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Legal Reasoning About Displacement and Responsibility: A Dialogue Between the Buddhist Monastic Discipline and IHL

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Legal Reasoning About Displacement and Responsibility: A Dialogue Between the Buddhist Monastic Discipline and IHL

Christina A. Kilby¹

Abstract

Civilian displacement is a common consequence of armed conflict with grave humanitarian implications. In this article, I analyze Buddhist codes of monastic discipline in order to illuminate how these legal traditions have reasoned about the significance of home and the harms of displacement. I then bring my findings into conversation with the legal reasoning that international humanitarian law (IHL) requires of parties to armed conflict whose decisions may result in displacement of civilians. I argue that both IHL and the Buddhist monastic codes take into account responsibility for the causes of harm, for direct harm, and for the reverberating fallout of harm. By exploring the ethical values and reasoning habits that these two traditions hold in common, Buddhist actors—in military and civil society—

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may strengthen their commitment to prevent displacement and to protect displaced people and their hosts during times of conflict.

IHL's Importance for the Displacement Crisis

At the end of 2022, the United Nations Office of the High Commissioner for Refugees estimated that more than 108 million people across the world were displaced from their homes (UNHCR). More than half of displaced people are internally displaced, which means that they have been forced or obliged to flee or to leave their homes or places of habitual residence but have not crossed an internationally recognized border. Without crossing an international border, their situation does not trigger the protective mechanisms of international refugee law. Furthermore, the majority of displaced people globally are forced to flee due to armed conflict where they live, and contexts of armed conflict often involve the breakdown of basic government services and sometimes a curtailment of rights. For people who are internally displaced due to conflict, the protection afforded to them by state laws and agencies may be severely limited. In many cases, international humanitarian law (IHL) provides the only meaningful legal protection on which displaced people can draw.

This reality lends a sense of urgency and significance to the role of IHL and its steward, the International Committee of the Red Cross (ICRC), in protecting displaced people and preventing and reducing displacement in times of armed conflict. IHL should be understood as a critical lever that can help change the trajectory of our current displacement crisis.

My current research, in collaboration with the ICRC's Global Affairs Team, addresses the interlocking roles that Buddhist teachings and IHL can play in mitigating the sufferings of displaced people in times of

armed conflict (ICRC “Project”). Approaching the topic of displacement from a Buddhist perspective confronts us with several interesting questions: as a tradition that prizes the monastic vocation of “going forth from home to homelessness,” how much value does the Buddhist tradition place on home? How much harm does the tradition ascribe to displacement, or loss of home? How can Buddhist teachings inform the application of IHL regarding conflict-induced displacement?

These questions are not merely speculative but are practically relevant for several sets of actors: for Buddhist religious leaders and civil society leaders, who are on the ground every day assisting displaced people and encouraging local communities to be generous to those in need; for Buddhist government leaders and policy makers, who decide which groups of displaced people will be provided state assistance and for how long; and for Buddhists in the military or non-state armed groups, whose professional duties obligate them to assess the severity of incidental civilian harm in attacks that are likely to cause displacement. A Buddhist exploration of displacement, even though it may not yield univocal answers to our questions, can help Buddhists operating at many levels of society strengthen their commitment to reduce the suffering of displacement in times of conflict.

Monastic and Military Discipline in Comparative Perspective

In this article, I consider Buddhist codes of monastic discipline in order to illuminate some ways in which these legal traditions have reasoned about the significance of home and the harms of displacement. I then bring my findings into conversation with the legal reasoning that IHL requires of parties to armed conflict whose decisions may result in displacement of civilians. In this exploration of place and displacement in the Buddhist

monastic codes I will investigate both the *content* of the codes and *habits of legal reasoning* that I identify in the codes.

The Buddhist monastic codes may at first glance seem unsuited to a dialogue with IHL because they are aimed at such high ethical conduct, far higher than is expected for lay people in peacetime, much less in times of war with all its moral compromises. However, despite the important differences between monastic and military life, there are also generative resonances between the two. Both monastics and military professionals play special roles in society—roles that are even marked by the uniforms that visually distinguish these professionals from ordinary citizens—and both are bound by cultures of strict discipline and by special rules that supersede the obligations of lay citizens. Additionally, both monastics and military professionals practice in environments of legal pluralism, where their particular rules of conduct are layered with other bodies of law issued by national and international bodies. Immersed in these legal pluralist environments, both monastic and military communities cultivate complex habits of legal reasoning.

