

Dissemination and Education

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Introduction

Article 1 of the four Geneva Conventions and of the Additional Protocols, provides that the High Contracting Parties undertake to respect and to ensure respect for the various Conventions and Protocols.

Respect, the ensurance of respect — this is a fundamental mission for the States parties to these international instruments and which has an obvious corollary: the need to be aware of the contents of these provisions, at least of the fundamental humanitarian rules, and to make them known to those directly involved in armed conflicts. There can be no possible respect, no guarantee for such respect, if humanitarian law is not properly understood and disseminated. For this reason the Geneva Conventions and the Additional Protocols place upon States the obligations of dissemination.

The present proliferation of armed conflicts, as well as the increase in breaches of the law of war, and the unexpected character of these conflicts, show that nobody is spared, neither the armed forces themselves, nor the civilians, so that logically the dissemination process has to be developed to the utmost in times of peace, before an armed conflict starts. This consequently leads us to another factor justifying the dissemination of international humanitarian law, even if not contained in the international legal instruments: the dissemination of international humanitarian law in time of peace can be considered as a fundamental part of any citizen's education, education for the respect of humanitarian values, education for solidarity, education for peace. And this applies to several categories of people, directly or indirectly concerned with the application of international humanitarian law.

The first part of this paper deals with the legal and educational objectives of international humanitarian law (*why*) which apply to the various groups of the community (*to whom*).

The complexity of the body of international humanitarian law (*what*), the multiple character of dissemination and the changing circumstances of our world, make dissemination a long-term process requiring constraining conditions: in order to ensure the credibility of international humanitarian law and facilitate the propagation of its message, dissemination needs to be adapted, through appropriate methods, to the subjects and to the groups concerned (*how*). This entails a certain manner of thinking which forms the subject of the second part.

The reasons for dissemination: from conventional obligation to humanitarian education

1. Dissemination: a conventional obligation

Several articles of the four 1949 Geneva Conventions (47, 48, 127, and 144 respectively) place upon States the obligation to disseminate as widely as possible, in time of peace and war, the text of the Conventions in their own countries and, in particular, to include their study in military instruction programmes and, if possible, civilian instruction programmes, so that the principles of the Conventions may be known to the population as a whole. This obligation was restated — and even extended — in the two 1977 Protocols Additional to the Geneva Conventions (Articles 83 and 19).

In addition, Resolution 21, adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva 1974–1977), invites the signatory States to take all appropriate measures to ensure that knowledge of international humanitarian law applicable in armed conflicts is effectively disseminated.

Finally, the aims of the General Assembly of the United Nations should be mentioned, i.e. the application of humanitarian rules relating to armed conflicts and their support through resolutions. The attention of all States was drawn to the need for steps to be taken for promotion of dissemination on a universal basis and of instruction in the rules of international humanitarian law.

Therefore, primary responsibility to disseminate knowledge of international humanitarian law in the various sectors of the population lies with the States signatories to the Geneva Conventions.

2. Dissemination: its humanitarian educational value

It may be more important to say that, through its nature and its principles as well as through its recent developments, humanitarian law is a factor of education for the parties to a conflict as well as for the average citizen.

(a) Educational value for the parties to a conflict

Humanitarian law is State law. In the first place it is the outcome of the interests of States. But at the same time humanitarian law is based on the principle of humanity. Its humanitarian rules contribute to the reduction of suffering, whilst stressing that whatever their race, their political or religious convictions, victims are all equal in their suffering and undergo the same physical and mental stress.

Moreover, the peremptory (*jus cogens*) and declaratory character of international humanitarian law, the fact that the Geneva Conventions are not subject to reciprocity, and more especially the extension of rights to the individual as reinforced in the Additional Protocols, can be considered as bulwarks against the non-respect of humanitarian rules. Equally, the norms of humanitarian law contribute towards the reduction of the intensity of violence and suffering: the parties to a conflict do not have an unlimited choice in methods and means of warfare. It is prohibited to use weapons likely to cause unnecessary loss or excessive suffering.

International humanitarian law, particularly its recent developments, consti-

tutes a deterrent to the use of force in international relations, force being outlawed except in self-defence. Indeed, whereas patriots fighting an invader could formerly be condemned as snipers, humanitarian law contains more flexible conditions to qualify them as regular combatants, and thereby reinforces resistance to aggression. Moreover, the penalties provided for in international law are a deterrent against the breaching of essential rules.

