

INTERNATIONAL HUMANITARIAN LAW AND THE GODS OF WAR: THE STORY OF ATHENA VERSUS ARES

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[This piece reflects upon the fundamental nature of international humanitarian law and explores issues surrounding the embrace of this legal regime by the humanitarian sector. By delving into images of the ancient Greek gods of war — the reasonable Athena who is linked to international humanitarian law and the bloodthirsty Ares who represents lawless war — it is argued that an in-depth understanding of the pragmatic military nature of international humanitarian law will add value to advocacy on the use of this highly specialised regime. Without acknowledging the ‘warring’ nature of international humanitarian law, as well as the contradiction of using armed force ‘for good’, implicit assumptions within the humanitarian dialogue on these topics cannot be challenged. This piece identifies the change in attitude to views on the merit of using the military for humanitarian action as well as the increasing use by many non-governmental organisations of the international humanitarian law framework, and examines the reasons why this has occurred. It then moves to an analysis of ancient Greek attitudes to different warring methods and the resonance that these myths still hold today. The piece notes the importance of maintaining the distinction between the laws which regulate the use of force (jus ad bellum) and those which regulate the conduct of hostilities (jus in bello) and concludes by urging all actors involved in international humanitarian law to continually clarify their perspective on the laws of war.]

In late 2006, I was invited to San Francisco to be part of a workshop on aerial bombardment and civilians. The workshop’s aim was to look broadly at historical instances of warfare from the air and, in particular, the events which occurred in Hiroshima and Nagasaki during World War II. Most who attended were military historians and I knew that their ‘mind frame’ would not be focused on the traditional international humanitarian law doctrine that I was used to. Thus I was excited to be explaining these principles in a different environment.

What I was not expecting was the extremely ‘robust’ and highly critical written response to my paper, in particular from a well-respected moral ethicist, on what I believed was a mere articulation of the legal principles in this area. Commenting on the paper’s explanation of the complex legal description of ‘military objectives’ (found in art 52(2) of *Additional Protocol I*¹), the reviewer included statements like ‘if they are right, then this is a major moral defect in the law’ and ‘people who think this way cannot be taken seriously when they profess

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¹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, opened for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (*‘Additional Protocol I’*). Article 52(2) states:

Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

a moral concern for the lives of the innocent'. Whilst not all participants were as direct, a general level of cynicism at the potential impact of international humanitarian law on warring factions and unease with its terms and concepts was palpable for the duration of the event.

The experience made me reflect deeply on what I had passionately pursued for most of my professional life. Had I moved so far over to the 'dark side' that terms of my craft such as 'military necessity' tumbled from my tongue and pen without a second thought? Did I think within a lawyer's restrictive paradigm tempered only by what was 'palatable' to the military? Was the term 'humanitarian' at all compatible with laws about war? Was I in a no-man's-land between condoning killing (according to the moral ethicist) and being a 'tree hugger' (according to the military)?

I came to international humanitarian law as a humanitarian interested in ensuring better protection for civilians during the most violent times societies can endure. In my role with various elements of the Red Cross/Crescent Movement and as an academic, I have spent the last ten years justifying international humanitarian law and arguing that it is worthwhile, does make a difference, and has significant value. I genuinely believe in international humanitarian law and am able to strongly advocate its virtues to governments, militaries, students and the humanitarian sector at large. I know that international humanitarian law can be clumsy, inconsistently and selectively used, blunt when dealing with the atrocities it attempts to regulate, slow and mostly reactive rather than proactive.² However, having been fortunate to have undertaken operational work with the International Committee of the Red Cross ('ICRC'), I have directly seen its benefits and admired the complexity of a legal system that is symbolic and even aspirational in its aim to apply the principles of distinction,³ proportionality,⁴ and limitation.⁵

My shock at the highly critical response my paper received on the application and principles of international humanitarian law made me rethink a range of assumptions I had been making. Surely the increasing theoretical synthesis being

² The instance of the prohibition of blinding laser weapons is the first time a weapon was prohibited before it had been deployed on the battlefield: *Additional Protocol IV to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, adopted 13 October 1995, UN Doc CCW/CONF.I/16, Annex A (entered into force 30 July 1998) ('*Protocol on Blinding Laser Weapons*').