Here, I hope to make the case that Buddhist monastic codes of discipline can in fact hold relevance for an IHL-focused discussion of displacement, and for two main reasons. First, the monastic codes—even though they are designed to support what is called the “homeless” life—nevertheless provide for the shelter and security of monastics, facilitating their basic dignity and humanity, which are also centrally important concepts in IHL (ICRC “What is IHL?”). The monastic codes offer minimal provisions for home and shelter that even those who have adopted lives of renunciation deserve; the codes provide relevant *content* on the importance of home and shelter for human dignity that can be useful for the application of IHL in contexts where civilian displacement is a possibility.

Second, the Buddhist monastic codes exhibit a high level of conscientiousness, or what in IHL is called “constant care” (ICRC “Rules” 15).

In many instances, when there is a rule of conduct in the *Vinayas* that prohibits a certain action, there may be several additional rules that are designed to prevent the causal factors that lead to the prohibited action. The codes attend exhaustively to the causes and conditions that facilitate unwholesome behavior, not merely to the behavior itself. The codes of discipline cultivate in the monastic community *habits of legal reasoning* that take responsibility for the root behaviors that cause harm, as well as for the consequences of those behaviors, requiring a practice of mindful analysis that can be useful for the application of IHL regarding constant care, precaution, advance warnings, and evaluating the proportionality of civilian harm against military advantage.

A note on our sources, before we begin: we have three distinct bodies of *Vinaya* (discipline) literature from the three living Buddhist monastic traditions: the Theravāda (South and Southeast Asian), Mūlasarvāstivāda (Tibetan, Mongolian, and Himalayan), and Dharmaguptaka (East Asian). The scale and complexity of this body of literature are significant; for example, the Mūlasarvāstivāda *Vinaya* (Tibetan *'dul ba*) alone numbers more than 13,000 folios (*'Dul ba*). Furthermore, even though the Buddhist *Vinayas* are the most visible legal texts in Buddhist monastic life, such that some scholars have made the term “Buddhist law” equivalent with the *Vinaya* literature (French 835), Buddhist monastics apply a range of legal sources beyond the *Vinayas* to their lives. These extra-*Vinaya* legal sources include commentarial literature to the *Vinayas*, monastic handbooks, monastic constitutions (Tibetan *bca' yig*), local monastic ordinances (Sanskrit *kriyākāras*), rules of purity (Chinese 禪苑清規 *chányuàn qīngguī*), and more. To add further complexity to the study of Buddhist monastic law, the *Vinaya* texts themselves are not merely legal codes. They encompass narratives, case studies, rebirth genealogies, and proverbs: a range of genres that inform legal practice in diverse ways and must be read with diverse methodologies. Finally, we should remember that monastic discipline is located not only in written documents, but also in what is “unwritten,

local, and contextual: the normative control and expectations emanating directly and indirectly from laity” (Schonthal xxiv). *Vinaya* is a living discipline shaped by its surrounding social and political contexts.

In this article, I do not have the capacity to address the enormous body of legal texts and contextual practices of Buddhism’s many monastic communities. Instead, to make a beginning of an exploration, here I rely primarily on the Theravāda *Pāṭimokkha* with some references to studies of Mūlasarvāstivāda and Chan *Vinaya* literature. There are many promising areas for future study regarding the relationship between the Buddhist monastic discipline and the legal tradition of IHL. I hope that others with scholarly as well as lived expertise in these traditions will undertake more in-depth studies in the future and that the current article inspires them in that direction.

The Buddhist Monastic Codes on Place and Displacement

To reframe our initial questions about displacement by focusing specifically on the monastic codes of discipline, we may ask: how much value do the Buddhist *Vinayas* ascribe to place and home? How much harm do they ascribe to displacement? How can the *Vinayas* inform the application of IHL regarding conflict-induced displacement?