Humanitarian law does not only mitigate the violence of conflicts, it also contributes to safeguarding fundamental human rights even when violence is at its worst. Consequently it has been viewed, in the United Nations system which is essentially orientated to the maintenance of peace, as "human rights in time of armed conflict". It has been pointed out, moreover, that by emphasising assistance to victims and protection of those who provide such assistance, humanitarian law extends the classic concept of human rights. Humanitarian law creates a climate favourable to solidarity among nations. It offers States the possibility of co-operating, if need be through a third party, to solve certain practical problems concerning the victims of armed conflict. In this way it promotes co-operation among States. As was stated by the ICRC at the World Red Cross Conference on Peace (Belgrade 1975), "respect for humanitarian law, in the very midst of turmoil, prepares the ground for the resumption of dialogue".

(b) Educational value for the citizen

Dissemination of international humanitarian law, however, does not only apply to the States and the major participants in armed conflicts, it is also the vehicle of a general humanitarian education. This takes place through the universal moral significance that the fundamental rules of international humanitarian law express, beyond the existence of an armed conflict, through their humanitarian message which can be extended as a code of behaviour for individuals, groups and communities in time of peace.

What are these rules? The principle of humanity but also the principle of inviolability (respect for the life of the wounded and sick, respect for the human being in his physical and spiritual well-being); the principle of non-discrimination; the principle of security.

Let us take the fundamental rule of the First Geneva Convention: wounded soldiers, to whatever nation they belong, shall be respected and cared for, whether friends or foes. In the first place, this rule teaches the self-restraint implicit in its observance, leading to the positive activity of caring for an enemy. But, irrespective of the armed conflict context, it contains two lessons of general significance: on the one hand, it is everybody's duty to respect and help the wounded, in all circumstances. Sooner or later, each one of us might be faced, in contemporary life, with the development of modern means of transport, with an accident involving casualties in need of assistance.

On the other hand, there is the duty to help an injured person without first considering his or her origin. In its wider implications, the respect of a wounded enemy means the respect of the stranger in distress. The circumstances of our modern life, where inhabitants of different countries mix with each other, where refugees and displaced persons migrate from one country to another, place each

one of us, and our children too, in the presence of persons who are alien to the local community and who have to be aided, should it be necessary.

Another example is the rule which requires that relief personnel going to the assistance of injured persons should themselves be respected and protected, in the very interest of their relief function. In its wider sense, this rule teaches people and helps them to discover that the assistance provided by another person may sometimes be needed and could even be absolutely essential. It is the cornerstone of human solidarity and it helps one accept aid, even from a stranger. The applications of this rule are legion in the everyday life of individuals as much as of communities. Numerous examples could be given showing that revenge is a primitive form of justice, that virtue is absolute in itself and never reciprocal or conditional, and that the end does not justify the means.

Both the legal and moral reasons for dissemination readily show that it does not only concern States, but each one of us. Dissemination is the concern of us all, both propagator and beneficiary. And this may be yet another reason in support of dissemination.

3. Dissemination: a concern for us all

The provisions referred to above show that the main agents of dissemination are States: they are the agents of dissemination. But among whom? By its resolution X, the XXIVth International Conference of the Red Cross (Manila 1981) *inter alia* "urges the Governments of States Parties to the Geneva Conventions and, as the case may be, to the 1977 Protocols, to fulfil entirely their obligation to disseminate knowledge of international humanitarian law among their armed forces, ministries, academic circles, schools, medical professions and general public . . ." This list is not mere chance. It shows by order of importance the audiences, or rather the target groups, which in all countries are directly or indirectly concerned with the knowledge and/or the application of humanitarian law. This virtually means that every citizen is affected by the dissemination of humanitarian values.

The individuals concerned in the first place are the private soldier who is most likely to infringe the laws of war by the very nature of his task; but also the high-ranking officers responsible for the private's behaviour; the top officers of the Ministries of Foreign Affairs, Defence, Justice, Education and Health, because they are responsible for the implementation of the rules laid down in the Geneva Conventions; academic circles — universities, primary and secondary schools — because the principles of humanitarian law are a means of general humanitarian education likely to provoke, especially among young people, a humanitarian conditioned reflex, but also because the child of today may be a soldier tomorrow and consequently may be directly involved in the fight. The medical profession is also involved because the instruments of humanitarian law contain a list of provisions stating very clearly the duties and rights of medical doctors, surgeons and nurses in time of war. Finally, the public at large, because the knowledge of a minimum of basic humanitarian rules may contribute to reducing the horrors witnessed every time civilians take up arms, more especially in civil strife, knowing nothing about the rules applicable in such circumstances.¹

1. For an analysis of these "target groups", see Surbeck, J, *Dissemination of International Humanitarian Law, When, Why, How* (ICRC 1982).