³ The fundamental principle of distinction can be found throughout international humanitarian law. In particular, *Additional Protocol I*, above n 1, art 48 states: 'the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives'.

⁴ Proportionality is found in many articles including *Additional Protocol I*, above n 1, art 51(5)(b) which prohibits attacks that cause damage 'excessive in relation to the concrete and direct military advantage anticipated'. See also art 51(4).

⁵ *Additional Protocol I*, above n 1, art 35(1) states: 'In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited'.

made between human rights norms and those found in the *Geneva Conventions*⁶ and their additional protocols, as well as the controversial but growing practice of using armed conflict to realise human rights through ‘humanitarian intervention’, had brought international humanitarian law ‘in from the cold’, and made it more accessible and tangible to an ever-widening group of those interested in its application. Whilst it had taken 50 years since the creation of the *Geneva Conventions* to resolve, the United Nations Secretary-General’s Bulletin on the application of international humanitarian law norms to UN forces⁷ added weight to my view that international humanitarian law was a vibrant part of the framework for ‘good’. I had thought that the old question of whether this area of law legitimises violence rather than saves lives had been dealt with by a pragmatic understanding of the usefulness of international humanitarian law.⁸

There is no doubt that civil society’s view of the merit of military action as a method of humanitarian assistance has dramatically shifted in the last decade. In his book, *The Dark Sides of Virtue*, David Kennedy writes about the rapid shift from the Vietnam era of viewing the military as the ‘baddies’ — ‘peace and protest still hung in the air ... [t]he military seemed all that international law was not, violence and aggression to our reason and restraint’⁹ — to the situation where the military were seen to implement ‘good stuff’ — ‘[b]y the early 1990s, the most liberal of my students embraced each new American military deployment with enthusiasm ... the military seemed newly capable of saving failed states and mending broken societies abroad’.¹⁰

Indeed, in my memory, it seemed only a short time between attending protests in the city square about the Australian Defence Force (‘ADF’) getting ‘out’ of Iraq in the early 1990s to attending protests in the city square about the ADF getting ‘into’ East Timor. Yet what are the implications of perceiving military action as an instrument of humanitarian action rather than violent interference for the population it seeks to assist? For some commentators, moving toward the acceptance of such a role of armed forces is extremely dangerous. As David Chandler writes: ‘Over the last decade, the universal humanist core of humanitarian action has been undermined and humanitarianism has become an

⁶ *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (‘*Geneva Convention I*’); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (‘*Geneva Convention II*’); *Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (‘*Geneva Convention III*’); *Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (‘*Geneva Convention IV*’) (collectively, ‘*Geneva Conventions*’).

⁷ Secretary-General’s Bulletin, *Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 (6 August 1999).

⁸ For a further discussion on this topic, see Chris af Jochnick and Roger Normand, ‘The Legitimation of Violence: A Critical History of the Laws of War’ (1994) 35 *Harvard International Law Journal* 49.

⁹ David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004) xii.

¹⁰ *Ibid.*

ambiguous concept capable of justifying the most barbaric of military actions'.¹¹ Within this context, it is also important to acknowledge that the shift in perception of the military by the humanitarian sector could also be seen to have contributed to an overly optimistic sense of the value and capacity of international humanitarian law. Can military actions in the humanitarian sphere be seen as a 'mission creep' and, if so, has it obscured where international humanitarian law comes from, and what is at its philosophical core? Curiously, whilst the debate rages on about the legitimacy of military interventions, particularly those without a clear mandate from the UN Security Council, international humanitarian law has never been so popular.