The three Buddhist monastic traditions whose lineages are alive today differ somewhat from one another, but they each provide Buddhist monastics with the “four requisites” of food, shelter, clothing, and medicine. These basic provisions support the safety and comfort of members of the order. Notably, they set Buddhist monastics in contrast with stricter Indian ascetic orders of the Buddha’s day that required members to

wander naked or to sleep out of doors.² A story in the *Mūlasarvāstivāda Vinaya* relates,

When the Blessed One had trained the first five monks they lived in the forest, but while living there they were vulnerable to lions, tigers, leopards, and hyenas. The Blessed One then thought to himself: ‘Where have the disciples of past Fully and Completely Awakened Buddhas made their home?’ He saw that it was in a *vihāra*. The gods also told the Blessed One that it was so. (Schopen “Hierarchy” 108)

In the judgement of the Buddha, who sought a middle way between the extremes of indulgence and deprivation, shelter is a basic security provision, essential not only for lay people but also for those who embrace a so-called “homeless” life. His decision to provide homes for his monastic disciples set the Buddha and his community apart.

Home and habitat

What considerations do the *Vinayas* make regarding “home”? Specific regulations in the *Vinaya* literature govern the construction of monastic dwellings in terms of the proper choice of building sites, materials to be used, and the size and simplicity of structures. According to the Theravāda *Pāṭimokkha*, sites for monastic dwellings should be “free of disturbances” and have “adequate space” (*Bhikkhu Pāṭimokkha*, Saṅghādisesa rules 6-7). Thānissaro Bhikkhu, drawing from the *Vinaya* commentarial literature, explains that:

² Some Buddhist monastics (such as masters in the Thai forest tradition or yogic masters in the Tibetan-Himalayan tradition) may opt to live in the wilderness without the comforts of shelter, in order more rigorously to pursue their meditative goals. However, this level of asceticism is voluntary, not an expectation set by the Buddha.

A site free of disturbances is (1) not the abode of such creatures as termites, ants, or rats who might do harm to the building. (2) It is not the abode of those—such as snakes, scorpions, tigers, lions, elephants, or bears—who might do harm to its inhabitant. The Commentary states that the [Sutta] Vibhanga’s purpose in forbidding a bhikkhu from building on a site where termites and other small animals have their home is to show compassion to these and other small creatures like them by not destroying their nests. As for the stipulation against building where snakes and other dangerous animals live, this also extends, it says, to the areas where they regularly forage for food. . . .

Adequate space means that there is enough room on the site for a yoked wagon or a man carrying a ladder to go around the proposed hut. . . . The Sub-commentary states that the stipulation for adequate space is so that the hut will not be built on the edge of a precipice or next to a cliff wall, and the Vinaya-mukha notes that the Vibhanga here is following the *Laws of Manu* (an ancient Indian legal text) in ensuring that the dwelling not be built right against someone else’s property. (*Buddhist Monastic Code I* 128)

The considerations undergirding these rules about shelter for monastics involve safety and comfort (not building a hut in a place where there are dangerous poisonous animals or many annoying insects),³ sustainability (assessing environmental factors that will allow the building to last), and compassion for the site’s animal inhabitants (refraining from destroying animals’ habitats and food sources), but also respect for the private

³ For a fascinating discussion of how the Vinaya addresses these creatures, refer to Hierman, Ann, “How to Deal with Dangerous and Annoying Animals: A Vinaya Perspective,” *Religions* 2019, 10, 113.

property of other people, because infringing on others' property would not only harm the monastic community's reputation but may even invite legal action against them.

Respect for private property also informed the rule that entails expulsion from the sangha “should any bhikkhu, in what is reckoned a theft, take what is not given from an inhabited area or from the wilderness,” established when the monk Dhaniya built himself a meditation hut out of wood that had not been properly permitted by the king (Heim 159).⁴ Stories like this one that place the sangha in a legally precarious position may explain why in the Theravāda *Pāṭimokkha*, before building a hut or dwelling, a bhikkhu must “assemble the bhikkhus to designate the site” (*Bhikkhu Pāṭimokkha*, Saṅghādisesa rules 6-7). The monastic community ensures that the building site is legitimately acquired without encroaching on the property of others. The *Pāṭimokkha* also attends to crops: not building where there are crops (*Bhikkhu Pāṭimokkha*, Pācittiya rule 19) and not polluting crops with spit, urine, or feces (*Bhikkhu Pāṭimokkha*, Sekhyia rule 74). The *Chanyuan Qinggui* are particularly attentive to the protection of others' cropland and the delineation of boundaries between monastic fields and other property because monastics in the Chan tradition have often engaged in agriculture (Yifa 166). Just as the *Vinayas* make provisions for home and shelter for Buddhist monastics, they are also keenly aware that “home” is contingent on legal, economic, and social relationships that require a degree of respect and compromise with others. The principles of assessment, consideration, and compromise exemplified in the *Vinaya* literature can inform the siting and construction of camps for displaced people, in light of the aims of safety, sustainability, and the needs and rights of host communities.

