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Cyber War Crimes: Islamic State Atrocity Videos and the Laws of War

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Articles

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Cyber War Crimes

Islamic State Atrocity Videos and the Laws of War

The Islamic State has combined its extreme violence with digital and cyber technologies to produce and distribute globally videos recording atrocities it commits. This article argues that those in the Islamic State who make and distribute these atrocity videos are committing war crimes under international law. After introducing the unprecedented phenomenon the atrocity videos represent (I.), the article first examines the relationship between international law and propaganda in war and peace (II.) The article then argues the atrocity videos violate prohibitions in international humanitarian law and constitute war crimes (III.). The article concludes by presenting criticisms of this argument and responses to the critiques (IV.).

I. Introduction

The armed conflicts in Syria and Iraq have involved atrocities committed by the self-proclaimed Islamic State.¹ Atrocities occur in most armed conflicts, but those associated with the Islamic State exhibit distributing features even against the grim realities of war. The Islamic State has been accused of a sickening range of atrocities, including genocide, torture, sexual slavery, rape, use of poison gas, attacks on civilians and civilian objects, mistreatment and murder of detained civilians and combatants, forced religious conversions, conscription of children, and the destruction of historical monuments.² The Islamic State justifies its actions through an extreme reading of Islamic law, thus rejecting the legitimacy of international human rights law and the international law on armed conflict.³

The scale and severity of these atrocities has produced calls for its leaders, military commanders, and soldiers to be investigated, prosecuted, and convicted for systematic violations of international humanitarian law through commission of the crime of genocide, crimes against humanity, and war crimes.⁴ Such demands for

criminal accountability are routinely made during and after armed conflicts, especially since the end of the Cold War and establishment of the International Criminal Court (ICC). As with calls for accountability in other armed conflicts, those seeking accountability for members of the Islamic State face problems, including, for the moment, the lack of ICC jurisdiction over the armed conflicts in Syria and Iraq.⁵

While atrocities in armed conflict and efforts to hold the perpetrators criminally responsible are depressingly familiar features of modern war, the Islamic State has broken new, disturbing ground. As if its behavior and justifications are not bad enough, the Islamic State has planned, staged, made, and edited digital recordings of atrocities and disseminated the videos around the world over the Internet. These atrocity videos record the execution of enemy fighters and civilians detained by, or under the authority of, the Islamic State during armed conflict in Syria and Iraq. The videos record the executions of single individuals and groups of people by various techniques, including shooting, beheading, isolation, and crucifixion.⁶

In these atrocity videos, the Islamic State has brought together medieval brutality and twenty-first century digital and cyber technologies to produce a phenomenon never seen before in warfare. Never before has a belligerent in armed conflict deliberately staged, recorded, and distributed film or videos capturing its commission of atrocities with the frequency, global scale, and notoriety achieved by the Islamic State. This article focuses on this development and argues that the making and distribution of these atrocity videos violate the law of armed conflict and constitute war crimes.

II. Propaganda and International Law in War and Peace

Videos produced and disseminated online by the Islamic State form part of its prodigious propaganda efforts spanning all forms of media, which seek to persuade Muslims around the world to support the Caliphate the Islamic State has proclaimed and is trying to create.⁷ The videos depicting the killing of persons detained in military operations by, or under the control of, the Islamic

▷ Prof. David P. Fidler, Indiana University Maurer School of Law. Further information about the author at p. 192.

1 The Islamic State is also variously known as the Islamic State in Iraq and Syria (ISIS) and the Islamic State in Iraq and the Levant (ISIL).

2 See Report of the Office of the UN High Commissioner for Human Rights on the Human Rights Situation in Iraq in Light of the Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, UN Doc. A/HRC/28/18, 13 March 2015; and Report of the Independent International Commission of Inquiry on the Syrian Arab Republic-Rule of Terror: Living under ISIS in Syria, UN Doc. A/HRC/27/CRP.3, 19 November 2014.

3 For analysis of the Islamic State, see *Stern & Berger*, *ISIS: The State of Terror* (2015) and *McCants*, *ISIS Apocalypse: The History, Strategy, and Doomsday Vision of the Islamic State* (2015).

4 See, for example, *Bellinger*, *New York Times*, 2 April 2015, http://www.nytimes.com/2015/04/03/opinion/make-isis-leaders-face-justice.html?_r=0.

