Fighting by the rules: Instructing the armed forces in humanitarian law

by Françoise J. Hampson

It is commonly accepted that education in human rights may be one of the most effective tools in promoting the observance of those rights. Those whose profession entails the exercise of power over others have an obvious need to know the limits of their power and members of the armed forces represent just such a group. Their acts engage the responsibility of their State under human rights treaties, wherever those acts are committed.[1] Some instruction in human rights law, particularly non-derogable rights,[2] is therefore necessary but the body of rules which imposes the greatest prohibitions and restraints on the conduct of armed forces is humanitarian law. That term is used here as including both "The Hague law", which imposes limits on the means and methods of warfare, and "Geneva law", which seeks to protect certain victims of the conflict, such as the wounded and sick in the field, the wounded, sick and shipwrecked at sea, prisoners of war and civilians living under belligerent occupation.[3] The latter body of rules was updated in 1977

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[1] The test is one of the effective exercise of jurisdiction; it does not depend on the territory in which the alleged breach of human rights law was committed. *Burgos* v *Uruguay* (R 12/52) HRC 36, 176; *de Caseriego* v *Uruguay* (R 13/56) HRC 36, 185 under the International Covenant on Civil and Political Rights (ICCPR); *Cyprus* v *Turkey*, 8007/77, 13 D & R 85 under the European Convention on Human Rights (ECHR).

[2] Human rights treaties provide that there are certain rights from which no derogation is possible; in other words they apply even in wartime. These include the prohibition of torture and cruel, inhuman and degrading treatment or punishment and protection of the right to life (subject to an exception in the case of lawful acts of war under the ECHR); see Article 4 ICCPR and Article 15 ECHR.

[3] For texts of the relevant Conventions, see Roberts & Guelff, *Documents on the Law of War*, Clarendon Press, Oxford, 1982.

by the addition of two Protocols which extended the range of protection by incorporating elements of "The Hague law". The 1949 Geneva Conventions have been ratified by 166 States [4] and Hague Convention IV, with which we shall principally be dealing, was held by the Nuremberg Tribunal to represent customary international law. To all intents and purposes then, every State is bound by the two bodies of rules. In addition, the 1977 Protocols are binding on those States which have ratified them.

Both bodies of rules provide for some form of dissemination. So, under Article I of Hague Convention IV, "The contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention". This does not require that armed forces receive instruction in the law of land warfare; merely that the State should ensure that such regulations as are issued comply with those rules. Article 26 of the Geneva Convention regarding the Amelioration of the Condition of Soldiers Wounded in Armies in the Field, 1906, was more specific in that signatories were required to "... take the necessary steps to acquaint their troops, and particularly the protected personnel with the provisions of this Convention and to make them known to the people at large." [5] The four Geneva Conventions of 1949 [6] went further in expressly requiring the instruction of the military and encouraging that of the civilian population and in requiring the dissemination of the Conventions both in war and in peace-time. The provision, similarly worded in all four Conventions, stipulates that "the High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains". The last two groups are replaced in the Third and Fourth Conventions by those having special responsibilities towards prisoners of war and civilians respectively. A similar provision

[4] *Dissemination*, August 1987, ICRC, p.11.

[5] Article 27 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 1929, was framed in identical terms.

[6] Article 47, Ist Geneva Convention; Article 48, IInd Geneva Convention; Article 127, IIIrd Geneva Convention; Article 144, IVth Geneva Convention.

is to be found in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.[7]

The obligation in the Geneva Conventions is reinforced by common Article I, under which "the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." The requirement to disseminate is reiterated in Protocol I, which also provides that "any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof".[8] The instruction of the armed forces is one of the functions of the legal advisers, who are to be available to advise military commanders.[9] In striking contrast to human rights texts, those setting limits on the conduct of armed forces expressly require both dissemination of the texts and the instruction of the armed forces. Whilst this is the position in law, the practice of States is much less encouraging. Amongst the States which are active in dissemination, we can mention the Federal Republic of Germany which provides regular courses of instruction [10] and considerable efforts are made in Yugoslavia, India and Poland.[11] In the United States, substantial changes were made in the quantity and form of instruction, following experience in the Vietnam war.[12] The extent to which the obligation to disseminate and instruct is being implemented seems to vary considerably. There is a striking level of agreement amongst commentators that ignorance of humanitarian law is one of the main explanations for its non-observance in armed conflict.[13]

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[7] Article 25.

[8] Article 83.

[9] Article 82.

