



Figure I.1 The plenary of the diplomatic conference in Geneva (1949). UK delegation leader Robert Craigie (with moustache) is situated in the upper left corner; Albert Lamarle and Georges Cahen-Salvador on the right, not too far from the Nationalist Chinese delegation; and Frede Castberg (bow-tie) in the upper right corner. The delegations of India and the United States are located on the left.

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Introduction

On the morning of 21 April 1949, at the diplomatic conference of Geneva's opening ceremony, the Swiss president of the meeting Max Petitpierre welcomed state representatives from across the world to the city before a crowd of excited spectators. They gathered at Geneva's historic Bâtiment Électoral—also known as the Palais du Conseil Général—to further the idea of humanizing warfare. Their mission was to revise the existing Geneva Conventions in response to the horrific experiences of the Second World War. The representatives all took part in a carefully choreographed ceremony. Bedecked with classical sculptures and Red Cross relics, the venue had the aura of a house of worship. In a powerful address, Petitpierre asked the delegates to heed the heavy moral responsibility that was resting on their shoulders. Indeed, they had been summoned, he believed, by the “millions of civilians who [had] perished in the horrors of the concentration camps” to purge armed conflict of inhumanity.¹

The representatives answered his call. They unanimously agreed that civilians deserved protection under the Conventions, and updated the existing treaty for prisoners of war (POWs). In addition to this, they established protections for civilians against the threat of indiscriminate bombing, shielded resistance fighters against torture, and extended these principles to civil wars for the first time. Their efforts were to tilt the Conventions in a progressive direction and hence give war a “more humane face.”² This undertaking, which was professionally managed by the International Committee of the Red Cross (ICRC), was truly universal, with the participation of representatives from Asia, Eastern Europe, the Middle East, and Latin America.³ The

¹ Final Record of the diplomatic conference of Geneva of 1949, Vol. II, Section A, p. 10, Library of Congress (LOC), Washington, DC.

² See Theodor Meron, “The Humanization of Humanitarian Law,” *The American Journal of International Law*, Vol. 94, No. 2 (2000): 239–278; and Stephen Neff, *War and the Law of Nations: A General History* (Cambridge: Cambridge University Press, 2006), 342.

³ This notion of “universality” was broadly shared among contemporary Swiss, German, and Francophone reporters writing for different European newspapers. See *La République*, 9 December 1949. The same notion is also apparent in more contemporary publications. See Dominique-Debora Junod, *The Imperiled Red Cross and the Palestine-Eretz-Yisrael Conflict 1945–1952: The Influence of Institutional Concerns on a Humanitarian Operation* (New York: Kegan Paul International, 1996), 270;

ultimate result was the adoption of four new Conventions, thereby satisfying the world's deep-rooted desire for catharsis in the wake of the war's appalling brutality.

That is the received master narrative of the making of the 1949 Geneva Conventions.⁴ According to this story, the delegates were primarily motivated by the shock of atrocity and inspired by humanitarian principles, which led them to establish the most important rules for armed conflict ever formulated. These Conventions were the product of liberal humanitarianism, dating back to Henri Dunant's pioneering efforts following the Battle of Solferino in 1859.⁵ Building upon this legacy, the world's legal experts gathered in Geneva (Dunant's birthplace) to shake the dust off his original blueprint for humane warfare. Their deliberations were shaped by a skilled cohort of liberal international jurists dedicated to rectifying the Conventions' shortcomings, which the Second World War had so vividly exposed.

This foundation myth of the Conventions has its origins in the aftermath of the diplomatic conference itself, when former protagonists published their own accounts.⁶ The British delegate Joyce Gutteridge stressed the importance of the experience of the war in bringing about the support necessary for revising

and Mary Ellen O'Connell, "Historical Development and Legal Basis," in *The Handbook of International Humanitarian Law*, ed. Dieter Fleck (Oxford: Oxford University Press, 2013), 16–17.

⁴ For important ingredients of this master-narrative, see Jean-Marie Henckaerts, "History and Sources," in *The Oxford Guide to International Humanitarian Law*, eds Ben Saul and Dapo Akande (Oxford: Oxford University Press, 2020), 1–27, 3–6; Gary Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (New York: Cambridge University Press, 2010), 81–84; Meron, "The Humanization of Humanitarian Law," 243–247; Gerald Draper, "The Legal Classification of Belligerent Individuals," in *Reflections on Law and Armed Conflicts: The Selected Works on the Laws of War by the Late Professor G.I.A.D. Draper*, eds Michael Meyer and Hilaire McCoubrey (The Hague: Kluwer, 1998), 196–205, 199–200; Frits Kalshoven, "The History of International Humanitarian Law Treaty-Making," in *Routledge Handbook of the Law of Armed Conflict*, eds Rain Liivoja and Tim McCormack (New York: Routledge, 2016), 94–112; Michael Schmitt, "Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance," *Virginia Journal of International Law*, Vol. 50, No. 4 (2010): 795–839, 807–808. Some parts of the recent historiography also have had the tendency to frame the Conventions' history through the lens of the Nazi occupation, the Holocaust, and/or the Second World War in the Pacific. Examples include Gerald Steinacher, *Humanitarians at War: The Red Cross in the Shadow of the Holocaust* (Oxford: Oxford University Press, 2017); and Sarah Kovner, *Prisoners of the Empire: Inside Japanese POW Camps* (Cambridge, MA: Harvard University Press, 2020). For a broader discussion of this problematic master-narrative, see Amanda Alexander, "A Short History of International Humanitarian Law," *European Journal of International Law*, Vol. 26, No. 1 (2015), 109–138, 112–113; and Rotem Giladi, "Rites of Affirmation: Progress and Immanence in International Humanitarian Law Historiography," Unpublished Paper.

⁵ This image was coined by Swiss publicists even before the diplomatic conference had started. See Georges Perrin, "Dans l'esprit d'Henri Dunant, Avant une Grande Conférence Diplomatique," *La Nouvelle Revue de Lausanne*, 17 March 1949.

⁶ For other examples, see: Draft Article "De Diplomatieke Conference te Genève, 21 April–12 Augusts 1949, Een keuze uit de belangrijkste artikelen," no. 1, Collectie Mouton, National Archives of the Netherlands (NA), The Hague; and Frede Castberg, "Franc Tireur Warfare," *Netherlands International Law Review* [1959]: 81–92.

existing international law,⁷ while the French drafter Georges Cahen-Salvador wrote about the Conventions' liberal origins.⁸ The influential Francophone drafter Paul de la Pradelle encapsulated these views by framing the history of the Conventions in terms of a dichotomy of realism versus idealism, of military necessity versus humanity, with liberal humanitarian values often trumping considerations of power.⁹ Glossing over the major divisions at Geneva, many of these Western accounts of the drafting process stressed the role of bipartisanship at this early stage of the Cold War. Influenced by reports of the conference in the Western press,¹⁰ they constructed a powerful memory regime that smoothed over the contested process of formulating the Conventions and accentuated their origins in humanitarianism and the shared experience of struggle against the Axis powers. In this way, this regime bridged the divisions of the incipient Cold War.

The most widely accepted account of the history of the Conventions was presented by the leading ICRC drafter Jean Pictet.¹¹ In prominent journals and newspapers published after 1949,¹² he emphasized the Conventions' liberal origins and the ICRC's central drafting role.¹³ Even though he acknowledged

⁷ Gutteridge was one of the few to note the important interwar legacies and the fact that the Conventions had a "different ancestry." However, she did not explain why those interwar proposals failed to be accepted before the start of the Second World War. Joyce Gutteridge, "The Geneva Conventions of 1949," *British Yearbook of International Law*, Vol. 26, No. 294 (1949): 294–326.

⁸ Georges Cahen-Salvador, "Les Nouvelles Conventions de Genève Pour la Protection des Victimes de la Guerre Seront Signées Aujourd'hui," *Le Figaro*, 8 December 1949.

⁹ Paul de la Pradelle, *La Conférence Diplomatique et les Nouvelles Conventions de Genève du 12 Août 1949* (Paris: Les Editions Internationales, 1951), 7–8. Resonating with this powerful image of the Conventions' making, one Finnish drafter spoke of a process that reconciled "military views" with the needs "of humanity." Erik Castrén, *The Present Law of War and Neutrality* (Helsinki: Finnish Academy of Science and Letters, 1954), 178.

¹⁰ Some examples are: *Le Courrier Australien* (Sydney, NSW), 7 October 1949; *The Times*, 13 August 1949; *Journal de Genève*, 5 December 1949; *The New York Times*, 9 December 1949; *The Calgary Herald*, 24 April 1950; and the *Baltimore Sun*, 29 March 1950. One ICRC press officer, René Bovey, played a substantial role in shaping early Swiss collective memory concerning the Conventions' adoption. See his publications in *Tribune de Lausanne*, 14 August 1949, and *Journal de Genève*, 13–14 August 1949.