These examples are enough to show the considerable responsibility resting on the States' shoulders. And experience has shown that the dissemination of knowledge of humanitarian law leaves much room for improvement in several States signatory to the Geneva Conventions. For this reason, the role of the Red Cross movement is so important in helping Governments fulfil their obligations in this field.

The Statute of the International Committee of the Red Cross, the Constitution of the League of the Red Cross Societies, and that of many National Societies, contain provisions for the dissemination by the Red Cross of international humanitarian law. Moreover, the Red Cross movement has stated its concern for the dissemination of knowledge of the Geneva Conventions in many resolutions adopted by International Red Cross Conferences. These resolutions express the conviction that the ICRC and the National Red Cross Societies have an essential role to play as agents of dissemination among the various groups mentioned above. Here we could add that specialised institutions also contribute to the development of the teaching of international humanitarian law, such as the International Institute of Humanitarian Law in San Remo, the International Institute of Human Rights in Strasbourg, the Henry Dunant Institute in Geneva, and we are also gratified that institutions of the same type exist in Asian countries or are being created.

Moreover, special emphasis should be placed here on the role of National Red Cross and Red Crescent Societies. As auxiliaries of the public authorities, it is their legal and moral duty to help those authorities to perform their humanitarian obligations which include dissemination. This co-operation implies that National Societies have a privileged role to play in dissemination: firstly among their own members, staff officers and volunteers at all levels, and secondly they have the responsibility of making sure that the other target groups set up their own dissemination structures and procedures.

We shall not deal with the role and the activities of the Red Cross institutions in the field of dissemination, as my colleagues and friends of the ICRC and of the Australian Red Cross are better qualified to do so. But we would like to say that it is not enough to find good reasons for dissemination of humanitarian law, convincing as they may be. We also know that there are also people who will always find good reasons to infringe the law of war.

In order to face these realities, a total commitment, a concerted effort, a real mobilisation, are required from all the dissemination agents, if the dissemination process is to be as efficient as possible.

The conditions for dissemination

When Lieutenant Calley, at this trial in the My/Lai case, was accused of having killed old persons, women and children, he said: "God, people say, but there were old men, and women and children. I tell you: I didn't see it. I had this mission, and I was intent upon it: I only saw, They're enemy. Of course, I was still in South Vietnam. I knew, there are old men, women and children in South Vietnam. It was common sense: sure, but in combat there is damn little common sense. . . ."

Is it not the secret of the dissemination of humanitarian law to maintain common sense? And also how to succeed in maintaining it?

Dissemination has not only to face rational premises upon which the violations of humanitarian law rest (i.e., the attack of non-military objectives in order to beat the enemy whilst sparing one's own forces, acts aiming at thwarting the enemy's plans by the use of torture, reprisals, etc); but also irrational premises, the instinct for power, sadism, racism, revenge, cynical indifference, loss of self-control. Another obstacle can also be added: the rather complicated content that humanitarian law presents due to the various aspects of protection and more especially to the complex and blurred character of modern conflict which makes dissemination a complex if not frustrating process. Consequently it can easily be understood that, for all these reasons, dissemination efforts often give rise to scepticism and the dissemination process has to be conceived of as a long-term investment, requiring patience, tenacity and abnegation. It places an overwhelming responsibility on dissemination workers without any guarantee that they will have the satisfaction of seeing swift and visible results.

What is at stake is the credibility of humanitarian law, which requires several constraining conditions: the content of the message must be clear, precise, simple, universal in its scope, and must refer to the cultures and traditions of the various regions.

The teaching methods have to be adapted to the subjects and to the groups concerned.

1. *A clear, universal message*

The dissemination of the knowledge of international humanitarian law today must include not only the law intended to regulate hostilities and attenuate the hardship they cause, but also the law intended to protect soldiers *hors de combat* and people taking no part in the hostilities. However, dissemination can present a grim aspect when we think of the bulk of the Geneva Conventions and the Additional Protocols comprising some 700 articles! We must not, in fact, be prisoners of words, but look beyond them and bring out the fundamental norms common to the Geneva Conventions and the Protocols, but which are also echoed in the various cultures, traditions and religions of the world.