[10] Draper, G.I.A.D., "The place of laws of war in military instruction" (Lecture), *Royal United Service Institutional Journal* (London), Vol. III, August 1966, pp. 189-192; Fleck, Dieter, "The employment of legal advisers and teachers of law in the armed forces", *International Review of the Red Cross (ICRC)*, No 145, April 1973, p. 173.

[11] Draper, *op. cit.*, note 10, p. 193.

[12] McGowan, J. J., "Training in the Geneva and Hague Conventions: A Dead Issue?", *Revue de Droit Pénal Militaire et de Droit de la Guerre*, XIV-1-2, 1975, pp. 51-55.

[13] Furet M.-F., Martinez J.-C. & Dorandev H., *La guerre et le droit*, Ed. A. Pedone, Paris, 1979, p. 212; Bolongo L., "Les conseillers juridiques dans les forces armées: Leur rôle et les conditions de leur efficacité", *Revue de Droit Pénal Militaire et de Droit de la Guerre*, XXII-3/4, 1983, pp. 343-355; Verri P., "Institutions militaires; le problème de l'enseignement du droit des conflits armés et de l'adaptation des règlements à ses prescriptions humanitaires", in *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Swinarski C. (Ed), Nijhoff/ICRC, 1984, pp. 603-606; *Report of the House Armed Services Investigation Subcommittee Investigation of the My Lai Incident*, 91st Cong., 2d Sess. 6 (1970) cited in McGowan, *op. cit.*, note 12, p. 51.

This is surely an over-simplification. Ignorance of the Conventions would explain the non-observance of what might be termed administrative provisions. Matters such as the responsibility for the provision of clothing and footwear for prisoners of war are essentially a matter of administrative regulation. It is important that the parties to a conflict should know on whom the responsibility falls and for that they need to be familiar with the Conventions. There is no obvious issue of right and wrong. This is in contrast to rules which seek to protect civilians from deliberate attack. It is unlawful for a soldier intentionally to kill civilians but it is to be hoped that the armed forces do not need to know that it is in breach of Article 51(2) of Protocol I. They ought to think such attacks wrong.[14] The function of the rule in that situation is not to define responsibilities but rather to confirm what the soldier already knows. Ignorance of the Conventions might give rise to breaches of the first type of rule but should not do so in the case of the second. Massacres of civilians nevertheless occur. There is not only the notorious example of My Lai. Two Soviet Assistant Military Attachés told a meeting in the UK that the Soviet armed forces had a great deal of instruction in humanitarian law [15] and yet both the UN Special Rapporteur on Afghanistan [16] and the Report of the Independent Counsel in International Human Rights [17] have found considerable evidence of the deliberate targeting of civilians by Soviet troops in Afghanistan. It is likely that some of the causes for such behaviour are a matter for the psychologist rather than the lawyer. The effect of long exposure to combat and of fear on usual inhibitions need to be examined if the prohibition of certain types of conduct is to be effectively enforced. They are beyond the scope of this paper. Such violations of the Geneva Conventions do, nevertheless, have a bearing on dissemination in that they suggest that instruction needs to take place within a context of respect for the law. The object of dissemination is not the mere provision of information but rather the effective implementation of the Conven-

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[14] The preamble to Hague Convention IV in the famous "Martens clause" provides that "... the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and *the dictates of the public conscience*" (emphasis added).

[15] Draper, *op. cit.*, note 10, discussion at p. 195.

[16] e.g. Reports of the Special Rapporteur of the Commission on Human Rights (A/40/843, A/41/778 & A/42/667).

[17] Report of the *Independent Counsel* in *International Human Rights on the Human Rights Situation in Afghanistan*, Washington, November 18, 1987.

tions.[18] This has fundamental implications for the manner and form of the instruction of the armed forces in the principles of humanitarian law.

The most effective inhibiting factor may well be the individual soldier's conscience. That needs to be an informed conscience rather than a product of unthinking prejudice. The soldier must know what he regards as right and wrong, whilst recognising that others may disagree with him on certain questions. The armed forces can foster such an attitude by encouraging discussion between the men and their commanding officers and chaplains. The discussion needs to be practical and to consider situations in which the soldiers will find themselves. The content will vary according to the group and so will the elements of the law that will need to be raised. The officers will therefore not only need to be familiar with the Conventions generally but also with the specific rules of most relevance to their particular group. The 1978 Red Cross Fundamental Rules of International Law Applicable in Armed Conflicts [19] provide a very accesible introduction. It is not being suggested that this form of instruction can entirely replace more conventional teaching in the requirements of the Conventions. The object of such discussions is to get the soldiers to internalise their knowledge, to make it part of themselves. If they realise that their sense of right and wrong is confirmed by the international legal rules, they may approach the formal study of the latter without the negative attitude that so often accompanies the study of law by non-lawyers. The Geneva Conventions are less likely to seem remote, incomprehensible and irrelevant. This will make the armed forces better able and more willing to absorb the full range of legal rules which they need to know and which provide for the practical implementation of their own moral impulses. Evidence from books about soldiers and soldiering suggests that such discussions and psychological preparation for combat play an important part in effectively preventing excesses by individual soldiers.[20]