¹¹ For similar accounts from another former ICRC drafter, see Frédéric Sordet, "Les Conventions de Genève et la guerre civile," *Revue Internationale de la Croix-Rouge*, Vol. 32, No. 375 (1950): 187–212 and Frédéric Sordet, *Inter Arma Caritas: The World of the ICRC during the Second World War* (Geneva: ICRC, 1947).

¹² One prominent example: Jean Pictet, "The New Geneva Conventions for the Protection of War Victims," *American Journal of International Law*, Vol. 45, No. 3 (1951): 462–475.

¹³ For examples of this dominant trend in the historiography, see Steinacher, *Humanitarians at War*, 211–236; Schmitt, "Military Necessity and Humanity," 806; David Crowe, *War Crimes, Genocide, and Justice* (New York: Palgrave Macmillan, 2014), 311–318; Caroline Moorehead, *Dunant's Dream: War, Switzerland, and the History of the Red Cross* (New York: Carroll & Graf Publishers, 1999); Howard Levie, "History of the Law of War on Land," *International Review of the Red Cross*, No. 838 (2000): 339–350; and Junod, *The Imperiled Red Cross*, 271. Unsurprisingly, most Swiss observers echoed Pictet's analysis stressing the importance of the Conventions' adoption for ICRC and Swiss neutrality interests. See Tages Anzeiger, Zürich, 18 March 1950; Gazette de Lausanne, 18/19 March 1950; La Nouvelle Revue de Lausanne, 18 March 1950; Feuille d'Avis de Neuchâtel, 7 December 1949; Nouvelliste Valaisan, 16 December 1949; Neue Zürcher Zeitung, 10 December 1949; and Basler Nachrichten, 10/11 December 1949.

some of their shortcomings, Pictet portrayed the Conventions' history primarily as an inclusive process, one belonging to a transcendent space of morality. On this account, the agreements pushed the arc of global justice slowly in the direction of offering protection to ever more victims of war. This teleological (if not self-serving) image of the Conventions' making, which remains popular today, has several analytical blindspots. For one thing, the narrative that it puts forward could be easily exploited to obscure Great Power politics, and it falls short of explaining why some of the more radical legal proposals circulating prior to 1949 were rejected, as will be shown below.

Pictet's most influential contribution to later understandings of the Conventions' history undoubtedly stems from his leading role in editing the influential ICRC Commentary, which was published between 1952 and 1959.¹⁴ He first introduced the idea of producing such a legal guideline in 1949, in the immediate aftermath of the diplomatic conference.¹⁵ Its aim was to inform contemporaries of the law's more "appropriate" interpretation. Given that it came to be seen as the authoritative account of the Conventions' making, the ICRC's Commentary has had a lasting influence on both academic and popular understandings of this history. Surprisingly few observers have grasped that this document represents just one account, written by just one former drafter, with its own particular aims.¹⁶ Consequently, the Commentary—with its stress on the Conventions' inclusiveness and depoliticized narrative of their contested making—has come to define the dominant view within the broader literature.

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This book tells a different story. It shows how the final text of the 1949 Conventions, far from being an unabashedly liberal blueprint, was the outcome of a series of political struggles among the drafters, many of whom were not liberal and whose ideas changed radically over time. Nor were they merely a product of idealism or even the shock felt in the wake of Hitler's atrocities. Constructing the Conventions meant outlawing some forms of inhumanity while tolerating others. It concerned a great deal more than simply recognizing

¹⁴ For the recently updated ICRC Commentaries on the Third Convention (as well as the First and Second Conventions), see <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary> (retrieved 10 November 2020).

¹⁵ The idea for a Commentary came originally from Pictet's predecessor (Paul des Gouttes), who had written a commentary on the Sick and Wounded Convention of 1929. Pictet re-addressed his idea after the diplomatic conference had finished. Minutes of Plenary Meeting ICRC, 20 October 1949, no. A PV A PI.19, Les Archives du Comité International de la Croix-Rouge (ACICR), Geneva.

¹⁶ Many of the contributors to the Commentary were former ICRC drafters: Frédéric Siordet, Claude Pilloud, Jean-Pierre Schoenholzer, Jean Pictet, and René-Jean Wilhelm.

the shortcomings of international law as revealed by the experience of the Second World War. In making the Conventions, drafters sought to contest European imperial rule, empower the ICRC, challenge state sovereignty, fight Cold War rivalries, ensure rights during wartime, reinvent the concept of war crimes, and prepare for (civil) wars to come.

This book argues that a better way to understand the politics and ideas of the Conventions' drafters is to see them less as passive characters responding to past events than as active protagonists trying to shape the future of warfare. In many different ways, they tried to define the contours of future battlefields by deciding who deserved protection, what counted as a legitimate target, whose lives mattered, whose did not, when these principles applied, and who had the right to enforce them. Outlawing illegal conduct did as much to outline the silhouette of humanized war as to establish the legality of waging war itself.¹⁷ Indeed, given the violent character of decolonization in Asia and the long-term ambitions attributed to the US and the Soviet Union,¹⁸ virtually every drafter accepted the reality of war as a given, if not as a defining feature of their time.¹⁹ Although they did not seek war as such,²⁰ they prepared for it by means of weaving a new legal safety net in the event that their worst fear should materialize—*si vis pacem, para bellum*.²¹

Looking beyond retrospective narratives reveals a different story of the Conventions' birth and the drafters' role in bringing that about. In this way it becomes possible to see how truly extraordinary some of their work was—even when it fell short of expectations—and the role that ideas played in

¹⁷ Here I draw upon the ideas of Mary Dudziak, "Making Law, Making War, Making America," in *The Cambridge History of American Law*, Vol. III, eds Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 680–717.

¹⁸ Melvyn Leffler, "National Security and US Foreign Policy," in *The Origins of the Cold War: An International History*, eds Melvyn Leffler and David Painter (New York: Routledge, 2002), 15–52, 37.

¹⁹ For a broader discussion of the tension between humanizing warfare and perpetuating war, see Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (New York: Farrar, Straus and Giroux, 2021); and Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford: Oxford University Press, 2020), 143–148. For a discussion of the crime of aggression, see Kirsten Sellars, *Crimes against Peace and International Law* (Cambridge: Cambridge University Press, 2013); Carrie McDougall, *The Crime of Aggression under the Rome Statute of the International Criminal Court* (Cambridge: Cambridge University Press, 2013); and Richard Tuck, *Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999).

²⁰ It is important to recognize that Petitpierre and many other drafters insisted that they were not seeking war as such: Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II, Section A, p. 10, LOC. Still, ICRC legal experts admitted privately that their efforts to humanize warfare could be seen as anticipating war without trying to perpetuate it: Conference Diplomatique, Rapport Spécial Etabli par Pilloud, 16 September 1949, no. CR-254-1, Les Archives du Comité International de la Croix-Rouge (ACICR), Geneva.

²¹ See Marguerite Frick-Cramer, "Contribution à l'élaboration d'une Convention sur les prisonniers, militaires ou civils, tombés au pouvoir de l'ennemi ou d'une autorité non reconnue par eux," *Revue Internationale de la Croix-Rouge et Bulletin Internationale des Société de la Croix-Rouge* [1947]: 228–247.

reimagining warfare internationally. Indeed, had the drafters been primarily driven by the pursuit of power or military necessity, then their ideas would not have mattered at all. Yet this book shows that not to be the case.²² Instead, it provides deeper insights into how those actors embedded their past experiences into a broader framework that was shaped by ideas, political interests, perceptions, and expectations about what was to come. For example, when demanding rights in interstate wars in response to Vichy and Nazi occupation, French drafters felt forced to bring this progressive project into line with their brutal counterinsurgency campaign in Indochina and other anti-colonial insurgencies they were expecting to face in the (near) future. Similarly, the Soviet Union proposed to regulate civil wars while remaining silent about its suppression of anti-communist insurgencies in Eastern Europe.²³ And the Americans, for their part, disliked discussion of aerial bombardment on account of their fear that restrictions in that theater of war might undermine their capacity to further their interests in the Cold War.

