

Changing the narrative: A Tool on African Traditions and the Preservation of Humanity during War

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Abstract

In an effort towards better explaining the authority of international humanitarian law (IHL) on the African continent, the Regional Delegation of the International Committee of the Red Cross (ICRC) in Pretoria recently examined the relationship between African traditional customs and modern-day principles of IHL. Evidence of a clear correlation would illustrate a respect for the law of war on the African continent. The outcome of the research conducted by the ICRC was the creation of the “Tool on African Traditions and the Preservation of Humanity during War”, which illustrates eleven African traditions and the related principles of contemporary IHL. The Tool is a living project, which will continue to be updated,

and which is presented in various formats that can be used for both pedagogical and operational outreach.

Keywords: international humanitarian law, law of armed conflict, Africa, African values and traditions in war, humanity.



Introduction

War and mankind are inextricably linked. From ancient wars to the conflicts that we bear witness to today, in some form or another conflict has always existed and continues to exist to date. Indeed, in 2020 the International Committee of the Red Cross (ICRC) estimates that 100 armed conflicts were being fought worldwide.¹ Alongside the ever-present existence of conflicts globally, however, is the underlying, unwavering principle of humanity, which dictates that whilst the objective of war may subjectively require taking a life in order to achieve a military aim or objective, humanity calls for limits to prevent the inherent devastating effects of conflict. This balance is essentially the foundation of international humanitarian law (IHL), which seeks to protect persons and property affected by armed conflict, as well as to restrict the right of parties to a conflict to use the means and methods of warfare of their choice. While IHL governs modern warfare, the principles that inspired its provisions were also present on the battlefields of yesteryear.

The Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005 are a set of instruments that forms the core of IHL. That the Geneva Conventions of 1949 carry the title of the most ratified treaties worldwide highlights both the relevance of IHL as well as the universality of the principles that it encompasses and espouses. In considering the origins of IHL the story begins before the codification of the law, and elements of modern-day IHL can be found in religions and cultures from east to west and north to south. This leads to the conclusion that not only are the principles of IHL universal due to the ratification rate of the Geneva Conventions, but also because its provisions reflect those principles contained in traditions, practices and values throughout the world.

An intrinsic role of the ICRC is the promotion and strengthening of IHL. Whilst this work takes place globally, the ICRC has a large presence and determined focus on the promotion of IHL on the African continent, where the organization has borne witness to the devastating effects of conflicts, including protracted conflicts, both past and present. It is clear to the ICRC that the single most important challenge to IHL lies in generating greater respect for this body of law.² During

1 See ICRC, *ICRC Annual Report 2020: Facts and Figures*, available at: https://library.icrc.org/library/docs/DOC/WEB_020.pdf (all internet references were accessed in January 2022).

2 See the ICRC report on IHL and the challenges of contemporary armed conflicts: ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in*

the course of the ICRC's activities in the dissemination and implementation of IHL in Africa, it became clear that there was a need to re-evaluate the methods and narrative used in the promotion of the authority of IHL on the continent. In Africa, whilst many countries see the value and importance of IHL, the authors assert that these countries do not necessarily have a sense of ownership over this body of law, be it in the form of treaty IHL or customary IHL, and as a consequence do not always actively participate in its implementation and development. With this in mind, the ICRC undertook to examine the relationship between Africa and IHL, as reflected in traditional customs, with the aim of contributing towards a means of better explaining the authority of IHL on the African continent. Evidence of a clear relationship would illustrate a respect for the law of war and thereby would be relevant for government and local authorities, weapons bearers, civil society and academics on the continent – all audiences with whom the ICRC often engages on the promotion and implementation of the law.

The outcome of the research conducted by the ICRC was the creation of the “Tool on African Traditions and the Preservation of Humanity during War” (the Tool), which was launched in May 2021.³ The Tool illustrates how a collection of African traditions correlate with modern-day principles of IHL, presented in various formats that can be used for both pedagogical and operational outreach. This contribution seeks to outline the motivation and findings of the research, as well as to present the Tool and its utility moving forward.