5 See Statement of the Prosecutor of the International Criminal Court on the Alleged Crimes Committed by ISIS, 8 April 2015 (concluding the ICC does not have jurisdiction to conduct a preliminary examination of the alleged crimes committed by the Islamic State).

6 This article addresses only videos made by the Islamic State and not genuine or fake videos produced and distributed by other groups or individuals.

7 See *Winter*, *The Virtual "Caliphate": Understanding the Islamic State's Propaganda Strategy* (Quilliam Foundation, July 2015).

State constitute only part of a larger attempt to convince Muslims of the Caliphate's dedication to the example and teachings of the Prophet Muhammed and its claim to re-constitute the political and spiritual foundation for the global Islamic community, the *umma*.⁸

1. Islamic State Propaganda

The Islamic State's propaganda activities online, especially through social media, have caused controversy in Western countries.⁹ The propaganda plays a role in the radicalization of individuals, many of whom have traveled, or sought to travel, to Iraq and Syria to join the Islamic State's efforts to build and defend the Caliphate. The importance of this propaganda in the radicalization process forces liberal democracies to combat it through counter-messaging efforts (e.g., disseminating information to refute the Islamic State's claims) or counter-content strategies (e.g., taking down online content associated with the Islamic State), or a combination of these approaches. So far, the Islamic State's online propaganda efforts have confounded democracies' attempts to address the threat it poses.

2. Propaganda in Peacetime

The Islamic State's propaganda includes positive messages and images that purport to depict the virtues of the Caliphate in order to encourage Muslims to support and join it. Although this type of propaganda forms part of the radicalization problem, international law does not prohibit or criminalize it. In peacetime, international law relevant to propaganda involves treaty prohibitions on propaganda that advocates aggressive war,¹⁰ on incitement to genocide,¹¹ on incitement to terrorism,¹² and on hate speech.¹³ The prohibitions against propaganda for war and incitement to genocide have influenced the development of individual criminal liability in international law for these acts, as seen in judgments of international criminal tribunals¹⁴ and provisions of the Rome Statute establishing the ICC.¹⁵ Neither incitement to terrorism nor hate speech has become an international crime in the way propaganda for war and incitement to genocide have.

However, the Islamic State videos that have caused the most controversy are not videos that constitute propaganda for war or incitement to genocide. Most of these videos circulated after armed conflict started, particularly after the Islamic State's military gains in Iraq in the summer of 2014. Similarly, the Islamic State was fighting in Syria before the videos in question began frequently appearing online. Nor have these videos been characterized as incitement of genocide because, among other reasons, the videos depict atrocities against different groups or people. The Islamic State has been accused

of committing genocide against the Yazidi people,¹⁶ but it does not appear as if the Islamic State produced and circulated videos calling for genocidal acts against Yazidis before such acts began. Videos depicting killing Yazidis might be evidence of the commission of the crime of genocide rather than the crime of inciting genocide.

3. Propaganda in Armed Conflict

International law applicable in armed conflict also has rules that apply to propaganda. For example, the crime of incitement to genocide can be committed during armed conflict.¹⁷ International humanitarian law (IHL) prohibits propaganda that is perfidious-information that falsely communicates to enemy forces they are entitled to protection under IHL and results in death, injury, or capture of such forces.¹⁸ Otherwise, IHL permits propaganda, even propaganda that conveys false information to enemy soldiers and civilians in order to undermine their morale and willingness to fight. IHL treats such propaganda as a legal "ruse of war."¹⁹

The Islamic State videos that depict atrocities are propaganda, but they are not perfidious under IHL. If these videos involve neither incitement to genocide nor perfidious acts, then it would appear they do not violate what are thought to be IHL's traditional regulations of propaganda during armed conflicts. The argument that the Islamic State's atrocity videos constitute war crimes must, therefore, have its basis in IHL rules not typically associated with acts of propaganda undertaken during armed conflict.

III. Prohibitions and Crimes in International Humanitarian Law

1. The Atrocity Videos and Prohibitions in International Humanitarian Law

For both international and non-international armed conflicts, IHL in both treaty law and customary international law prohibits belligerents from engaging in:

- Acts that humiliate, degrade, or otherwise violate a person's dignity;²⁰
- Acts or threats of violence the primary purpose of which is to spread terror among civilians;²¹ and
- Measures or acts of terrorism directed at persons protected by IHL, including detained persons and civilians.²²

The Islamic State violates these prohibitions in producing and distributing online the atrocity videos.