⁴This narrative relates to the Theravāda *Pāṭimokkha* Pārājika rule 2.

Danger and security

The Buddhist monastic codes account for the dangers of being away from home and on the road. There are rules in each of the three *Vinaya* traditions that make special exceptions for monastics who are traveling and subjected to heightened risks. In the Theravāda *Bhikkhu Pāṭimokkha*, for example, monastics are instructed to travel in groups where possible and are permitted to engage in behaviors while traveling that otherwise would not be permitted, such as a bhikkhu (male monastic) traveling with a bhikkhunī (female monastic) when “the road is to be traveled by caravan and is considered dubious and risky” (Pācittiya rule 27). The Theravāda *Bhikkhunī Pāṭimokkha* even prohibits bhikkhunīs from undertaking a journey without joining a merchant caravan, in a territory “considered dubious and risky” (Pācittiya rules 37-38). Here the *vinaya* is pragmatic in its assessment of the need not only for shelter, but also for security—two connected needs that remain at the center of the displacement crisis today. The *Pāṭimokkha* is attuned to the increased vulnerability that female monastics face in contexts of insecurity, just as IHL is attuned to the security needs of certain groups, including women, children, the elderly, the displaced, and the sick and wounded.

Not only does traveling away from home entail heightened risk, but staying in place can also be risky if environmental factors render home unsafe. As further evidence of the security functions of the *Vinaya*, the Buddha allows for exceptions when encountering dangerous obstacles during the monsoon season retreat. In the Theravāda *Pāṭimokkha*, breaking the rains retreat is without offense if practitioners encounter danger to their well-being, such as being “harassed by beasts who seize and attack them, harassed by creeping things who bite and attack them, harassed by criminals who rob and beat them, or harassed by demons who possess them and zap their vitality” (Thānissaro Bhikkhu *Buddhist Monastic Code II* 138-139). Thānissaro Bhikkhu clarifies that “With regard to the beasts, the

Commentary notes that ‘seize and attack’ also includes cases where the beasts, having surrounded one, chase one away, frighten one, or kill someone else in the vicinity” (ibid.). Reasonable evidence of danger is enough to justify breaking the retreat; one needn’t get to the point of shedding blood. There are also provisions for bhikkhus on retreat whose dwellings are burned or flooded, with permission for them to leave what is otherwise a strictly residential retreat and to pursue their four requisites of food, shelter, clothing, and medicine elsewhere. Sometimes even a dangerous road is safer than home, a truth that displaced people know all too well.

Although outside the *Vinaya* literature, the *Kacchapa-jātaka* is a story in the Pāli canon that relates both to the monastic life and to the theme of displacement. The story is about a tortoise who was reluctant to leave his home in the mud, even though his lake was drying up. Other animals were migrating to a nearby river, but he refused to budge. As a result, while burying himself stubbornly in the mud, he was accidentally struck by the spade of a potter collecting clay; this potter was the Buddha in a previous lifetime. As the tortoise lay dying, the potter condemned the tortoise for being so attached to his home that it cost him his life. (Tortoises and turtles are known for being so attached to the place they are born that they can die of stress if they are removed more than a mile from their homes.)

The explanatory verses at the end of this story say that the tale is about the monastic life, about renouncing home for the sake of a greater refuge and safety in the *dhamma-vinaya*, but this tale also reinforces the commonsense idea that one must flee one’s home and habitat when conditions are unsafe. This story portrays those who migrate as models of non-attachment and validates their willingness to “go where there is life,” as the story puts it (*Kacchapa-jātaka* 56). This positive attribution can help mitigate the stigma that displaced people are a social burden or a security

threat, stigmas that can leave them even more vulnerable to harm. The *Kacchapa-jātaka* also gestures toward the need for humanitarian corridors and provisions for people on the move seeking safety, so that they may “go where there is life.”

