged to have been targeted, reinforcing the isolation. This leads to the second set of themes: lack of accountability. Punishment for abuses in the cases he considers was rare—in fact, there is evidence that certain human rights abuses were actually encouraged. In other cases, the absence of accountability had structural origins, particularly in rebel movements with autocratic tendencies.

This last point is expanded upon in Part 2. A central dilemma facing international organizations concerned with the protection of civilians is whether and how to conduct relations with nonstate belligerent groups. In Chapter 3, Marie-Joëlle Zahar draws on interviews conducted with militias in Lebanon and Bosnia and Herzegovina to develop a typology of civil-militia relations. By examining such factors as the extent to which a militia identifies with the civilian population and the economic relations between the two groups, she establishes an analytical framework for evaluating the prospects of engaging with a militia on humanitarian issues concerning the civilian population. Her work also suggests the importance of understanding the economic agendas of parties to a conflict.

Chapter 4 turns to an in-depth case study of the activities of the International Committee of the Red Cross in Colombia, including its efforts to engage the various parties to the conflicts that have troubled that country over the past decades. Pierre Gassmann held the position of ICRC head of mission in Colombia from 1996 to 1999, and he provides a unique perspective on the history of those conflicts and the efforts to protect civilians. The ICRC now operates out of seventeen offices throughout that country, having established working relations with no less than 150 different guerrilla fronts. One reason for its success in engaging with belligerents, Gassmann argues, is the ICRC's policy of discreet and confidential persuasion, limiting its public condemnation of breaches of international humanitarian law to statements of principle. Such quiet diplomacy, encouraging belligerents to internalize the norms protecting civilians, may sometimes achieve far more than ostentatious condemnations of violations.

In Chapter 5, William O'Neill evaluates the mechanisms available to the United Nations for securing compliance with international humanitarian law. After reviewing the traditional mechanisms—the Commission on Human Rights, special rapporteurs and working groups, the various treaty bodies, and the High Commissioner for Human Rights—he focuses on the relatively