8 Zelin, 9(4) (2015) Perspectives on Terrorism, p. 85 (85 et seq.).

9 Fidler, Countering Islamic State Exploitation of the Internet (CFR Cyber Brief, June 2015).

10 International Covenant on Civil and Political Rights, art. 20.

11 Convention on the Prevention and Punishment of the Crime of Genocide, art. III.

12 Council of Europe Convention on the Prevention of Terrorism, art. 5.

13 International Convention on the Elimination of All Forms of Racial Discrimination, art. 4.

14 Timmerman, 88 (2006) Int. Rev. of the Red Cross, pp. 838-843 (823 et seq.).

15 Rome Statute of the International Criminal Court, art. 25.

16 Cumming-Bruce, New York Times, 19 March 2015, <http://www.nytimes.com/2015/03/20/world/middleeast/isis-genocide-yazidis-iraq-un-pan-el.html>.

17 Rome Statute, art. 25.

18 International Committee of the Red Cross, Customary International Humanitarian Law Database [hereinafter ICRC, Customary IHL Database], Rule 65 (perfidy).

19 *Ibid.*, Rule 57 (ruses of war).

20 *Ibid.*, Rule 87 (humane treatment).

21 *Ibid.*, Rule 2 (violence aimed at spreading fear among the civilian population).

22 Geneva Convention (IV) Relative to the Protection of the Civilians in Time of War, art. 33; and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), art. 4.

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a) Humiliation, Degradation, and Other Violation of Dignity

The prohibition on acts that humiliate, degrade, or otherwise violate a person's dignity is anchored in the principle that civilians and persons *hors de combat* must be treated humanely during armed conflict. This principle reflects the importance of respecting each person's human dignity in times of war. In previous and current armed conflicts, countries and IHL experts have argued that forcing prisoners of war to parade in public²³ or on television to make coerced statements²⁴ violated the humane treatment principle. The scope of this principle includes protecting a person's dignity after death, as evidenced by specific IHL rules on despoiling or mutilating the dead.²⁵

Making videos that record the execution of individuals captured or under the control of the Islamic State and distributing those videos online for global viewing violates the dignity of the murdered individuals. Traditionally, protecting a person's dignity after death during armed conflict has focused on ensuring appropriate treatment of the physical remains.²⁶ However, the underlying principles of humane treatment and human dignity are not restricted in application only to the remains of the dead. The Islamic State's use of digital recordings disseminated online constitutes a new way of despoiling an individual and violating his or her dignity, potentially thousands of times as people view the killings in places far from the theatre of battle.

b) Acts or Threats of Violence Intended to Spread Terror Among Civilians

IHL also prohibits in international and non-international armed conflicts acts or threats of violence the primary purpose of which is to spread terror among civilians.²⁷ This prohibition arises from the general principle of civilian immunity from attacks during armed conflict.²⁸ Acts of violence, or threats of violence, that violate this prohibition come in many forms, and include, for example, indiscriminate attacks on civilian populations, torture, and rape.²⁹

The making and online distribution of the atrocity videos demonstrate that the Islamic State uses them to send violence-laden messages to civilian populations about what happens to those who oppose it. The videos serve:

as a reminder of the group's self-proclaimed supremacy and its ability to exact revenge on behalf of Sunni Muslims against the Crusader-Shi'ite-Zionist conspiracy allegedly mounted against them. [The] Islamic State's most brutal propaganda serves as a vehicle by which to convey both vengeance and supremacy.... [T]his content is not just aimed at

declared supporters. In fact, they are not even the primary target audience. Rather, this material is intended for Islamic State's active or potential opponents.³⁰

As such, the videos constitute threats of violence intended to spread terror among civilians. The videos serve other objectives, including attracting new adherents and fighters, but this recruitment purpose thrives on demonstrating how the Islamic State strikes fear into those standing in its way. Thus, the primary purpose of the threats of violence the videos represent can be interpreted as spreading terror among civilian populations under, or potentially under, the control of the Islamic State. Experts have recognized that use of digital and cyber technologies to communicate threats of violence in order to terrorize civilians can violate IHL.³¹

c) Measures or Acts of Terrorism Directed at Protected Persons

Further, law of armed conflict outlaws measures or acts of terrorism that are directed at persons protected by IHL, including detainees and civilians.³² This principle differs from the prohibition on acts of threats of violence intended to spread terror among civilians because, first, it applies to more than acts of threats of violence and, second, it covers more than civilians.³³ In communicating what potentially happens to captured enemy combatants, the videos record acts of violence intended to terrorize persons already in custody or who might be detained. Prisoners of the Islamic State freed during a military raid by U.S. and Kurdish forces in Iraq reported that their prison cell had a television "that was used to play Islamic State videos of beheadings, and the captives were forced to watch."³⁴ Similarly, the contents of the videos and the manner in which the Islamic State exploits them through online distribution makes the videos measures or instruments of terror directed at civilians protected by IHL.