Motivation for the research

A critique often opined is that international law and, in this case, specifically IHL, is based on Western philosophies.⁴ While there are a number of arguments to support this view,⁵ one could also argue that given the universal nature of the principles enshrined in the Geneva Conventions, this body of law encompasses ideals from

Armed Conflict on the 70th Anniversary of the Geneva Conventions, 22 November 2019, available at: <https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts>.

- 3 ICRC, “African Values in War: A Tool on Traditional Customs and IHL”, available at: <https://www.icrc.org/en/document/african-customs-tool-traditional-customs-and-ihl>. The Tool is a living project, and the ongoing research aims to continue to extend to include additional traditions from all over the African continent.
- 4 Mutoy Mubiala, “International Humanitarian Law in the African Context”, in Monica Kathina Juma and Astri Suhrke (eds), *Eroding Local Capacity: International Humanitarian Action in Africa*, Nordiska Afrikainstitutet, Uppsala, 2002, p. 48.
- 5 To illustrate, all of the twelve countries that signed the 1864 Geneva Convention at the conclusion of its negotiation were European. See ICRC, *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*, Geneva, 22 August 1864, available at: <https://ihl-databases.icrc.org/ihl/INTRO/120>. At the negotiation of the 1949 Geneva Conventions, only Egypt and Ethiopia participated from the African continent. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. 1, 1949, pp. 158–70. For a more in-depth discussion, see Gus Waschefort, “Africa and International Humanitarian Law: The More Things Change, the More They Stay the Same”, *International Review of the Red Cross*, Vol. 98, No. 902, 2016. This article does not explore these criticisms in greater detail, but the reader can find more on the subject in writings by Mutoy Mubiala and Gus Waschefort.

traditions and customs which transcend borders. Perhaps a more nuanced understanding of the development of IHL lies somewhere in between, at least from an African perspective.

Reflecting on the negotiations of the Geneva Conventions and the lack of a strong African participation in these negotiations, a certain lack of African ownership over this important body of law is understandable. Moreover, as the status of African States in the international legal order changed alongside the development of the 1977 Additional Protocols, many African States who had not benefitted from the protections under IHL during the fight for independence were now obligated to adhere to the same rules.⁶ The hesitation of African States to accept laws seen as having a Western origin – which indeed may not have benefitted them at the time they most needed their protection – helps provide a deeper understanding as to why there may be a lack of ownership over IHL.⁷

This is not to say that African States are not convinced of the importance and relevance of IHL to the continent. Indeed, in recent years African States have played a significant role in the development of IHL and in some areas have been instrumental in the codification of this body of law. There is much evidence to support this assertion. According to Mabeza, the level of African State support can be gauged from a number of indicators, including the following: the rate of ratification by African States of instruments of IHL as well as the numerous decisions and Resolutions passed within the African Union (AU) system related to IHL; the development of the 2009 AU Convention on the Protection and Assistance of Internally Displaced Persons in Africa (the first binding regional instrument in the world to regulate the treatment of internally displaced persons); the fact that African States were instrumental in advancing the drafting and adoption of the Treaty on the Prohibition of Nuclear Weapons, as the first international instrument to ban nuclear weapons (when it came to its adoption, in July 2017, forty-two African States voted in favour); the existence in thirty-one of fifty-four African States of national IHL committees to follow the promotion and implementation of IHL at the domestic level and to provide a platform for broad government engagement on a variety of issues related to the domestication of IHL; the regular gathering of a number of African governments at regional IHL seminars across the continent hosted by the ICRC together with partner governments and institutions, in which States have the opportunity to report on developments in the field of IHL at their national level and receive updates on the recent developments in IHL; and finally, the fact that African voices and perspectives on various IHL themes are increasingly being promoted at the

6 G. Waschefort, *ibid.*, pp. 602–3.

7 See, in particular, Yollande Diallo, “Humanitarian Law and Traditional African Law”, *International Review of the Red Cross*, Vol. 16, No. 179, 1976; Emmanuel G. Bello, *African Customary Humanitarian Law*, Oyez Publishing, London, 1980; Emmanuel G. Bello, “A Proposal for the Dissemination of International Humanitarian Law in Africa Pursuant to the 1977 Protocols Additional to the Geneva Conventions of 1949”, *Revue de Droit Pénal Militaire et de Droit de la Guerre*, Vol. 23, Nos 1–4, 1984; Vangah Francis Wodie, “Africa and Humanitarian Law”, *International Review of the Red Cross*, Vol. 26, No. 254, 1986; M. Mubiala, above note 4; G. Waschefort, above note 5.