The soldier's sense of what he can and cannot do in combat and in dealing with the victims of hostilities is not, of itself, sufficient. It needs

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[18] See, for example, common Article I to the four Geneva Conventions of 1949; McGowan, *op. cit.*, note 12, at p. 52.

[19] Roberts & Guelff, *op. cit.*, note 3, p. 466.

[20] On the role of a chaplain, provided he has the right personal qualities, see Arthur, M., *Above All, Courage*, Sphere, London, 1986, pp. 197-8. On the effective reinforcement of inhibitions, see the attitude of soldiers faced with the possibility of having to fire at unarmed women at Greenham Common in Parker, T., *Soldier, Soldier*, Coronet, London, 1987, p. 239 and pp. 246-252.

to be reinforced in three ways. He must know that the same standards are shared by his commanding officers and those responsible for the conduct of the conflict. He must be used to confronting moral dilemmas in practice, so as to be familiar with applying the rules in the chaos of combat. In other words, training exercises must include situations in which the armed forces are required to put the law into practice. Finally, the soldier must know that a breach of the rules will entail punishment. These three factors reinforce one another. They must now be examined in turn.

Research is needed into the question of the correlation between massacres and other atrocities by groups of soldiers and the unlawful conduct of hostilities. Walzer, for example, in discussing the My Lai massacre, points out that the village was in a free-fire zone and was routinely shelled and bombed. He quotes a soldier who asked, "If you can shoot artillery... in there every night, how can the people in there be worth so much?" He goes on, "in effect, soldiers were taught that civilian lives were not worth much, and there seems to have been little effort to counteract that teaching except by the most formal and perfunctory instruction in the rules of war".[21] It is submitted that endless hours of instruction might not have made much difference to the behaviour of individual soldiers if the hostilities had continued to be conducted in the same manner by those responsible for its planning. The same problem arises in relation to the conflict in Afghanistan, where there is evidence both of indiscriminate and deliberate attacks on villages and also of massacres by individual group of soldiers.[22] The impact that the attitude of commanders can make on individual soldiers is illustrated by an account of an Israeli unit entering Nablus during the Six Day War. "The battalion CO got on the field telephone to my company and said, 'Don't touch the civilians... don't fire until you're fired at and don't touch the civilians. Look you've been warned. Their blood be on your heads.' In just those words. The boys in the company kept talking about it afterwards.... They kept repeating the words... 'Their blood be on your heads' "[23]. The episode is striking on account of the attitude shown by the CO but even more for the effect on his men.

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[21] Walzer, M., *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Pelican, London, 1980, p. 322 (footnote omitted); see also McGowan, *op. cit.*, note 12, pp. 54-55.

[22] See texts referred to in notes 16 and 17.

[23] *The Seventh Day: Soldiers Talk About the Six Day War*, London, 1970, p. 132, cited in Walzer, *op. cit.*, note 20, p. 310.

The second way of reinforcing the educated conscience of the soldier is by testing it and giving the soldier the confidence to rely on it. This requires the incorporation of situations involving the application of humanitarian law into training exercises.[24] Any evaluation of a soldier' or officer's performance in such exercises should include an assessment of how he handled legal problems. This is not only relevant to questions such as leadership potential but would also encourage the soldier to regard the subject as important. Quite clearly, such training must be the product of close co-operation between lawyers attached to armed forces and the tacticians responsible for planning the exercise. Certain armed forces are already adopting this approach.[25]

The third form of reinforcement is the certainty of a legal sanction in the event of a breach of humanitarian law. For this to be effective, the soldier must know that any alleged violations will be investigated. This will only happen if he knows that the facilities exist for such investigations, even during an armed conflict, and that the political will exists to ensure that they are carried out. There is a close interrelationship between this and the first factor, the attitude of commanding officers as evidenced by the manner in which hostilities are conducted. One example will illustrate the significance of this element. In the film 'Platoon', which is supposed to be an accurate evocation of the war in Vietnam, a staff sergeant deliberately attacked civilians in a village. Another sergeant reported the matter to the company CO. He was under pressure both to let nothing stand in the way of the accomplishment of the mission and to ensure field troops did not mistreat villagers. The captain told the alleged wrong-doer to submit a detailed report and said that the matter would be looked into when they got back to base camp. The men took that as a signal that military considerations prevailed over legal ones.[26] It is not merely a question of carrying out