According to these war-making states, victims of colonial torture, anti-communist political prisoners, or those subjected to terrorizing bombing raids were not necessarily “victims of war” to be protected by these Conventions. Drafting was as much about exclusion as inclusion, undertaken for both liberal and illiberal purposes, and all on a remarkably uneven playing field. The Conventions’ architects were both pragmatic and visionary in their efforts to restrain inhuman conduct of warfare and, in this way, lay the foundations of a new international legal order. At the same time, it remains critically important to remember that these actors often represented belligerent states that were armed to the teeth.²⁴ Anglo-American drafters regularly pushed for the most regressive solutions and opposed further restrictions on regulating occupation. This should come as no surprise. After all, these two liberal powers fought the most wars in the twentieth century—more even than Germany.²⁵ In trying to maintain a free hand in ongoing and future military operations and condoning the use of enormously destructive weapons against their enemies, Anglo-American drafters had to

²² This point, combined with the occasional lack of leverage of dominant state powers over smaller states, problematizes certain legal realist accounts of the Conventions’ making. See Wilhelm Grewe, *The Epochs of International Law* (Berlin: De Gruyter, 2001), 663.

²³ For an impressive history of the Soviets at Nuremberg, see Francine Hirsch, *Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (Oxford: Oxford University Press, 2020).

²⁴ On nineteenth-century debates regarding this issue: Kalmanovitz, *The Laws of War in International Thought*, 148–152.

²⁵ Hew Strachan, “Essay and Reflection: On Total War and Modern War,” *The International History Review*, Vol. 22, No. 2 (2000): 341–370, 342.

ask themselves time and again whether they could credibly claim to be upholding the principle of “civilization” in wartime.

All of the actors participating in the drafting process had to engage with public expectations with regard to the effort to humanize warfare.²⁶ At the very least, they had to look responsive when victims of occupation demanded that so-called Nazi-style counterinsurgency policies, such as the taking of hostages, be outlawed. Further, they could not afford to ignore the precedents set at Nuremberg and other criminal tribunals, which had proclaimed higher standards for the conduct of warfare.²⁷ This proved especially challenging in debates regarding the Conventions’ application to colonial wars, civilians, partisan warfare, and air bombing. Complaining about the Conventions being used “demagogic[ally]” to further Anglo-American interests,²⁸ the Soviets tried to widen the scope of the agreements to encompass civilian populations. In this way, they hoped to curtail US air power and spread propaganda in the context of the Cold War. In so doing, the Soviets turned the diplomatic conference into a forum for Cold War and anti-colonial politicking, in which Western adversaries could be criticized on an international stage. The latter were made especially vulnerable by their ongoing counterinsurgency campaigns in Asia and Southeastern Europe, which the Soviet Union—their former ally in the Second World War—characterized as being reminiscent of fascist practices.

“Behind the seemingly calm discussion of the Conventions,” wrote a Soviet delegate later, “a fierce fight [had been] lingering between [the] delegations.”²⁹ Discussing questions such as regulating civil wars made it possible for some drafting nations to criticize their Cold War rivals and secure their own political

²⁶ On the question of normative pressure in global politics and international lawmaking: Maartje Abbenhuis, *The Hague Conferences and International Politics, 1898–1915* (London: Bloomsbury, 2018), 3; Ayşe Zarakol, “What Made the Modern World Hang Together: Socialisation or Stigmatisation?,” *International Theory*, Vol. 6, No. 2 (2014): 311–332; and Giovanni Mantilla, *Lawmaking under Pressure: International Humanitarian Law and Internal Armed Conflict* (Ithaca, NY: Cornell University Press, 2020).

²⁷ Yuma Totani and David Cohen, *The Tokyo War Crimes Tribunal: Law, History, and Jurisprudence* (Cambridge: Cambridge University Press, 2018); Kevin Jon Heller and Gerry Simpson, *The Hidden Histories of War Crimes Trials* (Oxford: Oxford University Press, 2014); Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford: Oxford University Press, 2011); and Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001).

²⁸ Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, Tsentralnyi derzhavnyi arhiv vyschykh organiv vlady ta upravlinnia Ukrainy (TSDAVO), Kiev, Ukraine. This point resonates with “an older cynicism toward the term humanity, shaped by Marx’s suspicion of the bourgeois concept of humanity as simply class-based special interests dressed up in universalist language.” Paul Betts, “Universalism and Its Discontents: Humanity as a Twentieth-Century Concept,” in *Humanity: A History of European Concepts in Practice from the Sixteenth Century to the Present*, eds Fabian Klose and Mirjam Thulin (Göttingen: Vandenhoeck & Ruprecht, 2016), 51–70, 64.

²⁹ Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, TSDAVO.

interests. Drafters had to reckon with mass statelessness, the fall of European empires, and the rise of new hegemonic powers, which transformed international legal conversations profoundly.³⁰ As one leading ICRC drafter noted, these different factors each played an “enormous role” in how the Conventions were shaped, why they protected some and not others, and why some issues were addressed while others were not.³¹

By placing the history of the Conventions back in the context of decolonization, the Cold War, and global politics, this book shows how the ideas and politics driven by these processes had a profound impact on how the drafters reconfigured international law’s genetic code. It also points out why accounts of the emergence of the Conventions that focus exclusively on the experience of the Second World War, or a longer historical development of the idea of humane warfare dating back to Dunant’s pioneering advocacy in the 1860s—if not much earlier³²—fail to explain why some proposals were codified whereas others were scrapped, why the law remained silent on certain key issues, or why states that had been occupied by the Axis powers had not necessarily been brought together by this experience. These accounts cannot resolve the historical puzzle of why, for example, the French accepted an extrajudicial security clause despite the fascist occupation, the British condoned the use of indiscriminate bombing despite the Blitz, several post-colonial states received the idea of regulating wars within empires and states skeptically, or some European victims of occupation refused to ban the death penalty.

At every stage of this drafting process, questions concerning the kind of international law that would exist in future (proxy) wars and the forms of violence it would tolerate were on the line. The stakes were impossibly high: the “fate of millions of human beings depended on what would happen in Geneva,” wrote a Swiss reporter.³³ In drafting new rules for warfare, a range of further issues was in question: the sovereignty of states; the ICRC’s credibility; the concept of human dignity; the character of international order; and the forms of power and control that that system wished to exert over people’s lives in armed conflict. In the process of debating these questions, drafters expressed contrasting ideas about the very meaning of humanity under conditions of armed

³⁰ For an excellent history of statelessness, see Mira Siegelberg, *Statelessness: A Modern History* (Cambridge, MA: Harvard University Press, 2020).

³¹ Conférence Diplomatique. Rapport Spécial Établi par Pilloud, 16 September 1949, no. CR-254-1, ACICR.

³² For an example, see Alexander Gillespie, *A History of the Laws of War* (Portland, OR: Hart, 2011).

³³ *Journal de Genève*, 18 March 1949.

conflict and how this principle would be best served considering the fundamentally inhumane character of war.

Despite these divisions, establishing new rules for warfare created space for a surprising degree of cooperation during the early Cold War. It gave rise to unique opportunities not just for articulating Cold War rivalries, but for fostering East–West collaboration too. Indeed, it is crucial not to overstate the Cold War’s impact on the making of the Conventions. Most tellingly, the ICRC found a strategic partner in the Soviet Union, which eventually was keen to endorse its proposals for humanizing warfare. What is more, behind the scenes the French often cooperated with their main Cold War adversary. For their part, the Americans sometimes voted in favor of Soviet suggestions, and vice versa. So, while recognizing the impact of Cold War dynamics, this book also appreciates the extent to which ideas of deterrence and East–West relations can explain the drafters’ actions on principal issues.

Some scholars have spoken of the actors involved in the drafting process without making real distinctions between them, ignoring the extraordinary divisions within their ranks. In the British case, for example, there was a broad debate with regard to partisan warfare and civilian protection not only between the different government bodies concerned (that is, between the Cabinet in London and its delegation in Geneva) or different groups within the North Atlantic Treaty Organization (NATO), including victims of Nazi occupation and states now occupying Germany; crucially, there was also discussion and disagreement among the UK’s delegates in Geneva. On the one hand, Foreign Office delegates focused on protecting Britain’s prestige and the interests of UK nationals who might be detained in occupied territory; on the other, War Office counterparts (supported by the Security Services) tried to exclude different types of irregulars and civilians so as to secure their respective security interests. By analyzing the impact of such divisions among the major drafting parties participating in the negotiations, this book problematizes the often monolithic and essentialist understanding of the drafters’ intentions that still prevails in the current literature.

Over the course of this alternative history of the drafting of the Conventions, we meet individuals who defy expectations. We encounter survivors of Nazi persecution who battled against new rules for enforcing the Conventions. We learn about Western drafters who recognized similarities between Soviet proposals and their own and sought to bridge Cold War divisions. We face British drafters who offended their US allies and pressured smaller NATO partners to endorse their proposals. We listen to women who publicly criticized their male counterparts for failing to outlaw nuclear holocaust. We read

about postcolonial delegates who took the moral high ground and enjoyed the *Schadenfreude* of witnessing their former imperial rulers struggle in Geneva. And we get to know ICRC legal experts who used the principles of human rights against those in power to demand a more humane version of occupation.