2. The Atrocity Videos and War Crimes under International Law

In certain circumstances, violations of IHL prohibitions constitute war crimes for which individuals can be held personally accountable. The statutes and jurisprudence of international criminal tribunals from the International Military Tribunal at Nuremberg to the ICC have identified war crimes, delineated their legal elements, and applied the crimes to specific incidents. Under this law, a strong case can be made that the making and distribution of the atrocity videos is a war crime.

a) Outrages on Personal Dignity

As provided in the Rome Statute establishing the ICC, "[c]ommitting outrages upon personal dignity, in particular humiliating and degrading treatment" is a war

23 Schreck, Radio Free Europe/Radio Liberty, 20 October 2015, <http://www.rferl.org/content/ukraine-pow-march-war-crime/26548667.html>.

24 Barron, New York Times, 21 January 1991, <http://www.nytimes.com/1991/01/21/world/war-gulf-prisoners-iraqi-tv-broadcasts-interviews-wi-th-7-identified-allied.html>.

25 ICRC, Customary IHL Database, Rule 113 (treatment of the dead).

26 *Ibid.*

27 Protocol Additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts (Additional Protocol I), art. 51; and Additional Protocol II, art. 13.

28 ICRC, Customary IHL Database, Rule 1 (the principles of distinction between civilians and combatants).

29 *Ibid.*

30 Winter, pp. 22-23 (see fn 7).

31 Tallinn Manual on the International Law Applicable to Cyber Warfare (2013), p. 124.

32 See note 21.

33 ICRC, Customary IHL Database, Rule 2 (violence aimed at spreading fear among the civilian population).

34 Gordon, New York Times, 27 October 2015, http://www.nytimes.com/2015/10/28/world/middleeast/freed-prisoners-of-isis-tell-of-beatings-a-nd-torture.html?emc=edit_th_20151028&nl=todaysheadlines&nid=60638548&_r=0.

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crime as a “serious violation[] of the laws and customs applicable in international armed conflict” and as a violation of Common Article 3 of the Geneva Conventions of 1949 applicable to non-international armed conflict.³⁵ The statutes of other international criminal tribunals, such as the International Criminal Tribunal for Rwanda (ICTR),³⁶ also recognized this war crime. The ICC recognizes that the crime of committing outrages on personal dignity can occur if the person is dead.³⁷

Application of this crime has focused on physical acts to dead bodies, such as mutilation, despoliation, and pillaging.³⁸ However, the underlying objective informing this crime is the protection of a person’s dignity, and such dignity encompasses more than what happens to the body after death. Making and distributing videos that replay the gruesome, humiliating deaths of individuals violates the dignity of these persons, much in the same way that the coerced appearance of POWs in public or on television breaches the principle of humane treatment of persons who are *hors de combat*.

b) Acts or Threats of Violence Intended to Spread Terror Among Civilians

In terms of acts or threats of violence the primary purpose of which is to spread terror among civilians, the statute establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY) did not include such acts or threats as an express crime. Instead, the ICTY considered these acts or threats to be violations of the laws and customs of war, and, thus, a war crime under its statute.³⁹ The statutes establishing the ICTR⁴⁰ and the Special Tribunal for Sierra Leone⁴¹ both expressly included such acts or threats as a war crime. However, the Rome Statute does not do so for the ICC.