In the last decade, non-state actors, in particular non-governmental organisations, have increased their use of international humanitarian law as a tool for dialogue with governments, militaries and even the general public. Since the 1990s, groups such as Human Rights Watch, Amnesty International and Oxfam have started using the international humanitarian law framework in their activities, be it in critiquing military actions or in policy papers dealing with humanitarian crises.¹² The statement by the former UN High Commissioner for Refugees, Sadako Ogata, that there are 'no humanitarian solutions to humanitarian problems',¹³ is being demonstrated in the changing methods used by many NGOs today which move beyond the traditional human rights and development approach to encompass political dialogue on international humanitarian law issues. The reports by Amnesty International and Human Rights Watch accusing NATO forces of violating the rules of distinction and proportionality in Serbia in the late 1990s are clear examples of humanitarian organisations engaging in detailed analysis of international humanitarian law principles.¹⁴

Of course, one humanitarian movement has had a particularly strong relationship with international humanitarian law spanning over a century. The tight nexus forged between the Red Cross/Crescent Movement (in particular the ICRC) and international humanitarian law is a given, and need not be reflected

¹¹ David Chandler, 'The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda' (2001) 23 *Human Rights Quarterly* 678, 698.

¹² See, eg, Human Rights Watch, *International Humanitarian Law Issues and the Afghan Conflict: Open Letter to the North Atlantic Treaty Organization (NATO) Defense Ministers* (October 2001) <<http://www.hrw.org/press/2001/10/nato1017-ltr.htm>> at 18 October 2007; Amnesty International, *Israel and Hizbullah Must Spare Civilians: Obligations under International Humanitarian Law of the Parties to the Conflict in Israel and Lebanon*, AI Index MDE 15/070/2006 (July 2006) <<http://web.amnesty.org/library/index/engmde150702006>> at 18 October 2007; Oxfam International, *A Fragile Future: Why Scaling Down MONUC Too Soon Could Spell Disaster for the Congo* (Oxfam Briefing Paper No 97, 16 February 2007), available from <<http://www.oxfam.org/en/policy/2007>> at 18 October 2007.

¹³ David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (2002) 22.

¹⁴ See Amnesty International, *NATO/Federal Republic of Yugoslavia: 'Collateral Damage' or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, AI Index EUR 70/018/2000 (June 2000) <<http://web.amnesty.org/library/Index/ENG/EUR700182000?open&of=ENG-390>> at 18 October 2007; Human Rights Watch, *Civilian Deaths in the NATO Air Campaign* (February 2000) <<http://www.hrw.org/reports/2000/nato>> at 18 October 2007.

upon in this piece.¹⁵ The pragmatic working methods used by the ICRC, its international legal personality, and its ‘cloak’ of neutrality and confidentiality, have always set it apart from the rest of civil society and allows its relationship with international humanitarian law to be one of great ease.¹⁶ After World War II, during the attempts at the highest political level to prohibit the resort to force under international law, Kennedy writes: ‘The professionals at the Red Cross were ... standoffish. In their tradition, it was more realistic simply to accept that war would occur, and work to blunt its impact through rules painstakingly wrung from the military itself’.¹⁷ Pragmatic, conservative and focused to the core, the important role the ICRC plays in advocating adherence to international humanitarian law is neither new nor puzzling. What is new is the warm embrace being given by the broader humanitarian and human rights sector to an area of law which, although containing some provisions of a very similar nature to fundamental human rights, nevertheless allows killing with impunity (combatant to combatant) and the indefinite detention of individuals for the commission of no crime (prisoners of war and other detainees).

An examination of this recent rush to embrace the legal normative framework of international humanitarian law needs to take into account a number of factors. The first is the ‘seduction’ of international humanitarian law as an area of international law which is enforceable and results in ‘baddies’ being put behind bars or even executed. The spectacular rise in the number of international enforcement mechanisms dealing generally with international criminal law, and more specifically with international humanitarian law, has had the effect of bringing the public’s attention to the capacity to prosecute those accused of war crimes. There is a general understanding, not limited to the echelons of the elite, that those accused of atrocities should be held responsible and, in selected cases, there is now the infrastructure for this to occur. With the establishment by the Security Council of the International Criminal Tribunal for the Former Yugoslavia (‘ICTY’) and the International Criminal Tribunal for Rwanda (‘ICTR’), the entry into force of the International Criminal Court (‘ICC’) and the development of ‘hybrid’ tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, international humanitarian law prosecutions are now part of the international legal landscape.