The ICRC played a transformative role, especially in the early stages of these negotiations, by helping to lay the foundations of the drafting process. It created many of the most important proposals for the Conventions, which soon came to seem like obvious responses to the war's atrocities. As a major drafting party, the ICRC inevitably had its own agenda. Indeed, countering parts of the existing scholarship,³⁴ this book also shows that the organization faced major political dilemmas and rejected utopian schemes for humanized war. "For [this] work to be successful," Pictet admitted, "the secret [was] to keep it realistic [...] nothing is more dangerous than 'unbridled humanitarianism.'"³⁵

By unpacking the different considerations behind the ICRC's approach to the Conventions' remaking, this analysis calls into question those accounts that portray the organization as exclusively "idealist," in opposition to "realist" states. This binary schema conceals more than it reveals. *Preparing for War* also explores the political strategies that the ICRC used to keep the Great Powers on board and prevent itself from being sidelined. The latter was no small concern, for the organization was fiercely criticized for its lack of support for several groups of victims during the war—especially Soviet POWs and Jewish civilians. For example, the ICRC opposed plans to categorize the states' own nationals who suffered under persecution (such as German Jews) as "victims of war," as that had the potential to trigger stringent opposition from the Great Powers. To maintain their support, it removed this suggestion made by Holocaust survivors from its list of drafting priorities and frustrated attempts to put it back on. This indicates that the ICRC was not afraid to prioritize its own interests over those of vulnerable minorities.

That last point raises questions about what might have turned out differently. Which radical courses of action were not taken in Geneva in 1949? Each chapter emphasizes the processual character of drafting the Conventions, raising the possibility of alternative paths and unforeseen consequences. These

³⁴ This book challenges those parts of the literature's still state-centered focus either marginalizing, or simply praising the organization's role in establishing rules for warfare. Steinacher's important account of the Conventions' revision following the Holocaust, based for the most part on US and external ICRC sources, largely credits the ICRC's role. However, it pays little attention to its mixed motives, the Conventions' actual drafting, and the impact of decolonization (I found no reference to Common Article 3). See Gerald Steinacher, *Humanitarians at War: The Red Cross in the Shadow of the Holocaust* (Oxford: Oxford University Press, 2017) and Crowe, *War Crimes, Genocide, and Justice*.

³⁵ Jean Pictet, "The Formation of International Humanitarian Law," *International Review of the Red Cross* [1985]: 3–24, 20–21.

divergent trajectories are either missing or downplayed in existing accounts, which tend to take the final outcome—namely, four treaties with common articles applying to specific armed conflicts—largely for granted. Challenging this view, the book demonstrates the contingency of the negotiations, which might have collapsed at several junctures. In so doing, it shows that the final draft was not the only outcome possible, but one among many different options. Indeed, plans for the Conventions took myriad forms and might have disappeared altogether had specific actors not stood up to defend or advance them.

There were many roads not taken as the drafters imagined alternative visions for humanized war. They considered creating a single Convention for all victims of war, for instance, and initially agreed upon the need to extend this treaty to a whole range of different armed conflicts, potentially including so-called lower-intensity conflicts, which would have radically expanded international law's scope. The Civilian Convention might have featured the cardinal principle of distinction in aerial warfare, specifically outlawed "mental torture," incorporated the category of "refugees" under Article 4, or at least made specific reference to "stateless persons"—one of the most important civilian victim categories of the modern age. The grave breaches system could have been given more teeth and the POW Convention extended to include guerrillas and spies in particular. And Pictet could have insisted that carpet bombing should be strictly banned under these treaties. There were often good reasons for the drafters reaching different conclusions. That said, there was nothing inevitable about the demise of some proposals and the adoption of others.

This book provides the reader with insights into why the drafters finally adopted the four Conventions in the way that they did. At the diplomatic conference of 1949, the UK delegation seriously considered walking out over the issues of partisans, bombing, and the death penalty. The French had their doubts about the Civilian Convention, particularly with regard to its extrajudicial security clause, which has been mentioned above. Initially, the Soviets did not even take part in these negotiations; they would later also fiercely criticize the final version of the Civilian Convention. The Cold War battles fought at Geneva slowed the drafting process enormously, almost bringing disagreements to breaking point on several occasions and prompting concerns as to whether the conference would ever adopt anything significantly binding.

The ICRC, in turn, considered the possibility of dropping the plan for a separate Civilian Convention at various moments so as to assure the participation of all the Great Powers. Essentially, Pictet's drafting team feared that the treaty might never be accepted, especially by the reluctant Anglo-American delegations and their Stalinist opponents. Indeed, both London and Washington

seriously thought about not ratifying, or even signing, the Civilian Convention because of its stricter rules for occupation, particularly with regard to enforcing the death penalty. This treaty might never have been adopted had the French and other victims of Axis occupation continued to push for an ever more ambitious Civilian Convention. Until the very end, the major drafting parties expressed doubt as to whether they could ever agree to anything binding that would restrain the conduct of warfare in meaningful ways.

The drafting process remained contingent in nature and took place at numerous levels—from Geneva’s tearooms to the global, with critical implications for how these treaties emerged and developed over time. The drafters’ views were directly informed by debates about human rights and nuclear weapons at the United Nations (UN). Experts who had formerly been involved in preparing the Allied war crimes tribunals played a prominent role in providing legal advice and shaping the Conventions’ principles. The French, for example, wished to put these treaties into dialogue with other international conventions to prevent interstate resistance fighters from falling outside their scope. The Americans, for their part, tried to protect their interests as a war-making power, while the British tried to prevent human rights from overlapping with the laws of war, thereby protecting their colonial and Cold War interests. While stressing their entangled nature, this book demonstrates how the making of the Conventions became part of a much broader global debate as to how exactly the boundaries of international law in and around armed conflict should be demarcated.

Some drafters wanted to construct a new international legal order, others to restrain the powers of occupiers out of fear of an impending invasion. Still others sought to use the treaties as an instrument to fight Communism with greater legitimacy than they otherwise might. In reimagining the central concept of “victims of war,” the Conventions cannot be traced back to a common perspective or universal core. Instead, they were hybrid constructs, shaped by different drafters with contrasting political aims. Nevertheless, drafters shared concerns about the state’s paradoxical role in humanizing warfare—that is, as both its strongest guarantor and the greatest threat to it. This power to both protect *and* destroy civilian lives, they realized, meant that the right to decide which of the state’s two faces would stand out in wartime was the central puzzle to be solved at Geneva.

None of this came easily, however. Pictet, an inexperienced but exceptionally talented drafter, could do little on behalf of civilians, as an ICRC expert short of voting rights at the final diplomatic conference and only taking a direct part in its discussions about the peripheral First and Second Conventions.³⁶

³⁶ See Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II, Section A, p. 46, LOC, 2A.

Opposition from the Great Powers meant that the ICRC had to wait for decades before its interwar proposals for civilian protection were ultimately adopted. And UK drafters complained repeatedly about their continental European allies forcing them to accept ever more restrictions with regard to occupation. By retrieving the neglected history of the politics and ideas of the Conventions' making, this book shows the great difficulties that drafters faced in contemplating and defining what a truly humane war might look like.

Together, a concert of different individuals reimagined the very foundations of international law in wartime. There was no prototypical drafter, as is sometimes assumed. Contrary to popular belief, advocates of humanizing warfare were neither fringe utopians nor outright pacifists—to the contrary, the process involved a distinct group of predominantly European and North American men with clashing views and personal experiences of war: former leaders of wartime resistance movements, victims of Nazi persecution, former prisoners of war, doctors, veterans, colonial officials, military officers, ambassadors, academics, and countless others. They acted on behalf of state and non-state interests and assumed a variety of roles as experts, chairs, provocateurs, negotiators, mediators, demagogues, lobbyists, propagandists, reformers, or spokespeople.

The construction of the Conventions, in other words, was not the work of one person alone. The underlying ideas and ideologies motivating this mixed group of actors varied significantly, ranging from socialism to conservatism, from nationalism to Jewish internationalism. Nonetheless, they all agreed on the premise that wars should have limits. Despite being united in a common cause, they never formed a unified and consistent movement. Some drafters were outspokenly anti-imperialist, struggling against efforts to perpetuate European colonial rule. Others became deeply involved in maintaining empire by associating themselves with proposals that sought to defend colonial sovereignty.

Western actors often encouraged the impression that drafting was a scholarly endeavor in which expertise prevailed over practical concerns and activity. In reality, however, drafters had to get their hands dirty, whether by lobbying governments, drinking vodka with Soviet adversaries, tearing up countless drafts, listening to unbearably long speeches, or working at night to finish detailed reports for their respective capitals. Their work was a truly human affair: it gave rise not only to confusion, miscalculations, amateurism, personal rivalries, and error, but also to moments of ingenuity, courage, brilliance, and even heroism. During this drawn-out process, drafters had to grapple with radical changes in how the international legal order was being reimagined in the

first half of the twentieth century. In this book, the analysis puts their agency front and center, emphasizing how they had to constantly redefine their ideas, their beliefs, and the boundaries of their roles in this unique effort to revise the Geneva Conventions.

