"LAW OF WARCRAFT:" NEW APPROACHES TO GENERATING RESPECT FOR THE LAW

This panel was convened at 10:45 am, Friday, April 11, by its moderator, Elizabeth Stubbins Bates of the SOAS, University of London, who introduced the panelists: Vincent Bernard of the International Committee of the Red Cross Forum for Integration and Promotion of the Law; Laurie Blank of Emory University Law School; David E. Graham of the U.S. Army Judge Advocate General's Legal Center and School; and Brad Gutierrez of the American Red Cross.

Summary of Panel*

Elizabeth Stubbins Bates

Good morning and welcome to the panel on "'Law of Warcraft:' New Approaches to Generating Respect for the Law." States parties to the four Geneva Conventions and numerous other international humanitarian law (IHL) instruments are obliged to disseminate IHL as widely as possible, including to the civilian population, and in particular to integrate the text of the four Geneva Conventions, and these other instruments, into programs of military instruction and training. The International Committee of the Red Cross (ICRC) commentary to these provisions sees this dual obligation—dissemination and training—as logically prior to the obligation in Common Article 1 to the four Geneva Conventions—to respect and ensure respect for the law in all circumstances.

Yet empirical evidence is lacking as to whether the dissemination which is clearly necessary is sufficient to ensure respect for IHL or—in the language of this Annual Meeting—whether it is effective. Indeed, existing efforts have proven ineffective. With this in mind, innovative methods have recently been developed using technological visual and social media, including virtual-reality training tools, revised military training, and law school clinics on IHL. These innovative methods are the subject of our panel today, and in which our four panelists are expert.

The first part of this panel concerns theoretical and conceptual questions about dissemination and the extent to which dissemination is sufficient to promote compliance with IHL. How do you identify dissemination? What is its potential, and what are its limits in terms of ensuring respect for IHL?

Vincent Bernard

Dissemination in its classic form, with information leaflets, with PowerPoints, with foreign delegates telling the military to respect the law, is not sufficient. Dissemination needs to be part of a broader prevention approach, in which prevention stands for creating and maintaining an environment conducive for the respect of the law. An integrated approach is hence required, in which dissemination is a necessary prerequisite enabling dialogue.

David E. Graham

With respect to the military, dissemination definitely speaks to training and instruction. The drafters intended that the Geneva Conventions be included in the instruction program

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provided to the military, and stated that this instruction should be tailored to the various ranks within the military. From the military's perspective, dissemination also extends to effective training not only in the Conventions, but—as the years have gone by—in the law of armed conflict (LOAC) as a whole.

One of the limitations inherent in the obligation to disseminate is that it is optional with respect to dissemination to the general populace. The drafters were wise enough to understand the federal state system and to appreciate the fact that a federal government could not dictate to states what they must include in their state educational curriculum. Additionally, I would note that even the most sophisticated LOAC program will not prevent all violations of the law of armed conflict. Will it help? Will it instruct? Will it make the law of armed conflict relevant to individuals on the battlefield? Absolutely. But I am certain that even with the most developed LOAC programs, we will never be able to completely prevent LOAC violations from occurring.

Laurie Blank

The law of war is a dynamic and constantly developing institution that has to keep up with the times. Indeed, there are lots of people outside the military who are deeply engaged with this body of law and with the military in terms of its use of IHL and LOAC.

We can think about law of war in three key strands: training and education, implementation, and accountability. The law cannot function unless all three of those are integrated and working together. Dissemination has to talk to all of these three strands. Even though training the military seems to fall directly in ''training and education,'' it enables implementation. It also enables understanding when implementation is not working. It also enables effective mechanisms for accountability.

Over the last couple of decades we have witnessed the important role of an engaged citizenry concerned with what states do, how they fight, whether they fight, with whom they fight, and how we talk about these issues. To develop the ability to have that sophisticated, useful, and productive conversation, we must avoid thinking about the world in a dichotomous manner in which dissemination would essentially be reduced to external lawyers teaching the military. Indeed, policymakers also need to be deeply steeped in how the law works; but everything really begins with the ability of people to have a preliminary understanding that there is law in war. As of today, that simple yet crucial statement is far from being known by all.

The potential for dissemination is vast. And yet it should not be thought of as a monolithic entity. The crucial question is not so much: ''How do we disseminate and to whom?'' so much as: ''How do we disseminate differently for each of these particular groups?'' Dissemination must be multi-pronged.