As well as the recognition of the ‘teeth’ of international humanitarian law, which can bite those who disobey it, international humanitarian law can also be perceived as having a greater chance of influencing those in positions of authority. The lack of capacity to suspend international humanitarian law — unlike certain elements of human rights law — makes it an attractive and, at times, more certain legal framework. Furthermore, international humanitarian law has not been subjected to the same degree of cultural challenges that have beset human rights norms. As René Provost writes:

The multiplicity of conventional regimes in human rights is one factor which has been said to have contributed to the fragmentation of this field of international

¹⁵ See, eg, Yves Sandoz, ICRC, *The International Committee of the Red Cross as Guardian of International Humanitarian Law* (1998) <<http://www.icrc.org/web/eng/siteeng0.nsf/html/about-the-icrc-311298>> at 18 October 2007.

¹⁶ *Ibid* pt 5.

¹⁷ Kennedy, above n 9, 257.

law. This is compounded by a number of institutions attached to these distinct regimes. International humanitarian law, on the contrary, encompasses fewer regimes less likely to foster distinctive approaches to the protection of war victims ...¹⁸

There are many areas where international humanitarian law and human rights law overlap: both ‘aim to protect human life, prohibit torture or cruel treatment’, prescribe basic judicial guarantees, ‘prohibit discrimination’ and ‘regulate aspects of the right to food and health’.¹⁹ However, international humanitarian law contains rules dealing with issues not found in human rights law, including:

the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross and red crescent emblems. Similarly, [international human rights law] deals with aspects of life in peacetime that are not regulated by [international humanitarian law], such as freedom of the press, the right to assembly, to vote and to strike.²⁰

Written by the military, for the military, about the military, international humanitarian law treaties, particularly the universally ratified *Geneva Conventions*, are pragmatic documents which relate to bare survival during the most horrific condition humans can manufacture — armed conflict. They are not like human rights laws which provide a raft of rights for individuals to ‘be the best they can be’ in broader social, economic and cultural ways. Rather, international humanitarian law is both a permissive and restrictive regime for the military and other authorities during war, setting out protections and determining when such protections can be taken away. Indeed, one of the fundamental human rights — ‘the right to life’ — is explicitly taken away in certain circumstances, with international humanitarian law allowing combatants to kill combatants with impunity.²¹

Given that international humanitarian law is at odds with human rights law in some fundamental respects — and is certainly more practical, even cold, in the face of the realities of armed conflict — has the humanitarian sector got it wrong in using international humanitarian law as a framework and tool to critique perceived inhumane actions of a state? Is international humanitarian law rather a way for the military to effectively wage war? Is the philosophical basis of international humanitarian law related to military strategy rather than aiming for the protection of civilians? Is the humanitarian sector expecting too much from international humanitarian law?

¹⁸ René Provost, ‘The International Committee of the Red Widget? The Diversity Debate and International Humanitarian Law’ (2007) 40(2) *Israel Law Review* (forthcoming).

¹⁹ Advisory Service on International Humanitarian Law, *International Humanitarian Law and International Human Rights Law: Similarities and Differences* (2003) International Committee of the Red Cross [1] <[http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JR8L/\\$FILE/IHL_and_IHRL.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/57JR8L/$FILE/IHL_and_IHRL.pdf?OpenElement)> at 18 October 2007.

²⁰ *Ibid.*

²¹ See, eg, Louise Doswald-Beck, ‘The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?’ (2006) 88 *International Review of the Red Cross* 881, 899–900.

Perhaps some of the answers to these questions can be found in the writings and myths of the ancient Greeks. Between 800 BCE and 500 CE, Greek civilisation developed a body of philosophical concepts and political ideas which have had a profound influence on political leaders throughout history. Much current philosophy and theories of modern science owe their foundations to Greek thought, especially in the Western world. So what did Greek writing have to say on limitations in war?

The Greeks had two different gods of war — the wise and cunning goddess Athena and the bloodthirsty, unrestrained god Ares. The fact that out of 12 Olympian gods, two are devoted to armed conflict indicates the important role warfare played in the social order and the fabric of daily life. The clear distinctions between Athena's and Ares' methods of fighting, which correlate to their places of respect within the heavenly hierarchy, also allow some interesting reflections on the modern codification of international humanitarian law.