Eviction and displacement

More closely related to the act of forced displacement, the monastic codes prohibit monastics from intruding upon other monastics’ dwellings and from evicting one another.⁵ There are rules in place to instruct monastics how to mark certain dwelling places as their own, as well as rules requiring them to forfeit their dwellings in community-owned spaces when vacating them (such as *Bhikkhunī Pāṭimokkha* rule 48) and erasing their marks to enable other monastics to use the spaces (*Dharmaguptaka Vinaya Varṣa Skandhaka* T.22, p.831c). Interestingly, in the *Dharmaguptaka Vinaya*, these instructions are paired with a story about a rebellion at the border of a country that displaced many monastics, causing crowding in a nearby monastery, a reminder that for much of Buddhist history, monasteries have served as sites of refuge in times of conflict or disaster, as they do today in Myanmar for internally displaced people.

In the monastic codes we also find a sense of responsibility and duty to make restitution for the accidental displacement of local animals and spirits. According to the *Suttavibhanga*, the monastic precept against injury to living plants came about because monks in one region were cutting down trees to build their huts (Thānissaro *Buddhist Monastic Code I* 272). One of those trees was home to a tree spirit and her child. When a monk struck the tree, he unknowingly struck the arm of her child.

⁵ Rules relevant to monastic evictions include *Bhikkhu Pāṭimokkha Pācittiya* rules 16 and 17, *Bhikkhunī Pāṭimokkha Pācittiya* rules 35, 112, and 113, and *Dharmaguptaka Vinaya Varṣa Skandhaka* T.22, p.831a.

Distraught, the mother tree spirit decided to approach the Buddha, who found a vacant tree for her and her son to inhabit. The stories usually portray her new home as a better tree than the first tree: the Buddha's restitution for her losses was generous.

Including local inhabitants

The Mūlasarvāstivāda *vinaya* acknowledges and accounts for the local protector deities (Tibetan *srung ma*) who inhabit the land where a monastery is built. According to that *vinaya* tradition, a special verse is to be recited daily for the local *deva* of the monastery, and when monastics travel, they should recite a verse for the *deva* of any well or spring they use for drawing water (Schopen "Counting the Buddha" 380). When monastics gather to stay in a particular place for the rains retreat, each member agrees to be "counted in" and bound by the local monastic ordinances by taking a counting stick. The sticks are then placed in a box and counted each fortnight confessional meeting to take attendance. In the Mūlasarvāstivāda *vinaya*, the local deity of that place also receives a counting stick, indicating that the deity's presence is acknowledged and accounted for—and perhaps also encouraging the deity's cooperation with the ordinances. This ritual procedure indicates respect for the prior inhabitants of a locale and enacts an inclusive rather than dispossessive posture toward these "others."

There is also a story in the Mūlasarvāstivāda *vinaya* about the founding of Jetavana Monastery, which a lay donor built as an offering to the Buddha on land that he had deceptively acquired from a local prince (Schopen "Hierarchy and Housing" 117). When Śāriputra and his group of bhikkhus were invited to move in, a rival religious order who went for alms rounds in that locale were worried about being displaced. They explained that had already divided up the towns for alms rounds; Rājagṛha was Gautama Buddha's and Śrāvastī was theirs. The lay donor replied that

“you may have divided up the towns [for alms rounds], but not my private property. I will have a religious foundation built for whomever I want” (ibid. 119). The rival group cried out to the donor, “You, householder, have completely cut off all the foundations of our livelihood. Have some pity on us! We will work for wages on your *vihāra*. We have been here a long time. Surely you will not make us abandon our country!” (121). While the donor wasn’t particularly moved, Śāriputra considered their plight kindly by contemplating the questions “do they have some roots of merit, or do they not?” Seeing that the rival religious group had roots of merit, he then asked, “on whom are they dependent?—me myself” (122). Reasoning thus, he offered them jobs on the *vihara* property. While this story doesn’t take a clear position on whether their displacement was legitimate, it does take a clear position on the importance of compromise and of including prior inhabitants of the place in order to enable their livelihood, while also honoring the needs and rights of the host.