regional and global levels, for example through publication of articles by African authors in the *International Review of the Red Cross*.⁸

And yet, despite the above, beyond the contemporary development of IHL treaty law and the valuable role that Africa has played, hesitation persists on the ownership of IHL in Africa. For example, while numerous African States participate in regional and global meetings on IHL, they rarely play significant roles in the development of IHL. Indeed, Waschefort argues that African voices are not often at the centre of IHL discussions on a global level.⁹ This is not to suggest that IHL is always violated on the African continent; on the contrary, there are many instances where IHL is respected in Africa.¹⁰ Still, questions as to the reason for a perceived lack of ownership continue to arise. While Mutoy suggests it may be because the law is ineffective in Africa, an argument that persists today, Waschefort argues that it is due to a lack of motivation.¹¹ After years of experience working to promote and advance IHL in Africa, it appears to the authors that one contributing factor is a sense of competing priorities across the continent, together with a lack of resources, both financial and human. Indeed, in the authors' experience, there are many individuals across the continent who are passionate about IHL and knowledgeable concerning its provisions and relevance. Many of them are supported by government policies and approaches that are favourable towards the implementation of IHL at the national level. However, their work is delayed, and sometimes overridden, by work focusing on poverty eradication, development and issues such as trade. Another, and for this contribution most important, factor to the lack of ownership of IHL in Africa may be, according to the authors, due to a sense that IHL is too far removed, too foreign, to truly belong to the continent. While the Tool does not aim to address the challenges of competing priorities for African governments, it does hope to address this above-mentioned gap that exists.

Therefore, as a means of better explaining the authority of IHL, the ICRC undertook to examine the historical relationship between Africa and IHL as reflected in traditional customs. The aim of the research was to highlight that the concept of rules regulating behaviour in conflict is neither new nor Western and could in fact be drawn from examples in the traditions and cultures on the continent. The objective for the ICRC is that the resulting research will contribute to current debates on the relevance of IHL to Africa and thereby increase the understanding and acceptance of IHL rules on the African continent.¹² This approach of increasing the understanding and relevance of the law, by promoting

8 Sarah Mabeza, "Christof as Pan-African Humanitarian Lawyer", in Frans Viljoen, Charles Fombad, Dire Tladi, Ann Skelton and Magnus Killander (eds), *A Life Interrupted: Essays in Honour of the Lives and Legacies of Christof Heyns*, Pretoria University Press, Pretoria, 2022, p. 398.

9 G. Waschefort, above note 5, pp. 602–17.

10 See, for example, ICRC, "Sudan, Release of Child Soldiers", 19 April 2022, available at: <https://ihl-in-action.icrc.org/case-study/sudan-release-child-soldiers>. For further examples from Africa, see ICRC, "Africa", available at: <https://ihl-in-action.icrc.org/country/africa>.

11 M. Mubiala, above note 4, p. 37.

12 Interview with Tamalin Bolus, Legal Advisor, Pretoria Delegation, ICRC, 12 August 2021, Pretoria, South Africa.

the law and the values underpinning it and linking this with local norms and values, is by no means a new one. As early as 1976 the ICRC undertook a mission in West Africa to establish the similarities and differences which might exist between African traditions and the basic principles of humanitarian law as expressed in the Geneva Conventions.¹³ From this research it was apparent that there were many correlations between West African customs and the rules regulating behaviour in conflict that are contained in the Geneva Conventions. Similar research was also undertaken in Somalia in 1998, resulting in a fascinating publication which highlighted Somali society's own version of a Geneva Convention.¹⁴ Additional research conducted in 2009 by the ICRC investigated the traditional warfare practices in the Pacific and possible similarities with contemporary principles of humanitarian law. The aim of this research was not to change established IHL legal norms but to go beyond the legal documents and put IHL in the “minds and souls” of the people of the Pacific.¹⁵ More recently, significant research has been made in the correlations between IHL and religion.¹⁶ It aims to highlight the rules regulating behaviour contained in religious writings and highlight the similarities that exist with contemporary IHL. All of the above-mentioned research shares a common objective with the Tool in that it seeks to highlight that rules or codes regulating behaviour during conflict existed before the modern codification of IHL. This demonstrates that IHL is not something new, but something that builds upon existing rules in religion and custom.

