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Can international law meet the challenges of today's lawless conflicts?

With groups like Isis and Al-Qaida now waging war across the world, Lyal S. Sunga asks whether it's time for a new UN convention on terrorism

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Saturday 14 November 2015 10.00 GMT
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Ambulance workers at work in Paris, as more than 100 people were killed in multiple terrorist shootings and explosions. Photograph: Kenzo Tribouillard/AFP/Getty Images

"Shuffle off this mortal coil, you c***. It's nothing you wouldn't do to us. Obviously this doesn't go anywhere, fellas. I just broke the Geneva convention."

Royal Marine Sergeant Alexander Blackman's chilling words moments after he shot dead a Taliban insurgent at close range in Afghanistan on 15 September 2011, dismiss the Geneva conventions, show little fear of getting caught, and possibly indicate combat stress disorder.

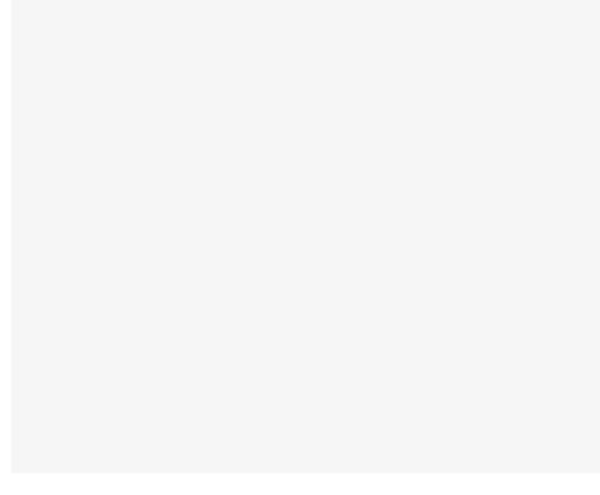
Blackman dragged him out of the sight of soldiers aboard the nearby Apache and prevented others from administering first aid, before firing a 9mm round into the insurgent's chest.

A military court in December 2013 sentenced Blackman to life imprisonment for the murder. Within weeks, more than 100,000 people signed a petition to free him and some Members of Parliament expressed their support.

People have been puzzling over whether it makes sense to afford Geneva conventions protection to opposing forces that show complete disregard for the laws of war.

Even before the Blackman case, prosecutors, judges, government officials and national human rights commission staff have thrown similar questions at me in the dozens of countries I have worked in over the last 25 years.

Can the Geneva conventions, adopted in 1949 mainly to limit cruelty in wars fought by regular soldiers, possibly apply to today's terrorist groups who carry out attacks such as the events in Paris last night, who don't wear uniforms, don't necessarily follow a regular military command structure, and don't have any intention to apply international humanitarian law?



Is it not impractical, and in fact dangerously naive, to treat captured insurgents humanely, when those same individuals would not hesitate to execute you if you were captured, and terrorise you in your own countries?

Today's terrorist groups do seem qualitatively different from the kinds of groups that loomed large in past decades; such as Action Directe, Brigade Rosse, Baader-Meinhof, Front de Libération du Québec, Basque Separatists, IRA, Farc, Lord's Resistance Army, or Shining Path.

These and countless other groups all targeted the political independence of a single State through operations mainly in one country with fairly limited cross border links and foreign support.

In contrast, certain groups like Al-Qaida and Isis display ambitions reaching beyond a single country towards establishing a grand caliphate to be governed by the harshest interpretations of Shari'a to which everyone must submit.

Some of today's terrorist groups demonstrate a tenacious capacity to control territory, secure steady and ample financing and supply chains, spread slick propaganda that attracts thousands of fresh recruits, and employ operations and tactics that repel even the most technically sophisticated of the world's armed forces.

Ordinary criminal law enforcement cannot do the job, but at the same time, some of today's terrorist operations approximate full-scale war and the Geneva conventions remain ill-suited to asymmetric conflict where one party simply refuses to play by the rules.

Unfortunately, many of the more powerful States that have always called for full respect for the Geneva conventions, have themselves been resorting more and more to covert operations with rules of engagement that accord scant regard for them.

Use of hybrid warfare strategies further complicate matters to the extent that States increasingly use non-uniformed personnel, proxy forces and agents, private security companies and mercenaries who frequently seem to consider themselves beyond reach of law, military discipline and criminal responsibility.

So why stick with the conventions? It's worth noting that when Blackman was court-martialed, the Appeals Court held that he had jeopardised other British service member's lives, that his actions would be used to radicalise others, encourage terrorist groups to fight British forces and exact more brutal retribution or reprisal.

How can the Geneva conventions apply to today's terrorists who don't wear uniforms and don't respect international law?

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Secondly, the Geneva conventions set some minimum standards of humane treatment without which cruelty in war-time would be completely unlimited.

Third, ignoring, tolerating or excusing war crimes corrodes everyone's respect for the principles of military necessity, proportionality and humanity, and weakens respect for the international rule of law in general, which in turn increases the likelihood of further conflict.

Fourth, winning battles through murder, torture, summary executions and other crimes is a sure way to lose the war for hearts and minds simply because it brings everyone down to the moral level of the terrorist.

It is now urgent for States to update rather than sideline the Geneva conventions, agree upon a definition of 'terrorist act', perhaps through a new comprehensive UN convention against terrorism, strengthen international cooperation and public awareness of the role and importance of international humanitarian law, consider revising the International Criminal Court's Statute explicitly to cover terrorist acts, and above all, maintain the high moral ground.

Maintaining legitimacy and full respect for humanity in our diverse and culturally rich world requires resolve and determination to fight intolerance without falling into the trap of perpetrating cruelty and inhumanity that intolerance itself feeds upon.

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