To summarize this overview, the Buddhist codes of discipline for male and female monastics have much to say about place and displacement. They take both implicit and explicit positions on issues such as the essential importance of shelter and security; the dangers of being on the road or away from home; the need to migrate when local dangers emerge; respect for private property, especially that of lay people; acknowledgement of and cooperation with local inhabitants of a territory; the duty to avoid displacing others from their dwellings, whether they are religious rivals, *devas*, animals, or insects; and the duty to take responsibility and make generous restitution when displacement occurs. Each of these themes, while there is room for debate within them, can contribute to a Buddhist ethical perspective on the importance of place and the sufferings of displacement.

In IHL, we find similar concerns about the importance of home and shelter for human dignity, the legal limits on forced displacement, the

humane treatment of displaced persons, the protection of displaced people's right of voluntary return, and the protection of the property rights of the displaced:

IHL expressly prohibits parties to an armed conflict from forcibly displacing civilians in both international and non-international armed conflicts, unless the security of the civilians involved or imperative military reasons so demand (*GC IV* Articles 49 and 147; *AP I* Article 85(4)(a); *AP II* Article 17; *CIHL* Rule 129. See also *AP I* Articles 51(7) and 78(1) and *AP II* Article 4(3)(e)). Like other rules of IHL that can prevent displacement from occurring in the first place, this prohibition also protects civilians against the risk of secondary displacement. Furthermore, internally displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. (*GC IV* Article 49 and *CIHL* Rule 132) (ICRC "Internally Displaced Persons" 3)

We also find in IHL habits of legal reasoning about actions that are likely to cause human displacement, habits that resonate with the way the *Vinayas* consider displacing animals.

Displacement as Equal in Penalty to Killing

The ethic of constant care modeled in the *Vinayas* shows us not only that shelter and security are necessary for well-being, but also that preventing the causes of harm is weighed just as importantly as preventing direct harm. The *Vinayas* are highly attuned to the fact that home and habitat are critical to survival. Monastics are enjoined to exhibit non-violence not

only toward animals but toward their habitats, the necessary conditions for their life.

The *Vinayas* treat several instances of destroying animal homes or displacing them from their habitats as equal in penalty to killing animals directly. To quote from the Theravāda *Bhikkhunī Pāṭimokkha* (with equivalent rules from the *Bhikkhu Pāṭimokkha* in brackets):

106 [10]. Should any bhikkhunī dig soil or have it dug, it is to be confessed.

116 [20]. Should any bhikkhunī knowingly pour water containing living beings—or have it poured—on grass or on clay, it is to be confessed.

142 [61]. Should any bhikkhunī intentionally deprive an animal of life, it is to be confessed.

143 [62]. Should any bhikkhunī knowingly make use of water containing living beings, it is to be confessed.

The prohibitions against using water containing living beings is manifested in the Chan tradition of monastics carrying water filters to remove any small beings before the water is used. What is significant here is that to “intentionally deprive an animal of life” entails the same penalty and consequences as either destroying a habitat or displacing an animal from it. There is a strong conviction conveyed in these rules that when the causes for others’ harm can be reasonably traced to a prior action, a monastic is equally responsible for his or her prior actions that serve as later causes for harm. This is the heart of the lifestyle of “constant care” exemplified in the *Vinayas*.

Responsibility for Causes and Consequences of Displacement: The *Vinayas* in Dialogue with IHL

In IHL, parties to a conflict are prohibited not only from “ordering” a population’s removal or “forcibly transferring” people,⁶ but also from taking actions that serve as direct causes for displacement.⁷ Some of these causes of displacement—such as cutting off water supply or food transport, destroying civilian homes, damaging critical infrastructure, or terrorizing the local population—are already illegal in their own right (as primary objectives). Other actions that lead to civilian displacement may not be explicitly prohibited but are nonetheless foreseeable causes of displacement for which military decision-makers must take responsibility.

Although military attacks that target civilians or whose primary objective is to displace civilians are illegal under IHL, many attacks that cause civilian displacement fall in a gray area where the attack’s legality is not objectively clear. The principle of proportionality is the mechanism in IHL that helps to guide decision-makers through this gray area of legality, as described in rule 14 of the ICRC’s study of customary IHL: “Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited” (ICRC “Rules” 14). Assessing the proportional relationship between the “concrete and direct military advantage anticipated” and incidental civilian harm is a notoriously ambiguous area of IHL, one that cannot rely on a simple mathematical

⁶ The exceptions to this prohibition are when “the security of the civilians involved or imperative military reasons so demand.” ICRC customary study, rule 129. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule129>. Accessed on 20 June 2023.