Findings of the research

From the desk research conducted it became evident that established norms that regulated the conduct of hostilities existed in many African tribes and cultures. In addition, it became clear that these norms or practices had broad connections with the general rules of modern-day IHL. This could be due to the fact that both IHL as well as African traditions have a basis in humanity – the principle of humanity underlies the body of IHL, and the principle of Ubuntu, which focuses on solidarity and interdependence, underlies African traditions.¹⁷ This broad link identified by the research between African practices and IHL rules applicable today clarifies and confirms that the rules contained in modern IHL are not foreign concepts in Africa. The research demonstrates a non-exhaustive list of

13 Y. Diallo, above note 7.

14 Musa Yusuf Hussein, Mohammed Abdilaani Riraash and Ibrahim Haji M. Wa'ais, *Spared from the Spear. Traditional Somali Behaviour in Warfare*, ICRC, Nairobi, 1998.

15 ICRC, *Under the Protection of the Palm, Wars of Dignity in the Pacific*, Suva, Fiji, 2009, pp. 4–5, available at: <https://www.icrc.org/en/doc/assets/files/other/wars-of-dignity-pacific-2009.pdf>.

16 See, in particular, ICRC, “Experts’ Workshop on IHL and Islamic Law in Contemporary Armed Conflicts”, 23 March 2021, available at: <https://www.icrc.org/en/document/experts-workshop-ihl-islamic-law>; and ICRC, “Reducing Suffering During Armed Conflict: The Interface Between Buddhism and IHL”, 25 February 2019, available at: <https://www.icrc.org/en/document/reducing-suffering-during-conflict-interface-between-buddhism-and-international>.

17 M. Mubiala, above note 4, pp. 37–9; G. Waschefort, above note 5, p. 597.

eleven instances in which African traditional customs correlate with international legal obligations under IHL:

- (1) The Tallensi tribe, in the area covered by modern-day Ghana, considered attacking, looting and pillaging of civilian property a violation of their dignity and a dishonourable act to be avoided; and the traditional rule which regulated the behaviour of the Kamajors of Sierra Leone in warfare included the prohibition on looting villages. These customs reflect the modern-day principle of IHL which states that pillage is prohibited. This principle can be found in Article 33(2) of the Fourth Geneva Convention, Article 4(2)(g) of the Second Additional Protocol and in Rule 52 of the ICRC's Customary IHL Database.¹⁸
- (2) In the Oronn district in the area covered by modern-day Nigeria, when one town decided to go to war against another, two men were sent to lay a plantain leaf upon the road entering the town, signalling an official declaration of war and warning civilians of impending hostilities. Similarly, when the Ashanti tribe in Ghana was faced with battle, a royal drum was beaten to signal the upcoming battle and to call the warriors whilst warning civilians of upcoming danger. This practice reflects the modern-day principle of IHL which states that effective advanced warning of attacks which may affect the civilian population shall be given, unless circumstances do not permit. This principle can be found in Article 57(2)(c) of the First Additional Protocol and in Rule 20 of the ICRC's Customary IHL Database.¹⁹
- (3) In the area covered by modern-day Somalia it was strictly forbidden to desecrate the bodies of the enemy dead or take their possessions for personal gain. This tradition reflects the modern-day principles of IHL which state that each party to the armed conflict must take all possible measures to prevent the dead from being despoiled, and that mutilation of dead bodies is to be prohibited. This principle can be found in a number of IHL provisions, especially Article 15(1) of the First Geneva Convention, Article 18(1) of the Second Geneva Convention, Article 16(2) of the Fourth Geneva Convention, Article 34(1) of the First Additional Protocol, Article 8 of the Second Additional Protocol and in Rule 113 of the ICRC's Customary Law Database.²⁰

18 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950); Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978); Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

19 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978).