Although they have the same father (the almighty Zeus) and the same subject matter under their jurisdiction, Athena and Ares are very different. References to Athena note her wisdom and thoughtfulness, her capacity to wage war with strategy, discipline and tactics. She is identified as a protectress, able to engage in civilised combat using her fighting prowess for just causes, particularly in protecting her beloved Athens.²² Her most famous weapon is her shield, not her sword, as she is seen as a warrior of defence. As well as war, Athena is the goddess of handicraft and has the power of *metis*, a term which relates to cunning and craftiness in terms of wisdom and strategy. She is credited with the invention of a number of essential articles, such as the bridle, which allows control of horses and thus greatly enhances both efficiency during battle and agriculture.²³ It was on Athena's advice that Odysseus implemented the use of the Trojan Horse, and classical literature is filled with images of her purity and beauty.

The ploy of using the hollow wooden horse to gain entry into Troy is an interesting example of the connection between Athena and international humanitarian law. Modern codifications of the laws of war make a clear distinction between actions during armed conflict that are perfidious and invite confidence of the adversary to believe they are entitled to protection under international humanitarian law (such as feigning an intent to surrender under a flag of truce or a misuse of the red cross emblem) and ruses (including use of decoys, mock operations, camouflage and misinformation).²⁴ Accounts of the huge horse, left by the departed Greeks, give no indication that the event involved a lure of confidence which would be illegal today under international

²² See, eg. Robert Graves, *The Greek Myths: 1* (1955) 96, 99–100.

²³ *Ibid* 96.

²⁴ Article 37(2) of *Additional Protocol I*, above n 1, states:

Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law.

humanitarian law. The debate between the Trojans about how to deal with this object is telling:

Thymoetes was the first to break the silence. 'Since this is a gift to Athene,' he said, 'I propose that we take it into Troy and haul it up to her citadel'. 'No, no!' cried Capys. 'Athene favoured the Greeks too long; we must either burn it at once or break it open to see what the belly contains.'²⁵

The fateful decision to follow Thymoetes' approach resulted in the bloody battle of Troy. However, Athena's use of *metis* in this situation, and her idea of using the ruse of the wooden horse, which gave the Greeks their winning edge, is well within the current framework of international humanitarian law.

On the other hand, Ares is constructed as the 'rush in and kill' type. He is cruel, bloodthirsty, uncontrolled and aggressive, waging offensive wars for the sheer love of combat. His murderous and bloodstained reputation result in little respect and that given is generated from fear rather than love or admiration.²⁶ Graves writes that 'Ares loves battle for its own sake ... delighting in the slaughter of men and the sacking of towns'.²⁷ Furthermore, unlike Athena who is usually defensive in her attacks and loyal to Greece, Ares 'never favours one city or side more than another' and fights as inclination prompts, not always victoriously.²⁸

The preference given by most Greeks to Athena over her brutish brother is stark and stories of the two locked in battle inevitably result in victory for Athena. It appears that the Greeks valued strategy over random violence and this narrative tells much about the human desire for legitimacy and justification. Careful and strategic killing is applauded whilst uncontrolled bloodshed is shunned. There are parallels with the modern codification of international humanitarian law in its pragmatic aims to reduce (not eradicate) suffering by limiting (not banning) armed conflict. However, concepts deeply embedded into these myths which involve 'just wars' must be acknowledged as lacking relevance to the modern codification of international humanitarian law, an area of law which applies in all armed conflicts irrespective of the reason for the use of violence.

Much continues to be written and reflected upon in relation to the tales of the Greek gods; understandings about power and social order found in these myths have resonance today. In the novel *Cryptonomicon*,²⁹ two characters involved in cracking codes during World War II discuss the fact that Athena with her *metis* is very much like modern technological cunning. They posit the proposition that all societies either worship Ares or Athena, and are either bloody and brutal, or cunning and strategically focused.³⁰ In their view, the battle between these two gods of war shapes whole cultures and also leads to success or downfall on the world stage. For example, they claim that the Allies were ultimately victorious in World War II due to their technological cunning and a worship of Athena. The

²⁵ Robert Graves, *The Greek Myths: 2* (1955) 331.