⁷ IHL involves a balance between humanity and military necessity; the prohibitions against displacement are not absolute but must be weighed against military necessity, while always attending to the distinction between combatants and those who are not or no longer in the fight and while preserving the humanity of those affected.

formula, but one that instead requires a “value judgment,” which makes decision-making in conflict zones more complex, but which also leaves space for Buddhist values to help guide decision-makers whose actions on the battlefield have the potential to both cause and prevent enormous suffering (Cohen and Zlotogorski 7).

The ICRC’s report on the *Gendered Impacts of Armed Conflict* confirms that “proportionality assessments must consider incidental civilian harm that is foreseeable—for example, the spread of disease due to incidental damage to municipal sewage systems in an attack” (ICRC *Gendered Impacts* 16). Just as Buddhist monastics take legal responsibility for damaging habitats or displacing animals because such actions lead to foreseeable consequences of harm, military personnel must take legal responsibility for the foreseeable consequences of their actions—for example, fighting in close proximity to villages or cities—that are likely to cause human displacement.

The same ICRC report also emphasizes the importance of “the military practitioner’s understanding of the kind of harm that might result from an attack. . . including the indirect or ‘reverberating’ effects, that may be expected” (*Gendered Impacts* 17). Regarding displacement, this means that decision-makers in times of conflict should consider not only how their actions might lead to displacement, but also how the displacement they may cause will lead to a variety of other forms of harm. We know a lot about the foreseeable, indirect harms of displacement:

(A) We know that displacement subjects people to a much higher risk of violence, including sexual violence; at least 1 in 5 refugee women have experienced sexual violence, for example (Vu et al.).

(B) We know that rates of child marriage and forced marriage increase significantly in certain contexts of displace-

ment because marriage is viewed in many communities as a security mechanism, even though it poses obstacles to children's education and health (Goers et al).

(C) Loss of civilian property and the loss of the year's harvest are well documented implications of displacement whose effects can be felt for a lifetime, or even generations.

(D) Family separation is a great risk among displaced populations. IHL customary rule 131 requires that civilians affected by conflict are provided "satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated" (ICRC "Rules" 131), and the Fourth Geneva Convention also makes strong commitments toward respecting family life and protecting the unity of families (ICRC "Internally Displaced Persons" 5). In reality, parties to armed conflict often do not fulfill these requirements. The ICRC works to restore missing family links for thousands of people every year. Family separation is a reality of displacement and must be factored into assessments of civilian harm.

(E) And finally, when civilians are compelled to flee their homes, we must account for the fact that some cannot flee as easily as others. The disabled, ill, elderly, young children, and their (usually female) caregivers all face additional risks and difficulties in situations where flight becomes necessary (ICRC "Gendered Impacts" 19). These groups are even more vulnerable when on the road, and if they are unable to flee, they remain home in a conflict zone while their community structures of support have disappeared.

Decision-makers in contexts of armed conflict must weigh the harms of displacement, its causes, and its consequences very heavily. The principles of “constant care” and “foreseeable precaution” in IHL enjoin these decision-makers to minimize attacks that cause displacement because of the severe immediate and reverberating harms that displacement causes.

Both the Buddhist *Vinayas* and IHL are legal reasoning traditions that take into account responsibility for the causes of harm, for direct harm, and for the reverberating consequences of harm. Displacement is one critical example of harm that is linked to many further consequences of harm, including loss of property, loss of family members, and loss of life.

Conclusion

Just as Buddhist monastics carefully balance the harms (toward insects, animals, plants, and *devas*) inherent to daily life with the requirements of their spiritual duties, so must parties to armed conflict balance the harms inherent to war with their obligations of restraint, precaution, and advance warnings under IHL. At their best, monastics and military personnel both entrust themselves to livelihoods of constant care and vigilance as they perform their respective roles in society, taking responsibility for harm, the causes of harm, and the reverberating consequences of harm as they serve causes greater than their own individual well-being with discipline and exactitude. Further dialogue between the Buddhist monastic discipline and IHL promises to illuminate the ethical values and reasoning habits these two traditions hold in common and to motivate Buddhist actors—in both military and civil society—to analyze more thoroughly the causes and consequences of displacement in order to reduce and prevent conflict-induced displacement.

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