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As a research topic, the making of the Conventions is anything but new. In many cases, scholars analyzing this process have cast the ICRC as the central protagonist of a depoliticized origin story. In this narrative, Pictet is presented as the “principal artisan” of these rules.³⁷ This search for a mythologized (male) founder has led to an historiographical amnesia with respect to the contributions made by other drafters, who were sometimes far more important than ICRC men such as Pictet.³⁸ In the main, scholars have forgotten the names of Cramer, the first female drafter of the Conventions; Morosov, a Soviet legal expert who played a major role in shaping socialist understandings of the Conventions; Cahen-Salvador, an influential French delegate who worked the concept of rights into the drafts; and Oung, a Burmese general who fought against proposals to regulate civil war, as well as many others who played important roles in the drafting process.³⁹

After several decades,⁴⁰ the received imagery of the Conventions’ genesis began to change as the humanitarian reputation of the ICRC—which had in

³⁷ Catherine Rey-Schyr, *De Yalta à Dien Bien Phu. Histoire du Comité international de la Croix-Rouge 1945–1955* (Geneva: Georg-CICR, 2007), 244. The UK military jurist Gerald Draper also traced the Conventions’ origins back to a mythified idea of Genevan humanitarianism. He even named his published lecture series on humanitarian law after the Red Cross. Gerald Draper, *The Red Cross Conventions* (London: Stevens, 1958), vii–viii, 1–2.

³⁸ For a critique of such approaches, see Glenda Sluga and Carolyn James, *Women, Diplomacy and International Politics since 1500* (New York: Routledge, 2016).

³⁹ This tendency to privilege the ICRC’s role has been largely cultivated since the early 1950s. The first volume of the organization’s history that was written by its own members was Pierre Boissier, *De Solferino à Tsushima: Histoire du Comité International de la Croix-Rouge* (Paris: Plon, 1963). Boissier briefly acted as the head of the ICRC mission to Algeria, in the early 1960s. He later became the director of the Institut Henry Dunant (IHD), a body founded in 1965 to study Red Cross activities including its history. The Institut, which was dissolved in 1998, would initially play an important role in shaping the ICRC’s history through publishing a range of different works. Other former IHD presidents were Dietrich Schindler and Pictet (he acted twice as president).

⁴⁰ One important reason for this delay was the lack of access to both state and non-state archives. Before the ICRC archives opened up in the 1990s, most scholars were forced to use only publicly available sources (e.g. the *Revue*, secondary sources, non-ICRC archives, etc.) in order to reconstruct the organization’s history, or that of the Geneva Conventions. One example is Dieter Riesenberger, *Für Humanität in Krieg und Frieden: Das Internationale Rote Kreuz, 1863–1977* (Göttingen: Vandenhoeck & Ruprecht, 1992), 214–218. A few other scholars had the opportunity to conduct research in the ICRC archives before 1996. Examples are Véronique Harouel and Dominique-Debora Junod: see Junod, *The Imperiled Red Cross* and Véronique Harouel, *Genève-Paris 1863–1918: Le Droit Humanitaire en Construction* (Geneva: ICRC, 2003). Former ICRC President Boissier said once about its initial refusal to open its archives for outside researchers: “das Internationale Komitee genießt das Vertrauen der Regierungen. Mit diesem Vertrauen als Rückhalt konnte es in den beiden Weltkriegen ein Riesenwerk

large part driven the established account—came under critical scrutiny from outside observers.⁴¹ Political scientists have written the first independent studies of the ICRC's institutional history, stressing its political origins over perceptions of its neutrality.⁴² Although these contributions have been pioneering, they paid relatively little attention to the Conventions' history, which they left for others to study. Swiss historians, like many Anglo-American scholars, have responded to this turn by providing more hagiographic accounts of the Conventions, particularly with regard to the ICRC's role.⁴³ Based primarily on the ICRC's Commentary and Swiss archives, this scholarship has taken little account of the role played by other actors and their different political agendas.

One of the most crucial shifts in the scholarship on the Conventions' making took place around the close of the Cold War, with the end of the bipolar world and the revival of liberal internationalism.⁴⁴ All of this spurred a growing scholarly trend toward tracing the origins of the international (legal) order and wartime humanitarianism.⁴⁵ This shift overlapped with a broader reorientation toward the study of internationalism as well as transnationalism,⁴⁶ with

vollbringen, das auch heute noch in der Erinnerung aller Menschen fortlebt." Cited from Riesenberger, *Für Humanität in Krieg und Frieden*, 10–11.

⁴¹ Examples are: John Hutchinson, *Champions of Charity: War and the Rise of the Red Cross* (Boulder, CO: Westview Press, 1996); Rainer Baudendistel, *Between Bombs and Good Intentions: The Red Cross and the Italo-Ethiopian War, 1935–1936* (New York: Berghahn Books, 2006); Irène Herrmann, "La Suisse Entre Peur de l'Autre et Devoir Humanitaire," in *La Peur et ses Miroirs*, ed. Michel Viegnes (Paris: Editions Imago, 2009), 109–121; James Crossland, *Britain and the International Committee of the Red Cross, 1939–1945* (New York: Palgrave Macmillan, 2014); and James Crossland, *War, Law and Humanity: The Campaign to Control Warfare, 1853–1914* (London: Bloomsbury, 2019).

⁴² David Forsythe, *Humanitarian Politics: The International Committee of the Red Cross* (Baltimore, MD: Johns Hopkins University Press, 1977). For Forsythe's reflections on his role as an outsider, see David Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), x. For recent political science approaches to analyzing the laws of war, see Tanisha Fazal, *Wars of Law: Unintended Consequences of the Regulation of Armed Conflict* (Ithaca, NY: Cornell University Press, 2018).

⁴³ Examples include Meron, "The Humanization of Humanitarian Law"; Ruti Teitel, *Humanity's Law* (Oxford: Oxford University Press, 2011); François Bugnion, *Le Comité international de la Croix-Rouge et la Protection des Victimes de la Guerre* (Geneva: ICRC, 2000); Rey-Schryr, *De Yalta à Dien Bien Phu*; and Jacques Moreillon, *Le Comité international de la Croix-Rouge et la Protection des Détenus Politiques* (Lausanne: L'Age d'Homme, 1973).

⁴⁴ For a broader overview of recent historiographical trends in the history of the laws of war, see Helen Kinsella and Giovanni Mantilla, "Contestation before Compliance: History, Politics, and Power in International Humanitarian Law," *International Studies Quarterly*, Vol. 64, No. 3 (2020): 649–656.

⁴⁵ For the historiography on war, legal diplomacy, and humanitarianism, see Neville Wylie, *Barbed Wire Diplomacy: Britain, Germany, and the Politics of Prisoners of War, 1939–1945* (Oxford: Oxford University Press, 2010); Sibylle Scheipers, *Prisoners in War* (Oxford: Oxford University Press, 2010); Maartje Abbenhuis, Christopher Ernest Barber, and Annalise Higgins, *War, Peace and International Order: The Legacies of the Hague Conferences of 1899 and 1907* (New York: Routledge, 2017); and Heather Jones, *Violence against Prisoners of War in the First World War: Britain, France and Germany, 1914–1920* (Cambridge: Cambridge University Press, 2011).

⁴⁶ Mark Mazower, *No Enchanted Palace* (Princeton, NJ: Princeton University Press, 2009); Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford

its focus on processes and principles that transcend the nation-state, such as humanitarianism.⁴⁷ In this context, while having previously published on the history of the laws of war,⁴⁸ Geoffrey Best's pioneering 1994 study *War and Law since 1945* represents the first attempt at a comprehensive history of the Conventions written by a scholar not involved in drafting them, nor being always directly aligned with the ICRC.⁴⁹

Best's most significant contributions lay in underlining the importance of the Conventions' contested making and in breaking with triumphalist accounts of the ICRC's role.⁵⁰ Still, his work suffered from several major shortcomings: first, Best's limited engagement with other archival materials beyond Anglophone sources led him to minimize the important contributions made by Francophone drafters; second, he placed remarkably little emphasis on empire, a crucial aspect of these negotiations;⁵¹ and lastly, some of Best's judgments were informed by an outdated Cold War politics: take, for instance, the way in which he downplayed the substantial Soviet contributions to the Conventions.⁵²

Since the turn of the century, scholars working in the discipline of international law have promoted a new turn toward history.⁵³ As Jennifer Pitts has noted, this "historicizing moment" has given rise to an important dialogue between the fields of international relations,⁵⁴ (postcolonial)

University Press, 2015); and Glenda Sluga, *Internationalism in the Age of Nationalism* (Philadelphia, PA: Philadelphia University of Pennsylvania Press, 2015).