20 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention (II)

- (4) Maasai warriors in East Africa wore distinctive armbands to distinguish themselves from the civilian population. This reflects the modern-day principle of IHL which states that in order to promote the protection of the civilian population from the effects of hostilities, combatants are urged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. This principle can be found in Article 44(3) of the First Additional Protocol (sentence 1) and in Rule 106 of the ICRC's Customary IHL Database (sentence 1).
- (5) Tribes in West Africa covered by modern-day Senegal, Togo and Ghana only fought outside the village to protect the women, children and elderly, or these protected civilians were relocated to a safe area during the fighting. This reflects the principles of IHL whereby parties to a conflict may establish hospital, safety and neutralized zones to shelter the wounded, the sick and civilians from the effects of hostilities. This principle can be found in Article 23 of the First Geneva Convention, Articles 14 and 15 of the Fourth Geneva Convention and in Rule 35 of the ICRC's Customary IHL Database.
- (6) In the area covered by modern-day Somalia, it was believed that any act of war that was characterized by excessiveness and brutality would bring divine retribution upon the perpetrator and his offspring. This tradition reflects the fundamental principle of proportionality, which is intrinsic to modern-day IHL. This principle is found in Article 51(5)(b) of the First Additional Protocol and in Rule 14 of the ICRC's Customary IHL Database.
- (7) Nuer tribesmen in the area covered by modern-day South Sudan did not attack women, children or the elderly when engaging in hostilities with one another. Similarly, the Fulani tribe believed that attacking women, children and the elderly would bring shame upon the tribe. This is a reflection of the modern-day IHL rule which protects persons not taking a direct part in hostilities from attack. This principle can be found in Article 51(3) of the First Additional Protocol, Article 13(3) of the Second Additional Protocol and in Rule 6 of the ICRC's Customary IHL Database.
- (8) Tribes in the Sahel region made messengers carry a distinctive emblem, such as an official baton, or don face paint which exempted them from fighting and protected them from attacks. Masai Mara warriors that survived attacks held a specific type of grass, the *Nyaregeta*, in their right hand until a treaty of friendship was signed. This correlates with the modern-day IHL rule which protects *parlementaires* from attack. This principle can be found in Rules 58, 67 and 69 of the ICRC's Customary IHL Database.
- (9) In the area covered by modern-day Somalia, the maxim "A well may be dug by one man, but it is not used by him alone", and the custom that destroying the plains used for cattle grazing or the poisoning of wells needed for survival

was strongly disapproved of, together reflect the modern-day rule of IHL which protects objects indispensable to the survival of the civilian population. This principle can be found in Article 54(2) of the First Additional Protocol, Article 14 of the Second Additional Protocol and in Rules 54 and 72 of the ICRC's Customary IHL Database.

- (10) When Fulani warriors in West Africa captured wounded prisoners of the opposition, they were turned over to the women to treat and care for them, and they were treated with respect and dignity. In Somalia, if an injured enemy warrior was captured, he would be brought back to the village and cared for, and once healed he had the option to return to his village or assimilate into his new home. These traditions reflect the rules of IHL which protect wounded and sick persons taking part in hostilities. Relevant provisions can be found in Article 3 common to the four Geneva Conventions, Articles 12, 15 and 18 of the First Geneva Convention, Articles 12 and 18 of the Second Geneva Convention, Article 16 of the Fourth Geneva Convention, Articles 10 and 17(2) of the First Additional Protocol, Articles 7, 8 and 18(1) of the Second Additional Protocol and in Rules 109 and 110 of the ICRC's Customary IHL Database.
- (11) Warriors from the Fulani tribe in West Africa were prohibited from desecrating the place of rest of the deceased or places of worship. This correlates with the rules of IHL which protect institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science. Relevant provisions can be found in Article 17 of the First Geneva Convention, Article 120 of the Third Geneva Convention, Article 130 of the Fourth Geneva Convention, Articles 34 and 53 of the First Additional Protocol, Article 16 of the Second Additional Protocol and in Rules 38, 40 and 115 of the ICRC's Customary IHL Database.²¹