For an atrocity video to be a war crime following the ICTY’s jurisprudence, its making and distribution would have to be viewed as an intentional threat of violence against civilians made with the primary purpose of spreading terror among the civilian population.⁴² The elements of the crime do not require that the civilian population actually suffer terror. Nor must spreading terror be the only purpose; other objectives can exist, as long as spreading terror is the principal objective. ICTY cases involving this war crime involved acts of violence, such as indiscriminate shelling or sniper fire against civilian areas, rather than threats of violence.⁴³ The ICTR did not have any cases applying its statute’s inclusion of this war crime. Under the Rome Statute, threats of violence the primary purpose of which is spreading terror among civilians would only arise in sentencing individuals found guilty of crimes subject to the ICC’s jurisdiction.⁴⁴

c) Acts or Measures of Terrorism as War Crimes

Whether prohibited acts or measures of terrorism constitute war crimes is uncertain. The ICTY statute did not include such acts or measures as war crimes, nor did the ICTY face cases in which it had to determine whether acts or measures of terrorism were war crimes as violations of the laws and customs of war. The ICTR included such acts or measures as war crimes in its statute,⁴⁵ but it never applied this war crime in any case. The Rome Statute does not include acts or measures of terrorism as a war crime subject to ICC jurisdiction. Given the weak connection between the prohibition on acts or measures of terrorism and international criminal law, arguing that the atrocity videos are war crimes because they violate the prohibition would not be persuasive.

3. Individual Responsibility for War Crimes and the Atrocity Videos

Under IHL, individuals can be held personally responsible for committing war crimes. Under the Rome Statute, individuals are criminally responsible if they contribute to the commission of war crimes with the aim of furthering a group’s criminal activities or with the knowledge of the group’s intention to commit such crimes.⁴⁶ Under these rules of criminal responsibility, those acting with a common purpose in making and distributing the atrocity videos are criminally accountable even if they did not participate in killing people. The “straight to video” manner in which the Islamic State planned and perpetrated the recorded atrocities demonstrates that the people intentionally involved in producing and disseminating the videos to advance the Islamic State’s criminal activities contributed directly to the commission of the war crimes the videos constitute.

4. The Prohibition on Attacking Historic Monuments and International Criminal Law

The Islamic State has also produced and disseminated videos that record its destruction of historic monuments in Iraq and Syria.⁴⁷ IHL prohibits attacks against historical monuments,⁴⁸ and the Rome Statute makes directing such attacks a war crime in international and non-international armed conflict.⁴⁹ The ICC has issued an indictment against an individual for committing this war crime during armed conflict in Mali.⁵⁰

While the Islamic State’s destruction of historical monuments certainly qualifies as war crimes in international law, the making and distribution of videos recording the destruction could only be a war crime if such videos could be considered threats of violence the primary purpose of which is to spread terror in civilian populations. As disturbing as the Islamic State’s violence against historical monuments is, videos recording this violence would be hard to interpret as threats of violence against civilians primarily intended to terrorize them.

35 Rome Statute, art. 8 (b) & (c).

36 Statute of the International Criminal Tribunal for Rwanda, art. 4.

37 ICC, Elements of Crimes (2002), pp. 27, 33.

38 ICRC, Customary IHL Database, Rule 113 (treatment of the dead).

39 Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 3.

40 ICTR Statute, art. 4.

41 Agreement between the UN and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, art. 3.

42 ICTY, *Prosecutor v. Stanislav Galić*, 30 November 2006, Judgment on Appeal.

43 See *ibid.*

44 Cryer *et al.*, An Introduction to International Criminal Law and Procedure (2014).

45 ICTR Statute, art. 4.

46 Rome Statute, art. 25.

47 See McLaughlin, ABC News.com, 8 October 2015, <http://abcnews.go.com/International/video-shows-2000-year-arch-isis-destroyed-palmyra-story?id=34338007>.

48 ICRC, Customary IHL Database, Rule 38 (attacks against cultural property).

49 Rome Statute, art. 8 (b) & (e).

50 *Whiting*, Just Security, 29 September 2015, <https://www.justsecurity.org/26453/mali-icc-attacks-cultural-heritage/>.

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IV. Assessing the Argument that Atrocity Videos Constitute War Crimes

The novelty of arguing that the Islamic State violated IHL prohibitions and committed war crimes in making and distributing online the atrocity videos naturally invites skepticism and criticism at technical, philosophical, and political levels. Technically, lawyers might perceive the atrocity videos are outside key terms and concepts, such as personal dignity or threats of violence, used in treaties and customary international law to prohibit and criminalize certain activities in armed conflicts. States and tribunals have applied IHL and international criminal law on protecting the dignity of dead persons more narrowly than the atrocity video argument does. Similarly, threats of violence the primary purpose of which is to spread terror among civilians have, to date, meant immediate threats of actual kinetic violence, rather than the more remote threat an atrocity video contains.