⁴⁷ For the origins of this shift towards transnationalism, see Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley, CA: University of California Press, 2004). For a recent discussion of new approaches to internationalism, see Glenda Sluga and Patricia Clavin, eds, *Internationalisms: A Twentieth-Century History* (Cambridge: Cambridge University Press, 2016).

⁴⁸ Geoffrey Best, *Humanity in Warfare: The Modern History of the International Laws of Armed Conflicts* (London: Weidenfeld and Nicholson, 1980).

⁴⁹ The first attempt by a former drafter to write a comprehensive (Francophone) legal history was De la Pradelle's book: De la Pradelle, *La Conférence Diplomatique*.

⁵⁰ For the work of ICRC historians, see Bugnion, *Le Comité international de la Croix-Rouge et la Protection des Victimes de la Guerre*; Rey-Schyr, *De Yalta à Dien Bien Phu*; Jacques Moreillon, *Le Comité international de la Croix-Rouge et la protection des détenus politiques*.

⁵¹ Best once wrote that, despite Britain's atrocious track record in Kenya and various other places, "a British historian may reflect with some pride that his country's record in armed conflicts since it ratified the Conventions (which was however not before 1957) shows care for spirit and letter alike": Geoffrey Best, "Making the Geneva Conventions of 1949: The View from Whitehall," in *Etudes et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet*, ed. Christophe Swinarski (Geneva: ICRC, 1984), 5–15, 15.

⁵² Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 2002), 110–113.

⁵³ Examples are: Lauren Benton, *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013); and Martti Koskenniemi, *Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

⁵⁴ David Rodin and Henry Shue, *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford: Oxford University Press, 2008); Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012); and Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).

theory,⁵⁵ international law, and history.⁵⁶ Various studies have critically engaged with conventional histories of the laws of war by revealing their profoundly hierarchical and exclusive character.⁵⁷ This work has not yet produced a comprehensive genealogy of the Conventions' past and originators, for it engages too little with archival materials, among other things.⁵⁸ Nevertheless, these critical legal studies are an important inspiration for this book.⁵⁹ Drawing on this body of work, this account is not only sensitive to the law's imperial origins; it also sets out to analyze the Conventions' mechanisms of exclusion and hierarchy, which are too often neglected in mainstream scholarship. The book's approach, which is based on extensive archival reading, resonates with a broader trend within postcolonial legal studies, which is concerned to analyze international law's imbrication with European imperial expansion.⁶⁰

⁵⁵ Adil Haque, *Law and Morality at War* (Oxford: Oxford University Press, 2017).

⁵⁶ Jennifer Pitts, "The Critical History of International Law," *Political Theory*, Vol. 43 (2015): 541–552, 541; and Matthew Craven, "Theorizing the Turn to History in International Law," in *The Oxford Handbook of the Theory of International Law*, eds Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), 21–37; and Anne Orford, "International Law and the Limits of History," in *The Law of International Lawyers: Reading Martti Koskenniemi*, eds Wouter Werner, Marieke de Hoon, and Alexis Galán (Cambridge: Cambridge University Press, 2015).

⁵⁷ For the excellent scholarship on critical approaches to the laws of war, see Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law* (Oxford: Oxford University Press, 1999); Frédéric Mégret, "From 'Savages' to 'Unlawful Combatants': A Postcolonial Look at International Humanitarian Law's 'Other,'" in *International Law and Its Others*, ed. Anne Orford (Cambridge: Cambridge University Press, 2009), 265–317; Helen Kinsella, *The Image before the Weapon: A Critical History of the Distinction Between Combatant and Civilian* (Ithaca, NY: Cornell University Press, 2011); Giovanni Mantilla, *Lawmaking under Pressure*; Chris af Jochnick and Roger Normand, "The Legitimation of Violence: A Critical History of the Laws of War," *Harvard International Law Journal* (1994): 49–95; Eyal Benvenisti and Doreen Lustig, "Monopolizing War: Codifying the Laws of War to Reassert Governmental Authority, 1856–1874," *European Journal of International Law* [2020]: 127–169; Olivier Barsalou, "Preparing for War: The USA and the Making of the 1949 Geneva Conventions on the Laws of War," *Journal of Conflict & Security Law*, Vol. 23, No. 1 (2018): 49–73; and William Hitchcock, "Human Rights and the Laws of War: The Geneva Conventions of 1949," in *The Human Rights Revolution: An International History*, eds Akira Iriye, Petra Goedde, and William Hitchcock (New York: Oxford University Press, 2012).

⁵⁸ One example is Michael Barnett's central *Empire of Humanity*, which only briefly discusses the 1949 Conventions. He saw them not so much as a "breakthrough," but rather as a limited product of fear of another war full of brutality. Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca, NY: Cornell University Press, 2013), 102–103.

⁵⁹ Other important sources of inspiration are: Stefan-Ludwig Hoffmann, "Human Rights and History," *Past & Present*, Vol. 232, No. 1 (2016): 279–310; Amanda Alexander, "International Humanitarian Law, Postcolonialism and the 1977 Geneva Protocol I," *Melbourne Journal of International Law*, Vol. 15 (2016): 15–50; and Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010).

⁶⁰ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011); Anne Orford, "A Jurisprudence of the Limit," in *International Law and Its Others*, ed. Anne Orford (Cambridge: Cambridge University Press, 2009), 1–34; Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton, NJ: Princeton University Press, 2019); Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History, 1842–1933* (Cambridge: Cambridge University Press, 2015); Juan Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford: Oxford University Press, 2017); and Umut Özsu,

Focusing on transnational and international dynamics,⁶¹ recent historians have opened up humanitarian concepts' multi-dimensional character. They have stressed that human rights can have a conservative trademark;⁶² the "malleability" and the "slipperiness" of humanitarian concepts over monolithic notions of humanity;⁶³ and the mixed origins of international criminal law.⁶⁴ Although this body of work encompasses a number of different approaches, each of these works begins from an understanding of how concepts are contested, evolve over time, and are used by different actors for often divergent political objectives. This book has taken this up as a key premise for its analysis of the Conventions' making.

The 9/11 attacks and their aftermath triggered a heavily politicized debate surrounding the Bush Administration's decision to question the extent to which the Geneva Conventions were relevant for the so-called War on Terror.⁶⁵ In this context, a "new" history of the laws of war has emerged,⁶⁶ to which this book further contributes. Some observers have stressed the importance of contingency, the role of shifting legal boundaries, and how an older tendency to separate law and morality from the politics of warfare was no longer tenable.⁶⁷ Such critical interventions have opened up a new space for historicizing the laws of war from

Formalizing Displacement: International Law and Population Transfers (Oxford: Oxford University Press, 2015).

⁶¹ David Armitage, "The International Turn in Intellectual History," in *Rethinking Modern European Intellectual History*, eds Darrin McMahon and Samuel Moyn (New York: Oxford University Press, 2014), 232–252; Judith Surkis, Gary Wilder, James W. Cook, Durba Ghosh, Julia Adeney Thomas, and Nathan Perl-Rosenthal, "AHR Forum: Historiographic 'Turns' in Critical Perspective," *American Historical Review*, Vol. 117, No. 3 (2012): 698–813; Patricia Clavin, "Time, Manner, Place: Writing Modern European History in Global, Transnational and International Contexts," *European History Quarterly* [2010]: 624–640; and Akira Iriye and Pierre-Yves Saunier, *The Palgrave Dictionary of Transnational History* (Basingstoke: Palgrave Macmillan, 2009).

⁶² See Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford: Oxford University Press, 2017).

⁶³ Paul Betts, "Universalism and Its Discontents," 62; and Johannes Paulmann, "Conjunctures in the History of International Humanitarian Aid during the Twentieth Century," *Humanity* (2013): 215–238.

⁶⁴ Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment* (Oxford: Oxford University Press, 2014); and Daniel Segesser, *Recht statt Rache oder Rache durch Recht? Die Ahndung von Kriegsverbrechen in der internationale wissenschaftlichen Debatte, 1872–1945* (Paderborn: Ferdinand Schöningh, 2010).

⁶⁵ David P. Forsythe, *The Politics of Prisoner Abuse: The United States and Enemy Prisoners after 9/11* (Cambridge: Cambridge University Press, 2011).