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[24] Williams, W. L., "The Law of War and "Personnel infrastructure": A proposed inquiry into maximizing the contributions of nonlawyer officers and of military instruction in support of the law of war", *Revue de Droit Pénal Militaire et de Droit de la Guerre*, XV-1-2, 1976, pp. 19-30; Mulinen, F. de, "Instruction et application du droit de la guerre", *Revue Militaire Suisse*, No 7/8, juillet-août 1979, pp. 325-327.

[25] e.g. In a recent exercise throughout the UK the British armed forces protected strategic installations against attacks from Spetznaz "troops" who had entered the country clandestinely. When any of the "infiltrators" were captured, the detaining troops had to determine their status. This depended on whether they thought the Geneva Conventions applicable (i.e. was there an armed conflict) and whether those captured were entitled to combatant status and therefore to prisoner-of-war status on capture.

[26] Dye, D. A., *Platoon*, based on a screenplay by Oliver Stone, Grafton, London, 1987, p. 143 et seq.

investigations; there must, in addition, be the political will to prosecute those who are alleged to have committed grave breaches of the Geneva Conventions. Such prosecutions are an independent treaty obligation under the Conventions [27] but, in this context they are seen as an essential adjunct to effective dissemination. If a soldier is to believe that compliance with legal rules matters, he must know that there is a heavy price to pay for noncompliance.

Having seen that to ensure respect for humanitarian law requires far more than mere instruction, some consideration must be given to the problems alleged to exist in relation to the provision of it. Three difficulties need to be overcome. There is, firstly, scepticism amongst the military as to whether adherence to such rules is compatible with the object of winning a war. There are, secondly, practical difficulties in deciding what form such training is to take and who is to lead it. There is, finally, the very real problem of convincing both the armed forces and their political masters that the rules of humanitarian law matter and need to be complied with.

Military scepticism takes various forms. Some question the compatibility of humanitarian law with military effectiveness. Others question not the principle of legal regulation itself but rather the actual content of the legal rules. They believe that the rules, particularly those designed to protect civilians in Protocol I, unduly impede legitimate military operations.[28] Yet others question the existence of the political will to demand compliance with the norms of humanitarian law. They would base themselves on the refusal of nuclear-weapon States to countenance the applicability of Protocol I to the use of such weapons and on the alleged use of weapons prohibited under the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare in the conflicts in Vietnam, Afghanistan and in the war between Iran and Iraq. Another factor is the lack of war crimes trials for those fighting on behalf of the Allies in World War II and who allegedly committed war crimes. The military are justifiably sceptical about the political will to implement

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[27] Article 49, Ist Geneva Convention; Article 50, IInd Geneva Convention; Article 129, IIIrd Geneva Convention; Article 146, IVth Geneva Convention; see also Articles 85-87, Protocol I.

[28] Verri, P., *op. cit.*, note 13 at pp. 608-9 shows that the questioning of the content of the actual rules causes the armed forces to question the applicability of any rules. This would lead to the abandonment of even those limitations which are consistent with military necessity, such as proportionality.

humanitarian law if it is a matter of winning or losing. If compliance mattered, political leaders would be familiar with the principles fundamental to that law. Yet, in the South Atlantic Conflict in 1982, as late as 26 April the British Ministry of Defence and Prime Minister denied that Argentine military personnel captured on South Georgia were prisoners of war because no state of war was believed to exist between the United Kingdom and the Argentine.[29] The Conventions had in fact been applicable since early April. The statement was corrected and, thereafter, the conflict was notable for the degree of compliance with the requirements of the Geneva Conventions but one may question whether, at the political level at least, this was the product of a desire to act lawfully or else of the need to win the battle of international public opinion.