²⁶ Graves, *The Greek Myths: 1*, above n 22, 73.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Neal Stephenson, *Cryptonomicon* (1999).

³⁰ *Ibid.* 804–5.

Germans, on the other hand, are deemed to have followed Ares to their ultimate downfall.³¹ As the two characters note:

‘we’ve all known guys like Ares. The pattern of human behaviour that caused the internal mental representation known as Ares to appear in the minds of the ancient Greeks is very much with us today, in the form of terrorists, serial killers, riots, pogroms, and aggressive tinhorn dictators who turn out to be military incompetents. And yet for all their stupidity and incompetence, people like that can conquer and control large chunks of the world if they are not resisted.’

... ‘Who is going to fight them off ...?’

... ‘Sometimes it might be other Ares-worshippers ... [but] the only way to fight the bastards off in the end is through intelligence. Cunning. *Metis*.’³²

So what is the relationship between Athena and international humanitarian law and what use is this analysis?

At its essence, the application of international humanitarian law requires strategy, discipline and tactics in the waging of war, all attributes of Athena. The fundamental principles encoded in the *Geneva Conventions* and their additional protocols — those of distinction, proportionality and limitation — could be linked to *metis* and cunning/wisdom as they all require the gathering and use of knowledge and information before the launching of lethal attacks. Like Athena, international humanitarian law allows wars to be waged but dictates how the warring should be undertaken. In doing so, the application of international humanitarian law relies on *metis*, knowledge and strategy rather than unconstrained violence.

For example, the principle of distinction requires the military to distinguish civilian populations and objects from combatants and military objectives, and to only direct their operations against military objectives.³³ Hence the military must know who they are fighting, and where civilians and their objects are placed, a task that, although increasingly difficult in today’s ‘battle-space’, is nevertheless essential if the protection of civilians is to be ensured. To be faithful to the principle of proportionality, combatants must have a complex understanding of the military benefit to be gained from attack and to balance this with the ‘incidental loss of civilian life’.³⁴ This ‘incidental killing’ is often referred to by the sanitised term ‘collateral damage’, which does not convey the real death and destruction visited upon the area of the attack, a reality the humanitarian and human rights sector are all too familiar with. However, one suspects that the highly pragmatic Athena would have understood this balancing concept perfectly. Indeed, the complicated and layered process for the making of targeting decisions under international humanitarian law — involving the classification of an object as a ‘military objective’ under the twofold test found in art 52(2) of *Additional Protocol I*;³⁵ the identification of lawful weapons and tactics; the undertaking of precautions to minimise civilian damage; and

³¹ Ibid 806–8.

³² Ibid 806–7.

³³ This is codified in the basic rule found in *Additional Protocol I*, above n 1, art 48.

³⁴ Ibid arts 51(5), 57.

³⁵ For the text of this article, see above n 1.

consideration of the principle of proportionality — require a high degree of *metis* to actually wage the war.

Similarly, the principle of limitation is stated succinctly: ‘In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited’.³⁶ This principle is then codified in numerous specific treaties restricting or banning certain weapons.³⁷ This concept of limitation requires careful analysis of the warring situation and the appropriateness of weapons and tactics to be used in the specific environment assessed.

Through the correct application of international humanitarian law, one can witness the implementation of cunning, knowledge and strategy. In doing so, the ‘mindless slaughter’ of Ares is rejected in favour of the careful planning and strategic actions of Athena. Are the triumphs of Athena over Ares in a number of battles an early version of the dissemination of international humanitarian law?³⁸ Within the paradigm of acknowledging and accepting the existence of armed conflict, Athena’s cunning has more humanity than Ares’ warlike frenzy. However, she is still a bloody god of war and must never be confused as anything but a warrior, albeit one of restraint and *metis*.

The embrace of international humanitarian law by humanitarian organisations is essential in the fight to save lives during times of armed conflict. It is beyond dispute that the more knowledge about limitations that exist during warfare, the better the chances of success in urging authorities to apply distinction, proportionality and limitation during their military operations, to the benefit and protection of civilians. Increasing the number and publicity of high profile figures being duly prosecuted as war criminals can only serve to remind those in power that impunity for the commission of war crimes can no longer be guaranteed.