While the above certainly does to some extent clarify and confirm that the rules contained in modern-day IHL are not foreign concepts in Africa, a number of caveats to the findings of the research must be noted. Firstly, findings should not be directly matched with their correlating IHL norms. In drawing connections between traditional practices and contemporary IHL, inconsistencies may be found. Technically, there are numerous distinguishing features between the examples of African traditional customs and the IHL norms presented. This includes the fact that the traditional customs come from mostly non-international armed conflict contexts, while some of the rules listed are applicable to international armed conflicts.²² Caution must therefore be taken not to overstate the correlations between the traditional customs and contemporary rules of IHL. Secondly, it would be remiss to ignore the fact that there were also practices in Africa that were the antithesis to the principles protected by the Geneva

21 Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950).

22 However, many of the principles of IHL mentioned in the Tool also apply in non-international armed conflicts through customary IHL.

Conventions.²³ Some authors suggest merely overlooking these inconsistencies,²⁴ whilst others suggest that these instances rather represent violations of the specific code of conduct in that culture and as such should not be seen as undermining IHL.²⁵ Either way, and whatever the reason for these inconsistencies, one should be cognizant of the fact that the objective of this research is only to present those practices that support the provisions of IHL as we know it today, given the aim of the Tool which is to advance the respect of IHL on the continent. Thirdly, it is possible that this Tool may be more relevant for non-State armed actors in Africa rather than African States, given both that non-State armed actors are not parties to IHL treaties, whereas the ratification by the authorities of various IHL treaties should demonstrate an already existing willingness to comply with the obligations contained in those treaties, as well as the fact that non-State armed actors are active at the community level and may be more likely to be influenced by traditional norms.²⁶ A recent mapping exercise by Geneva Call in Mali confirms the relevance of such research to non-State armed actors as it suggests “that relying on local traditions and principles, including religious values, might have wider resonance with the local armed non-State actors and thus could enhance IHL compliance”.²⁷ And finally, there are a number of practical gaps in the research that must be noted: as written resources are not always available, there is a question about the reliability of oral sources and also where to find them; the current examples only reference a small number of African regions, and this should be expanded on in future research efforts in order to ensure proper regional representation; and it is important that the readers of the research guard against generalizations, as there are fifty-four States in Africa, with even more traditions and cultures within those States.

Creation of the Tool

A recent ICRC study published in *The Roots of Restraint in War* sets out to identify the various sources of influence on the behaviour of those bearing arms in different types of armed forces and armed groups. One of the major findings of this study provides evidence for the fact that whilst the role of law is vital in setting standards, encouraging individuals to internalize the values that the law represents through socialization is a more durable way of promoting restraint.²⁸

23 M. Y. Hussein, M. A. Riraash and I. H. M. Wa’ais, above note 14, pp. 43–5. It is not the aim of this article to address this in detail.

24 Karolina Aksamitowska, “Traditional Approaches to the Law of Armed Conflict: Disseminating IHL Through the Receptor Approach”, *Journal of International Humanitarian Legal Studies*, Vol. 11, No. 1, 2020.

25 M. Y. Hussein, M. A. Riraash and I. H. M. Wa’ais, above note 14, pp. 9–10.

26 K. Aksamitowska, above note 24, p. 16.

27 K. Aksamitowska, above note 24, p. 29; Moussa Touré and Giuliano Vascotto, “Sources de droit et normes socioculturelles au Mali, creusets pour la protection des civils”, Geneva Call, June 2019, available at: <https://www.genevacall.org/wp-content/uploads/2020/03/Rapport-Mali-3.pdf>.