⁶⁶ Examples are: Angela Bennett, *The Geneva Convention: The Hidden Origins of the Red Cross* (Gloucestershire: Sutton Publishing, 2005); John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Free Press, 2012); Sibylle Scheipers, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford: Oxford University Press, 2015); James Morrow, *Order within Anarchy: The Laws of War as an International Institution* (Cambridge: Cambridge University Press, 2014); James Whitman, *The Verdict of Battle: The Law of Victory and the Making of Modern War* (Cambridge, MA: Harvard University Press, 2012); and Isabel Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (Ithaca, NY: Cornell University Press, 2014).

⁶⁷ See David Kennedy, "Reassessing International Humanitarianism: The Dark Sides," in *International Law and Its Others*, ed. Anne Orford (Cambridge: Cambridge University Press, 2009), 131–155.

different perspectives, in terms of both their origins and practice. This book builds upon this scholarship, drawing inspiration from its comparative approaches to exploring legal history.⁶⁸ It also makes use of different analytical tools so as to examine clashing views among the Great Powers with regard to the laws of war.

Historicizing the Conventions' changing character confronts readers with Geneva's paradoxes and contradictions. This is not a story of triumph—reconstructing the making of the Conventions means placing them in history. The book shows how key concepts at stake in the agreements, from “non-international armed conflict” to the idea of civilian protection, emerged and accrued meaning. This book also sheds light on the entangled relations among notions of humanity, rights, and warfare, and specifically the role of lawmaking in propelling the emergence of a new international legal order. This approach foregrounds the ways in which both states and international organizations used the Conventions to further their own agendas and interests as new wars loomed on the horizon.⁶⁹ Recognition of this extraordinary history allows readers to better grasp the past and politics of the laws of war.



The book analyzes the genealogy of the Geneva Conventions through the lens of the five major drafting parties—the ICRC, the United States, the United Kingdom, France, and, to a lesser extent, the Soviet Union. Their proposals reshaped the fabric of the laws of war. The analysis attends to the ICRC's role as an influential non-state actor in conjunction with that of the Swiss Federal Government, whose officials lobbied for a number of ICRC proposals and eventually organized the diplomatic conference in Geneva.⁷⁰ Clearly, this Eurocentric selection of actors does not aim at presenting a truly global history, in that it does not show how the world at large engaged with the spectacle of Geneva.⁷¹ At the same time, the book's choice of focus is not meant to deny the ideas and roles played by non-Europeans in these deliberations. Instead,

⁶⁸ One particularly important source of inspiration was Hull's groundbreaking study of the laws of war during the First World War: Hull, *A Scrap of Paper*.

⁶⁹ Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (New York: Oxford University Press, 2017).

⁷⁰ For the history of ICRC–Swiss relations during World War II, see Isabelle Vonèche Cardia, *Neutralité Entre le Comité International de la Croix-Rouge (CICR) et le Gouvernement Suisse* (Lausanne: SHSR, 2012).

⁷¹ Pictet later admitted that it was often said after 1949 that the Conventions were “made by Europeans for Europeans”: Pictet, “The Formation of International Humanitarian Law.” For a discussion of the Eurocentric nature of international law, see Martti Koskeniemi, “Histories of International Law: Dealing with Eurocentrism,” *Rechtsgeschichte* (2011): 152–177; and Kinsella and Mantilla, “Contestation before Compliance: History, Politics, and Power in International Humanitarian Law.”

Preparing for War presents a comparative and entangled history of the ideas and politics of the most influential players who sought to humanize warfare.

It has chosen to focus on this cast of protagonists for three different reasons. First, the book concentrates on those parties that had the most significant impact on these deliberations. These drafters were able to make notable contributions on account of a variety of factors. The ICRC was able to capitalize on its legitimacy, the UK and France on the size of their delegations, the Soviet Union on the central role it played during the process of negotiating the Civilian Convention, and the US on the drafting power that it brought to the table, as well as its status as a superpower. The book discusses the roles played by other, usually less influential actors only as they bear upon the positions adopted by the major drafting parties or where they directly influenced international law's evolution. This leaves room for further study of actors from the Global South.

Second, the book moves beyond the existing literature's tendency to focus on the state. To achieve this, it attends closely to the politics and strategies of the ICRC, an influential non-state actor, and brings together the insights of important scholarly case studies of the role of single states.⁷²

The third reason that the analysis looks at these major drafting parties rather than others is that each participated prominently in the entire drafting process, rather than joining the discussions in the postwar period alone. With a few exceptions, the British, the French, the Americans, and the ICRC all took part in the relevant drafting debates both before and after the Second World War. This was not the case for most other major state actors, such as Japan, the two Germanies, or most Latin American states. The governments of these states either lacked resources or interest in the matter, were ignored, or else went uninvited due to their allegiances in the recent war, for instance. For this reason the book pays relatively little attention to their views, save for those of the Soviets during the final stage of the negotiations. Consequently, it analyzes the part played by the Soviets in relation to that of the other major drafting parties or where it directly affected the revision of the Conventions in 1949.⁷³

As the organizers of the most important drafting meetings, in which they strove to obtain bipartisan support for the developing proposals, the Swedes and Swiss tended to see the concept of "universality" primarily through the lens of the Second World War and the Cold War. Fear of war between the Soviet

⁷² Two examples of such singular case studies are Olivier Barsalou, "Preparing for War" and Best, "Making the Geneva Conventions of 1949."

⁷³ This dimension of the book is mainly based on non-Soviet materials.

Union and its Western adversaries was crucial in this regard in shaping their respective invitation policies, what ideas emerged, how they were codified, and what was left out of these texts. Strikingly, the ICRC, like the Swiss Federal Government, did little to ensure the participation of those who fell outside the bipolar spectrum or came from outside broader Europe. In preparing the first major drafting meeting for government experts in 1947, the ICRC initially invited only the signatories of the United Nations Declaration of 1942. In so doing, the organization excluded Japan's former allies, such as Thailand. In addition, the Swiss did not press hesitant Arab states to send more delegates to the diplomatic conference two years later, let alone ask members of African national liberation movements to attend the debates in the capacity of full delegates, or even as observers.⁷⁴

Reflecting their primary focus on (Western) Europe, the Swiss hosts believed that most non-Europeans had far less wartime "experience" of applying the laws of war than the Europeans did.⁷⁵ Allegedly, this made them better able to revise the Conventions. Building upon a pre-existing racialized outlook, the Swiss were reluctant to invite certain non-European revolutionary movements to participate in the talks—whether the Maoists in China or those fighting against colonialism, such as the Indonesian Republicans. Indeed, they only extended invitations to recognized states that had previously signed at least one of the existing Geneva Conventions. In essence, the Swiss feared that broadening participation in that way might prompt severe opposition from the European colonial powers. This resulted in a highly Eurocentric drafting process.

The diplomatic conference finally generated four different treaties with numerous provisions covering a panoply of issues, from hospital ships and chaplains, through the right to water and labor rights for POWs, to sexual violence and reprisals in armed conflict.⁷⁶ In the space of a single monograph, it is impossible to cover all of these questions or provide a truly comprehensive history of the Conventions. In view of this, the book adopts a comparative and entangled approach and returns to the original documents. In this way, it

⁷⁴ It is also a marked contrast with the revision of the Geneva Conventions in the 1970s, when certain national liberation movements did participate. See Mantilla, *Lawmaking under Pressure*.

⁷⁵ As noted by Cédric Cotter, it is ironic that the Swiss made such remarks despite not having been involved in an armed conflict for more than a century.

⁷⁶ For perspectives on gender and the laws of war, see Judith Gardam, "A Feminist Analysis of Certain Aspects of International Humanitarian Law," *Australian Year Book of International Law* [1992]: 265–278; and Helen Kinsella, "Securing the Civilian: Sex and Gender in the Laws of War," in *Power in Global Governance*, eds Michael Barnett and Raymond Duvall (Cambridge: Cambridge University Press, 2004), 249–272; Kinsella, *The Image before the Weapon*; and Catherine O'Rourke, *Women's Rights in Armed Conflict under International Law* (Cambridge: Cambridge University Press, 2020).

examines the views of the major drafting parties on five pre-selected issues of paramount importance: the regulation of civil and colonial wars; restrictions on air-nuclear warfare and blockade; the protection of civilians; the matter of partisan warfare; and how the agreements were to be enforced. These issues went to the heart of the Conventions and each defined the scope of their provisions. Indeed, they have been central to most debates concerning the laws of war in modern history.