It is indeed the experience of the International Committee of the Red Cross in particular, that to spread knowledge of the law of war throughout the world in general, among civilians as much as among members of the armed forces, considerable efforts must be made to adapt teaching methods and means to the special circumstances reigning in different regions of the world. What is suitable for Europe cannot be exported wholesale to Africa, while a model which has been devised specially for Africa, or parts of Africa, will not suit countries in Asia or Latin America. Traditions, motivations, the origins of the law regulating relations between peoples, nations and States, whether in time of peace or in time of war, differ from place to place.

This is why the Red Cross institutions have expressed in condensed form the very essence of international humanitarian law, known as the *Fundamental Rules of International Humanitarian Law Applicable in Armed Conflicts*. This text does not have the authority of an international legal instrument, nor is it in any way intended to substitute for existing treaties. Its only purpose is to facilitate the dissemination of the knowledge of international humanitarian law.

Its scope is also educational as it serves to instruct all those whose function it is

at various levels to put humanitarian law into practice, as well as those who will be called upon to avail themselves of it or to confer its benefits on their fellow men.

2. Credible contents and appropriate methods

The dissemination process has recourse to various pedagogical methods, as adapted to the categories of people concerned. But it also has another dimension: in all cases, at all levels, in all countries, the challenge is to convince the members of the society of the need for dissemination and to guarantee its credibility. In order to illustrate these points, we shall limit ourselves to some examples related to the armed forces and to academic circles.

Dissemination among the armed forces is faced with the overcomplexity of today's conflicts and that of the rules of protection, making teaching of international humanitarian law complicated, especially for the private individual or the group.

One of the consequences of the ever-growing number of conventions, their increasing bulk and complexity, is to diminish the credibility of the law of armed conflicts. Men trained to do battle and ready, if need be, to lay down their lives in the accomplishment of their duty, do not wish to be encumbered with regulations which, to their minds, are just fanciful theories propounded by jurists who have no idea of the military realities. At least, even though soldiers might perhaps be inclined to observe certain elementary humanitarian principles, they are not sure that their adversaries will do likewise and they consequently yield to the urge to consider themselves free of any such obligation.

Any kind of genuine teaching of the law of armed conflicts must take into account this kind of unfavourable background. The aim must therefore be to create a climate conducive to effective and durable instruction. The question is one of priorities and methods.

As to priorities, within the armed forces, the main effort of instruction should be directed at privates, who are in the majority and who go into action on the field of battle; they should be the first to receive instruction.

When teaching privates, consideration should be given to the most unfavourable circumstances, when the fighting man, almost or entirely alone, suddenly has to face the unexpected: an enemy who surrenders, a wounded soldier lying across his path, a civilian who moves into his line of fire just as he is about to squeeze the trigger, an objective which is found during an attack to be marked with a red cross, etc. Such situations demand a response which should not only be immediate, but should be above all correct and in conformity with the law of war. This is why the teaching of fundamental rules as mentioned above is so important in the normal drill of the private soldier's instruction, in order to achieve some kind of reflex as automatic as the use of a weapon. Furthermore, it is all the better if, prior to their recruitment, the soldiers have already acquired an elementary set of moral principles, based on respect for the human being. This all means that it is most important to imprint these principles as soon as possible in a child's mind, already at primary and secondary school level.

Experience — and also sad experiences marked by the killing of Red Cross personnel or of ICRC delegates — has shown how fundamental it is to teach any private soldier, any citizen, the value of the emblem of the red cross used either

as a protective sign in time of armed conflict, or as an indicatory sign in time of peace.

As for the methods used, they will be adapted to the hierarchy within the armed forces. The higher the level, the greater should be the range of knowledge of the law of war.

We shall not go into details, but the most important issue is to make this teaching credible. This means that abstract notions must be set aside, and that one must constantly seek to relate the international regulations to the practical facts which States and their armed forces have to contend with. For example, as Colonel de Mulinen writes in his study *The Law of War and the Armed Forces*, it is not enough to tell the men that an enemy who is captured or who surrenders becomes a prisoner of war. They should first of all be given realistic and practical instructions as to what to do with such an enemy, where he should be taken, how to treat him and where he should be held pending his evacuation, what to do with the weapons and other military equipment he might have had with him, and so on.²