Yet in spite of these highly positive aspects to the ‘mainstreaming’ of international humanitarian law, international political machinations are neither this simple nor unselective. As discussed above, international humanitarian law is not implemented consistently or in a neutral manner. Like all international legal systems, it is infused with global politics and inherent power dynamics. International humanitarian law is unfortunately frequently and sometimes flagrantly violated with no repercussions. The discourse change, including a favourable reception of international humanitarian law within thinking usually reserved for human rights dialogue, has a real world impact. It repositions the margins of what is acceptable and taken for granted, and what needs to be rigorously analysed. Debates on ‘humanitarian’ military interventions must come to terms with the tensions and implications of using armed force to maintain

³⁶ Ibid art 35(1).

³⁷ See, eg, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, opened for signature 18 September 1997, [1999] ATS 3 (entered into force 1 March 1999) (‘*Ottawa Convention*’).

³⁸ The *Geneva Conventions* and their additional protocols require dissemination of international humanitarian law. For example, art 48 of *Geneva Convention II*, above n 6, states: ‘The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries’.

human rights, both in a philosophical and practical manner.³⁹ A high technical knowledge in both fields is necessary to understand the areas of compatibility and distinction within the worlds of international humanitarian law and human rights. If Athena is to be evoked by the humanitarian community to fight off evil, then there must be a clear understanding of her aims and methods. It is much better to invite Athena intentionally to the negotiating table than to accidentally find a warring god on your side.

It is noteworthy that the ancient Greeks, unlike the Romans, had no one particular god dedicated to 'peace'. There was an acceptance that '[c]onflict was part of the human world as run by gods'.⁴⁰ The parallel between international humanitarian law and Athena is useful for reflection but obviously has strong limitations. The clear separation between the laws governing the legality of war and the laws governing conduct during hostilities (the distinction between *jus ad bellum* and *jus in bello*) does not exist in ancient Greek myths and Athena is often applauded and admired for her decisions to engage in 'just' wars. This is not compatible with the modern codification of international humanitarian law and there are significant dangers in advancing the concept that 'legitimate' and 'just' conflicts (highly subjective notions in themselves) are privileged to a less restrictive legal regime. Whilst Athena fought 'just' wars in a 'just' manner, there are great dangers in linking the two concepts together. Irrespective of the political aims of any military intervention, the consistent application of international humanitarian law in times of armed conflict is one of its strongest 'humanising' factors. To allow the use of force for 'good' to ignore the fundamental tenets of distinction, proportionality and limitation is to greatly weaken a legal regime based on the concept of neutrality of purpose.

Perhaps if, during my time at the San Francisco workshop, I had located international humanitarian law as a battle between two violent Greek gods, I may have provided some clarity to the moral critiques advanced. In my attempts to explain the very pragmatic heart of international humanitarian law, the story of Athena and Ares could have served well. Despite its foibles, connecting the image of Athena — 'relentless in battle' and also 'possessing great wisdom'⁴¹ — with international humanitarian law, has something for both sides involved in the attempt to find the balance between 'military necessity' and the principles of humanity. It reminds warring parties that the use of *metis* and limitations can provide military advantages, and it reminds humanitarians that they must be careful and mindful in their dealing with this area of international law.

³⁹ See, eg, Beat Schweizer, 'Moral Dilemmas for Humanitarianism in the Era of "Humanitarian" Military Interventions' (2004) 86 *International Review of the Red Cross* 547. See also Adam Roberts, 'Humanitarian Issues and Agencies as Triggers for International Military Action' (2000) 82 *International Review of the Red Cross* 673. Roberts highlights a range of concerns relating to military mandates for humanitarian considerations, including the dangers of such forces not applying international humanitarian law due to the perception of a 'high moral purpose'. This is particularly relevant to numerous 'counter-terrorism' activities which have resulted in the classification of individuals as outside human rights and international humanitarian law protections.

⁴⁰ Ruth Padel, *Whom Gods Destroy: Elements of Greek and Tragic Madness* (1995) 215.

⁴¹ Kathleen Lines, *The Faber Book of Greek Legends* (1973) 32.