Elizabeth Stubbins Bates

The American Red Cross (ARC) conducted a survey in February 2011 on the extent to which American civilians understood IHL. Fifty-five percent of adult respondents were somewhat to very familiar with the Geneva Conventions, but 51% also thought it acceptable to torture enemy soldiers. What are your thoughts on dissemination to the civilian population? Do the words ''as widely as possible'' make it optional or compulsory?

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Brad Gutierrez

As a national society, we do have a responsibility in the United States to teach our citizens about IHL. This is an obligation laid out in the charter of the American Red Cross (ARC), and it is also laid out as auxiliary to our government and in partnership with the ICRC through the commentaries to the Geneva Conventions and otherwise. The ARC has a very active dissemination program, which also has its limits: the United States has fifty states with fifty different academic systems. This has put pressure on what we were using as a curriculum device, which consisted of trying to get teachers to integrate into a single program something that is considered as an optional piece by all fifty state systems. This method has proven challenging and not overwhelmingly effective. Yet the 2011 ARC survey shows that 80% of the youth want to know more about IHL. This result is a reaffirmation of the fact that there is a market and a demand out there, and that we owe it to the American population to fulfil our obligation to disseminate and to do a better job at it.

With this in mind, we revamped our IHL program and structured it into three pillars, or target audiences: (1) high school groups and collegiate students; (2) young professionals and law school students; and (3) professionals. The program consists of classroom activities, seminars, panels, moot court competitions, and refugee simulations, with an emphasis on learning through hands-on experience throughout. The idea is to take the law as it is written and make it experiential. This is how the ARC adopts a multifaceted approach to dissemination, one of its core businesses.

Elizabeth Stubbins Bates

Is there a difference between international and non-international armed conflict? Are dissemination and training required in each case? According to Protocol II,[1] it appears only dissemination is required.

David E. Graham

With respect to the question of whether there is a necessity for training in Protocol II, an effective LOAC training program will provide for a solid knowledge of the basic principles applicable in non-international armed conflict. Of course, if you train your personnel in LOAC, and they become involved in a non-international armed conflict, the conflict terminology then becomes a misnomer. From the moment of intervention, the conflict becomes internationalized and is no longer an Article 3 conflict (Common Article 3 to the 1949 Geneva Conventions), but an Article 2 conflict (Common Article 2 to the 1949 Geneva Conventions). I don't think it practical to establish a LOAC training program for non-international armed conflict, specifically. But, as I said, an effective law of armed conflict training program will reflect all of the basic principles contained in those eighteen substantive articles of Protocol II, and your personnel will be trained accordingly.

Vincent Bernard

This is an especially important question as most conflicts today are non-international. In this sense, the question also concerns the effectiveness of IHL as applied by armed groups. As

[1] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (June 8, 1977).

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mentioned before, dissemination ought to be taken seriously, as part of a general ''prevention'' approach. Because war is a crime-prone environment, we need to find ways to prevent violations before they occur; this is even more necessary because compliance mechanisms are weak, and sanctions will not repair the root causes of conflict. Then the question is: Should we train armed forces differently if they are to be involved in situations of non-international armed conflict? Is there even an obligation to train such forces in non-international armed conflict? The question is theoretical in nature because it represents a peacetime obligation. So even before you know what type of armed conflict your forces will be—if ever—be involved in, you need to ensure they are properly trained in IHL. Precisely because you do not know what type of situations may arise, it is essential that armed forces be trained to react to all kinds of situations. In addition, dissemination should be wide enough so as to reach out to other segments of society who may find themselves involved in non-international armed conflicts. Dissemination should also be happening in peacetime so that in case of non-international armed conflict, there is a wide knowledge of IHL.

Now, how can armed forces prepare for non-international armed conflict? This is hard to say, as training is often not adapted to this type of situation. This has been a lesson of the past 15 years: counter-insurgency operations, which tend to be prolonged, include high risks for the civilian population, and, with interaction between armed forces and civilians and armed groups, are rather new. But the main question relates to training of, and by, armed groups. How can armed groups train their members in IHL, knowing that these groups are often disorganized, lack clear hierarchical lines, or do not have the capacity (both in terms of logistics and knowledge)? Furthermore, dissemination remains basic and may not even reach the ''training and integration'' stage, which we may sometimes reach with armed forces. However, new tools and technologies developed at the ICRC and elsewhere can allow us to reach out to armed groups in a much more efficient way than we presently do; through the Internet, the content of IHL is much more easily accessible.