All these requirements (credibility, appropriate methods) can be found in the dissemination process among academic circles. Teaching humanitarian law in universities responds to a need to provide a good legal education. Humanitarian law presents fundamental legal issues for the law in general, and for public international law in particular; its very essence is closely linked to the moral and psychological foundations of law. Moreover, we cannot deny the paradigmatic value of humanitarian law. As applied in extreme situations, it is a test area for the effectiveness of the international legal order. And more generally, all the important issues of international law can be explained and illustrated within the field of humanitarian law: relationship between various multilateral treaties (Geneva Conventions, Hague Rules, Hague Convention on Cultural Property), reservations, dispute settlement, fact-finding, reprisals, etc.³ Is it enough to ensure dissemination and teaching of international humanitarian law in the various universities and academic institutions? Certainly not. Here again educational authorities have to be convinced, and for this the role of the National Societies is very important. Furthermore, professors and students have to be convinced, and administrative and psychological barriers often overcome. In the first place, there is the lack of available time in the various curricula: the numbers of chairs devoted to humanitarian law is extremely limited and in many cases its teaching is squeezed into the normal vehicle for teaching international law or political science by a professor particularly motivated by this subject, and which he does on his own initiative. Secondly, for many students, if not professors, international humanitarian law has less practical relevance than other subjects — it is a nice “orchid subject”.

Also raised are objections of a dual character: as Professor Bothe said, “some people feel that the law of war amounts to favouring war, that it means militarism; and there are others who think that it is useless, because it is not

2. De Mulinen, F, *The Law of War and the Armed Forces* (1981), 20.

3. See Bothe, “Methodological and Didactic Problems Involved in the University Teaching of International Humanitarian Law, Especially in Connection with the 1977 Geneva Protocols”, in *Report on the European Seminar on Humanitarian Law, Jagellonean University (Krakow 1979)*, 61-69.

observed anyway, and that even if it has a chance of being observed, concern for the law of war means curing symptoms, not causes, and that the international lawyer should rather deal with the cause of conflicts. Both these objections are to be taken seriously, as they provide on the other hand, an opportunity for going into the fundamental problems of international law generally and humanitarian law in particular."⁴

The equation "law of war equals militarism" cannot face up to careful examination. In international politics there has been a growing awareness that the law of war is an essential element in the protection of the human being, and that the law of war has also, as we said earlier, a fundamental function in facilitating a return to peace. The 1974–1977 Diplomatic Conference itself was the result of this new awareness of the relationship between human rights and the law of war. This is a factor which should be used in publicizing the teaching of humanitarian law.

For all these reasons, and in order to guarantee the credibility of the teaching of international humanitarian law in universities and its development, it is perhaps advisable not to present it in a systematic way, but to limit its teaching to a number of fundamental issues: for instance, the use of the law of war (how does the law meet the requirements of our time?), the status of conflicts, fundamental concepts such as combatant/civilian, treatment of prisoners etc, together with case studies.

Conclusion

The task of dissemination of international humanitarian law is a legal obligation which falls upon States, especially within the armed forces. We have tried to show that it has an educational value. As a school of self-control, altruism and solidarity, it is a form of civic education, legal education, moral education. If only for the last reason, dissemination is the concern of all of us. At the same time, it requires the mobilisation of all forces, psychological and practical, in order to convince, to establish a sense of credibility, to find relevant methods adapted to the various groups and cultures.

Every year, the art of dissemination is gaining ground as the groups concerned become ever more conscious of the necessity to act in a concerted manner.

Resolution X of the Manila Conference urged governments to encourage the establishment of joint committees representing the appropriate Ministries and National Red Cross and Red Crescent Societies in developing activities in the field of dissemination. We can mention the example of our host country, Australia, where in December 1978 a dissemination committee was set up whose function it was to examine and advise the Commonwealth Attorney-General and the Chairman of the Australian Red Cross on the dissemination of the Geneva Conventions. This committee, composed of officers of the Attorney-General's Department, the Department of Defence and representatives of the Australian Red Cross, discussed various matters connected with the promotion of dissemination, and reached remarkable results.

There are numerous examples of this type, but we do not wish here to list the programmes undertaken in the various countries in this area, nor the methods

4. Bothe, *op cit.*, 63.

used or which will be used. Nevertheless, what matters is the consciousness that, in our world shaken by so much turmoil, witness of so many infringements, there will increasingly be a continuous pressing need for dissemination workers doing their best to create a humanitarian reflex among potential combatants. Workers who believe that the inculcation of basic humanitarian rules may in the long run, and through its multiplying effect, overcome irrationalism, indifference and barbarism.