Writing a fuller history of the Conventions means returning to the archives, exploring what went on behind the scenes, which ideas shaped Geneva's deliberations, and how these were conceptualized and finally codified into four treaties. The book analyzes the genealogy of the Conventions' making by attending to the principal questions that drafters faced in the period from roughly the end of the First World War up to 1949, emphasizing the immediate post-1945 era in particular. Considering this extended periodization shows how several key principles arose not from the Second but rather from the First World War and its immediate aftermath, before being fundamentally revised in the years between 1944 and 1949.⁷⁷ This may come as a surprise. To give one example, although today the idea of a separate Civilian Convention is often presented as an innovation first made after the Second World War, it had actually already been introduced in the 1920s.⁷⁸ Studying the Conventions' genealogy, then, requires extending the temporal scope of analysis beyond the direct impact of the Second World War. It even calls for rethinking the *longue durée*, highlighting the importance of radical interwar innovations over tracing the Conventions' past back to Dunant's advocacy in the 1860s.

Preparing for War analyzes the major drafting parties' attitudes by attending to their evolving legal views; the ideas and legitimacy of their proposals; their perceptions of resistance, competing projects, and the law's suggested scope; their informal lobbying efforts; and how the outbreak of new wars shaped the ways in which they interacted.⁷⁹ The book recognizes that the laws of war have a longer history, which goes back as far as the ancient world, medieval chivalry codes, and Vattel's conceptions of justice. However, when contemporary observers today refer to "humanitarian law" and its detailed set of rules for

⁷⁷ Here my position aligns with Neville Wylie and Lindsey Cameron, "The Impact of World War I on the Law Governing the Treatment of Prisoners of War and the Making of a Humanitarian Subject," *European Journal of International Law*, Vol. 29, No. 4 (2018): 1327–1331, 1347–1350; and Hull, *A Scrap of Paper*.

⁷⁸ One example: Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment* (Oxford: Oxford University Press, 2014).

⁷⁹ A few tools are borrowed from Lewis's excellent analysis on the history of international criminal law. See *ibid.*

civilians, hospitals, supervision, criminal repression, and (non-)international armed conflicts, they are invoking a vocabulary and body of law that is distinctively twentieth-century in origin.

The ICRC and Swiss observers first coined the term "humanitarian law" in the 1940s. It entered common usage in English, Spanish (*derecho humanitario*), German (*humanitäre Völkerrecht*), and French (*droit humanitaire*) only after the diplomatic conference. (The vocabulary of "international humanitarian law" was coined even more recently—in the 1960s.⁸⁰) The experience of reconstructing the exact meaning of this well-known term in different historical contexts has proven challenging, if not exhausting. This is not just because the relevant documents run to hundreds of thousands of pages and are scattered across the globe, with some held in archives difficult to access. The research also had to handle the systemic problem of public minutes being heavily edited.⁸¹ As such, these documents portray a very different picture of how the Conventions were made from that provided by confidential reports by the drafters themselves. Many key decisions, these reports indicate, were made informally, or at least not in public rooms in which minutes were taken and journalists often present.

Exploring the process of forging the Conventions as a history from below, through the eyes of the main protagonists, raised a number of methodological challenges. The fact that Pictet himself believed that the "making of humanitarian law [. . .] should remain anonymous," to mention just one, made it almost impossible to identify the part played by individual ICRC experts.⁸² In addressing this, the analysis spent a great deal of time going through numerous ICRC files that promised to contain information on Pictet's drafting team but said remarkably little about its exact deliberations and disagreements. By focusing on the role of the ICRC's partners, their reports, and other newly excavated primary sources, however, the book has presented a different story, revealing the ICRC's multifaceted role in shaping the Conventions and lobbying for support in Western capitals.

Still, these materials—often derived from state archives—raise their own methodological questions, not least because they were produced for specific audiences with distinctive interests, preconceptions, jargon, and expectations.

⁸⁰ Alexander, "A Short History of International Humanitarian Law."

⁸¹ For a more detailed study of the problem of using the so-called *travaux préparatoires*, see Nathan Kurz, "Hide a Fact Rather than State It': The Holocaust, the 1940s Human Rights Surge, and the Cosmopolitan Imperative of International Law," *Journal of Genocide Research*, Vol. 23, No. 1 (2020): 1–21.

⁸² Pictet, "The Formation of International Humanitarian Law," 4.

In this book, the analysis has tried to remain alive not only to the potential and limits of these sources,⁸³ but also to the ways in which state drafters tried to bypass written documentation. Indeed, in the case of some especially controversial actions, state drafters sought to avoid leaving a paper trail in the archival record. Some of the internal reports from ICRC delegates proved especially useful as a means of demystifying these lacunae in the drafting process.⁸⁴ This book's compilation of multilingual archival materials, including recently declassified documents, is composed of predominantly Western and a few Soviet sources. Collected from both state and non-state archives, including private collections, these sources offer a unique perspective on the context in which the question of humanizing warfare reentered the arena of global politics.

The chapters that follow trace the evolution of ideas about the meaning of humanitarian law in the twentieth century. Chapter 1 begins by sketching the winding road to Geneva from the ruins of the Second World War to the diplomatic conference of 1949. This introductory chapter of the book presents the most important actors who participated in the process of humanizing warfare, the steps they took to realize that vision, and the compromises that they were willing to accept along the way. Chapter 2 covers the history of the first binding international treaty to recognize human rights protections for enemy civilians in armed conflict. The Civilian Convention, as it became known, provides a set of basic norms that proscribe brutal counterinsurgency campaigns of the sort seen during the world wars, for instance. In line with the book's sub-goals of re-drawing alternative drafting routes and reconstructing the drafters' politics, the chapter argues that the treaty's history should be understood as a long struggle featuring several surprising turns of events, which are now largely forgotten.

Chapter 3 provides a new genealogy of Common Article 3, which regulates wars within states and empires (what were termed "non-international armed conflicts"). This was the first binding international legal provision in history that challenged states' absolute sovereignty in their domestic and colonial affairs for humanitarian purposes. The book revives the neglected history of how this central provision, which has received both praise and criticism since 1949, unexpectedly came into being. In reconstructing the contingencies through which the article emerged, this chapter complicates some of the subsequent

⁸³ One example is that the book features a relatively high number of British archival materials. This is the result of the fact that British delegations—compared to the French—had relatively strict and detailed instructions. It forced them to regularly report in detail to London, thereby leaving a detailed paper trace of their actions for later historical research.

⁸⁴ One prominent example: Conference Diplomatique. Rapport Spécial Établi par Pilloud, 16 September 1949, no. CR-254-1, ACICR.

perspectives that have grown up around it. While some have branded Common Article 3 a failure, for many it remains the most innovative outcome of the entire drafting process. Moving beyond these dichotomies, this chapter provides an in-depth analysis of how attempts to internationalize so-called internal wars were profoundly shaped by the dynamics of imperialism and the Cold War.

Chapter 4 provides a micro-history of the attitudes embedded in the Civilian and POW Conventions concerning one of the most contested categories in the history of humanitarian law: the “irregular” fighter on the battlefield. This broad debate led to conflict not just among the Cold War powers, but also within the Western bloc. It raised several crucial questions. Who deserved protection under humanitarian law? Were civilians allowed to take up arms, or would this violate the principles of distinction and passivity? And what should happen to them if they were captured? This chapter notes the importance of decolonization and the Cold War for understanding how drafters’ attitudes changed over time and why they came to a far more exclusionary outcome than is often admitted. Indeed, this discussion left a doubtful legacy for both future irregulars resisting occupation and those fracturing empires.

Chapter 5 takes a more overarching view by looking at how the protections to be adopted under future Conventions might endure the dual threat of bombing and blockade. Although the story of Nuremberg’s silence on air-nuclear warfare is widely known, this chapter adds a new dimension to this history by revealing how Geneva struggled to obtain rules for protecting civilian populations. In the first part of the chapter, the analysis reconstructs attempts to limit aerial bombing (and blockade) before 1949, which eventually disappeared from the drafters’ radar. The remainder of the chapter demonstrates how international law’s silence on indiscriminate bombing and its conditional acceptance of starvation as a weapon of war was less the result of a strictly drawn legal distinction between “Hague” and “Geneva law” than a concerted campaign of subversion on the part of a cartel of Western drafters. Unlike some other participants, they believed that limits should be put on the ways in which the central concept of “victims of war” was interpreted. This created a major struggle over whether humanitarian law would become relevant in aerial warfare, with crucial consequences for the Conventions’ future.

Chapter 6 poses various questions about how the Conventions’ enforcement mechanisms developed. How should one respond to violations of these treaties? To what extent should violent reprisals be allowed under humanitarian law so as to force parties to adhere to their principles? What about criminal repression? And what could be expected from Protecting Powers and the ICRC, given that the doctrine of neutrality came under scrutiny in the years

following the Second World War? These key questions became a legal battleground. The role of the state and the boundaries of its sovereignty in relation to outside inspectors were especially contentious. These questions foreshadowed contemporary problems. Today, many speak the language of Geneva yet continue to struggle with its dilemma of how to ensure compliance on the battlefield—as the conclusion will show.