Laurie Blank

One key point here is dissemination in a more specific sense. What exactly are we disseminating? What needs to be disseminated? The whole question of armed groups and going from a peacetime position of training your military in the law of war and maybe disseminating among the civilian population, to a situation where you have a government fighting against an armed group that has risen up inside the country, or maybe two armed groups, raises the essential question of the people who are not in the armed forces and who have not been receiving detailed training. Now they are the ones who are fighting. What do they know? What core issues are they going to rely on in order to understand how they are going to behave? One of them is distinction. You can kill some people; you can't kill other people; and when you have people in your custody you have to treat them in a humane manner. These three essential ideas will go a long way towards providing a moral, foundational core on which all behavior would then be based.

Brad Gutierrez

The challenge with non-international armed conflict is that you don't know who you need to train and you don't often have access to who you need to train. You often end up teaching post facto, after the violations have already been committed. The target audience here is the armed groups who have materialized out of villages and communities and parts of countries where there has not been an ingrained sense of organization. It becomes a problem without

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an answer. And yet dissemination to armed groups in non-international armed conflict remains a pressing challenge. Africa, for example, where UN peacekeeping forces work alongside African Union peacekeeping forces and a whole host of multilateral armed forces are trying to keep the peace (and who are, unfortunately, often put in the position of first having to *make* the peace), is a classic case. Here you have a lot of different conflicts on the continent, with a whole lot of actors involved. Here you have combat forces with training in IHL who are fighting against—or trying to protect—civilians who have no such training. This is indeed a pressing problem.

David E. Graham

If I may add, respect for the Geneva Conventions is not based on reciprocity. The compact of compliance is with the international community at large. Even though your adversary may not comply with the law of armed conflict, your obligation is to that international community. This same obligation does not exist in the case of nonstate groups engaged in hostilities against an established government, or who are fighting among themselves. These groups don't understand the concept of having an obligation to the international community as a whole. This makes the business of the ICRC and those who are engaged in training nonstate entities exceptionally difficult.

Elizabeth Stubbins Bates

My candidate for the most pressing challenge in dissemination and training is slightly different and relates more to the idea of ''moral disengagement,'' from Muñoz-Rojas and Frésard's study of former fighters and IHL,[2] and maybe even a concept of ''false reciprocity.'' This is the idea that annihilation might be morally justified in revenge for attacks against your comrades—which is such a major risk for serious violations of IHL. What do you think is the most pressing challenge for dissemination and training at this stage?

Laurie Blank

I don't know that there exists one most pressing challenge across the board, but I would highlight two thematic points. The first is *access*, and, then, having gained that access, the second is to make sure that it is *sustainable*. The common framework for most law of war training programs is to ''train the trainer,'' which pertains to the idea that the instruction ultimately needs to come internally, i.e., from the military, not just from an external lawyer. This notion of being able to train folks who can then impart that information to the next level allows for the development of a generational process throughout.

Vincent Bernard

It is good that dissemination is undefined in the Conventions, because it is a practice that evolves through time. It is a means to an end, and there is no single recommendable method. Dissemination has to be adapted to the context and should not be seen as one type of activity, but rather as a group thereof. In this sense, the most pressing challenges include: How to disseminate? How to ensure access to armed groups? Which tools are more adapted to which

[2] Daniel Muñoz-Rojas & Jean-Jacques Frésard, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations*, 86 Int'l Rev. Red Cross 189 (2004).

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target audience? Then comes the question of violations, reciprocity, and distinction. One example was identified through the ICRC's current Health Care in Danger Campaign. The protection of the medical mission and the protection of the wounded in the field are the very basis of IHL, which started 150 years ago with the realization that the wounded were not protected on the battlefield. Today, this protection—a core fundamental principle of IHL—is growing weak. It is still not respected. At least, we have realized that the problem does not lie in a lack of awareness for the rules, and our dialogues with parties to the conflict have shown that they agree that medical services should be better protected. But in such circumstances, dissemination can also work as an opportunity to create an operational dialogue with the parties.

Now, how to disseminate? One can imagine three concentric circles emanating from this humanitarian problem identified by the ICRC: (1) all measures directly changing or affecting the behavior of the combatant (e.g., training, dissemination); (2) system and structures (e.g., armed forces regulations, laws of the country); and (3) indirect influence on the environment where these violations take place (e.g., civil society, media, video games on the perception of IHL).

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