28 ICRC, *The Roots of Restraint in War*, 12 June 2020, p. 9, available at: <https://www.icrc.org/en/publication/4352-roots-restraint-war>. This was included in the major findings of the ICRC study which, based on two

Thus, the research conducted by the ICRC into correlations between African traditions and modern-day IHL could not stay written in internal reports – in order to encourage Africans to take more ownership over IHL, the findings of the research needed to be translated into a practical, easily accessible and user-friendly Tool. This would support the development of a humanitarian culture in Africa, whereby Africans are convinced that despite the “formal imported character” of IHL, the rules of this body of law are similar to African traditions and are therefore relevant and applicable.²⁹ The Tool, created as a result of the above-mentioned research, aims to contribute to this objective – that by highlighting the importance of African values in warfare, these principles would be internalized and contribute to the promotion of restraint in current warfare. It is for this reason that the notion of “value” is specifically highlighted in the title of the Tool.

As the research provided some clarity into the norms of traditional African customs in war, it became important to conceptualize a means of showing the link between culture and law that would effectively contribute to current debates on relevance of IHL to Africa and would ultimately increase understanding and acceptance of IHL rules on the African continent. The outcome was the production of the Tool, a resource with which to engage various audiences on the relationship between Africa and IHL. The Tool consists of eleven cards, highlighting firstly the traditional custom in question, secondly some of the African tribes or cultures that have a history of practising that traditional custom, and thirdly the related rule under modern-day IHL. The cards are available in various formats, including as playing cards, which can easily be shared with armed actors manning checkpoints, for example. They are also available as postcards, which are useful in a pedagogical context, and finally in a poster format, so they can be incorporated in relevant advocacy and awareness campaigns. The Tool has also been adapted into additional formats which aim to add value in operational settings – these include a short video that can be used on social and traditional media but also shown by humanitarian actors to armed actors on a mobile device, as well as the inclusion of the Tool in a recently produced ICRC notebook for armed actors in the field. Additionally, the Tool has been translated into French and Portuguese, with the intention to translate into further African languages in the future. To date, various ICRC dissemination sessions to academics and authorities have used the Tool, including in Nigeria, Kenya and South Africa. The posters have in addition been used in photo exhibits in South Africa, and the playing cards are currently being distributed to armed actors in Africa.

The main objective of the Tool is to start a discussion and encourage further discourse, with the aim of gathering a plethora of examples from across the continent that can harness and highlight the universal principles that underlie

years of research by a group of distinguished scholars, sets out to identify the various sources of influence on the behaviour of those bearing arms in different types of armed forces and armed groups.

29 M. Mubiala, above note 4, p. 58.

IHL. The Tool by no means reflects a different set of IHL norms to be respected. It is clear that contemporary IHL, both treaty and customary, is the definitive set of rules applicable today. Indeed, the objective is that by providing these examples and exploring the development of IHL on the Africa continent, the Tool will rather illustrate how IHL is relevant, and perhaps garner greater respect for the law, thereby contributing towards the reduction of suffering during times of armed conflict, which remains the ICRC's ultimate goal.

Conclusion

The research conducted contributes to a demonstration of a clear correlation between IHL and a number of African practices and norms, and the ICRC therefore hopes that it has produced a useful and helpful Tool. It must, however, be noted that there are a number of questions related to the research that remain unanswered, and that will be addressed as the research continues. In the way forward the ICRC aims to strengthen and expand the research in order to ensure that the Tool is as well researched and geographically representative as possible. Some of these questions are as follows:

- Is merely demonstrating the links between culture and law a sufficient basis for generating increased respect for the law? Does knowledge of such traditional norms actually contribute towards achieving the objectives of IHL? Do respect and implementation of IHL rules depend on such a clear correlation between the applicable rule and local customs?
- Will the outcomes of this research actually contribute to mainstreaming IHL in Africa?
- What do these examples illustrate on how wars were fought in pre-colonial Africa? Is there a link with how Africa engages in IHL today?

And yet, despite these unanswered questions, there is still a clear sense that the Tool has the potential to make a difference; that it will remind Africans of the value of Ubuntu, and of the importance for Africa of the sense of humanity that underlies all traditions, customs and religions. As Africans, we must remember that this sense of humanity is one of our permanent values, and we must ensure that the rules and norms of the past that contribute to respect for IHL are not forgotten.³⁰ The ICRC's Tool on African Traditions and the Preservation of Humanity during War aims to contribute to this ambition.

30 Y. Diallo, above note 7, p. 63.