These counter-arguments connect to the philosophical concern that arguing the atrocity videos are, themselves, war crimes risks running afoul of the principle of *nullum crimen sine lege*, or no criminal punishment without law. Since the Nuremberg war crimes trials, this principle has played an important role in the development of international criminal law.⁵¹ The principle underscores the need to transform novel arguments about criminal behavior into clear, specific law that puts people on notice of their potential criminal responsibility.

From the political perspective, arguing that the atrocity videos constitute war crimes seems, first, to distract attention from the horrific crimes the videos record. Here, the importance of the videos is the evidence they provide of the commission of war crimes rather than the videos themselves representing criminal activity in armed conflict. Second, adding more war crimes to the long list of crimes already committed does not bring investigation and prosecution of Islamic State members closer to reality. Although calls have been made for the Security Council to refer the Islamic State to the ICC, the Security Council is not likely to do so. Any referral that is limited only to the actions of the Islamic State in the armed conflicts in Iraq and Syria would be criticized for ignoring alleged war crimes committed by other participants in these conflicts. But, these other participants include Russia and its client state, Syria, and the United States and its client state, Iraq—and neither Russia nor the United States would refer their involvement in these armed conflicts to the ICC. How we think about the atrocity videos will have no impact on this fundamentally political problem.

In response to these possible criticisms, the technical argument perhaps focuses too much on how war crimes have been applied to date rather than on the breadth of terms and concepts used in the relevant international law. The objective of protecting the dignity of individuals during armed conflicts plays out in many contexts because of the importance of this goal. The manner in which IHL and international criminal law deal with human dignity welcomes identifying new ways belligerents can violate such dignity, including the dignity of persons killed in war. Similarly, the centrality of protecting civilians during armed conflicts means that threats of violence intended to terrorize civilians should not be

read restrictively. Thus, the principle of *nullum crimen sine lege* is not at risk in asserting that the atrocity videos constitute war crimes.

This assertion does not lessen the seriousness of other war crimes committed by the Islamic State. Indeed, the focus on the videos highlights that the Islamic State is committing *atrocities* within the meaning of international law and is transforming those atrocities into other criminal behavior through the videos. A hallmark of IHL and international criminal law has been adaptation to how armed conflict evolves over time. Key principles, such as protecting individual dignity and civilian populations, have broad application because war is not static and new threats emerge as the technologies, tools, and techniques of warfare change. The Islamic State's atrocity videos represent something new that IHL and international criminal law should confront.

Taking the atrocity videos seriously as war crimes will not change the political calculations of the permanent members of the Security Council about referring the armed conflicts in Iraq and Syria to the ICC. The point of identifying how the Islamic State's exploitation of digital and cyber technologies in making and disseminating the atrocity videos produces war crimes is not to solve the riddle of geopolitics. Rather, the objective is to show that this unprecedented aspect of current armed conflicts needs international legal attention as part of the long-standing commitment to protecting humanitarian objectives in war.

V. Conclusion

Although headlines and news stories about gruesome Islamic State videos circulating online have declined, the Islamic State continues to make and disseminate globally digital recordings of its executions of detained persons and civilians.⁵² The Islamic State apparently believes that these videos remain potent propaganda for recruiting supporters and fighters and threatening and intimidating its adversaries. Western countries continue to struggle with how to deal with how the Islamic State harnesses digital and cyber technologies for propaganda and other purposes, and at the heart of this struggle is finding effective ways to counter this phenomenon without compromising liberal commitments to privacy and freedom of expression.

Seeing the Islamic State's atrocity videos as war violations of IHL and crimes does not involve this struggle. Outlawing and criminalizing this behavior are consistent with the values at the heart of IHL and international criminal law supported by liberal democracies around the world. Moving in this direction does not jeopardize any person's freedom of speech or privacy and puts the onus directly on the people responsible for recording atrocities and using the videos for purposes considered criminal in armed conflict. Indeed, the arguments made in this article resonate with one of the most fundamental tenets of the laws of war—the right of belligerents to adopt means of injuring the enemy is not unlimited.⁵³

⁵² Lesaca, Brookings Institution Tech Tank, 24 September 2015, <http://www.brookings.edu/blogs/techtank/posts/2015/09/24-isis-social-media-engagement> (analyzing Islamic State videos through September 2015).

⁵³ See Hague Convention (IV) Respecting the Laws and Customs of War on Land, Annex: Regulations Concerning the Laws and Customs of War on Land, art. 22.

⁵¹ See, for example, Rome Statute, art. 22.