It is submitted that the other grounds for military scepticism are, generally, ill-founded. The rules imposed by the Geneva Conventions do not impede the conduct of hostilities. They deal rather with the protection of those either never or no longer taking an active part in the hostilities. There is no conflict between humanitarian imperatives and military necessity in relation to the four Geneva Conventions.[30] Protocol I does impose limitations on the means and methods of warfare.[31] They may mean that a conflict lasts longer than it would otherwise have done and higher military casualties may be sustained but the rules may help to attain other objects. The conflict is being fought in order to achieve peace. That may be easier if there is little of the bitterness usually produced by atrocities. In that regard, there is a marked difference in attitude between those on the Western front taken prisoner by the German Army and those taken prisoner by the Japanese in the Far East in World War II. Again, in interviews with Afghan refugees, it emerged that the manner in which the DRA and USSR armed forces had conducted the hostilities was a real barrier to the establishment of the political co-operation necessary to achieve peace.[32] No doubt, the same might be said as regards the methods of warfare employed by the opposing party. Adherence to the rules of humanitarian law, even at the price of some inconvenience, serves another, equally important, purpose. It is in the interests of military

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[29] Best, G., *Humanity in Warfare*, Methuen, London, 1983, p. 391.

[30] Schwarzenberger, G., *International Law as applied by International Courts and Tribunals*, Vol. II — *The Law of Armed Conflict*, Stevens, London, 1968, pp. 10-13.

[31] e.g. Protocol I, Articles 35, 44, 48-58.

[32] See also Draper, *op. cit.*, note 10, p. 194.

necessity, indeed it is vital to the efficient conduct of operations, that the armed forces should remain disciplined. "Discipline ensures stability under stress; it is prerequisite for predictable performance.... Self-discipline is a voluntary compliance with directives and regulations of leaders whose requirements are established in the interests of the organization." [33]

In other words, compliance with the provisions of the Protocol is in the interests of discipline and therefore of military efficiency.[34] It has sometimes been argued that one possible exception might be where the very existence of the State is threatened. It would appear paradoxical if States were free to abandon the rule of law in order to protect their existence. One may question whether there would then be anything worth saving. Reliance on nuclear deterrence is supposed to prevent that ultimate threat materializing.

The second problem identified above was that of training. Certain indications of the form that training must take have emerged from earlier discussions. Thus, it needs to be practical and to address problems which the group in question is likely to encounter.[35] In other words the content of the training depends on the particular audience and its military function. It is not a matter of rank. [36] Instruction needs to be on-going [37] and to be reinforced by experience in exercises. The law should not be seen as something set apart from the carrying out of other professional duties but as an integral part of them. This means that training, except perhaps for that of the trainers themselves, should not be done solely by lawyers.[38] To ensure that soldiers regard the limits

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[33] US Department of the Army Field Manual (FM) 22-100, Military Leadership, 4-2 (1973), cited in Williams, *op. cit.*, note 23 at p. 27; see also generally, Karsten, P., *Law, Soldiers and Combat*, Greenwood Press, London, 1978.

[34] Verri, *op. cit.*, note 13 at p. 609 implies that where the other party to a conflict does not apply the rules of humanitarian law, which arises perhaps most commonly where it is fighting for an ideology, the first party cannot be expected to do so. Draper, *op. cit.*, note 10, at p. 194 argues convincingly against this position. Experience in such conflicts (e.g. Vietman, Algeria and wars of colonial independence) suggests that if a State cannot win by fighting according to the rules, it will not be able to win at all.

[35] McGowan, *op. cit.*, note 12, p. 55.

[36] Draper, *op. cit.*, note 10, discussion, p. 195.

[37] Williams, *op. cit.*, note 23, p. 29.

[38] It must, however, only be undertaken by adequately informed personnel. Verri, *op. cit.*, note 13, at p. 607 cites an unfortunate example of a soldier asking a question about humanitarian law and being told to sit down and be quiet because the officier was not sufficiently well-informed to answer his question.

imposed by humanitarian law as important, the effectiveness of the training needs to be monitored. The American system, under which dissemination is a matter of command responsibility, may be a useful model in this respect.[39] If the training is to be effective, the soldiers must know that their commanding officers and those responsible for planning operations regard compliance with the law as important. If that is the case, those officers themselves need to have effective access to legal advice [40] and to use it. This need led to the obligation to appoint legal advisers imposed by Article 82 of Protocol I.[41] The final text is a much watered-down form of the original proposal but, if implemented, it may have a useful "knock-on" effect on the attitude of the armed forces to the law. The argument that there are insufficient resources, in terms both of time and money, to provide either the training or the legal advisers is unconvincing.

Ultimately, it is a matter of the importance attached to compliance with the Geneva Conventions. If that is seen as a high priority, whether out of humanitarian concern, political calculation or the need to maintain disciplined forces, the resources will be found. One way in which the costs could be reduced would be through co-operation between States. This is all the more important in the case of an integrated military

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[39] Williams, *op. cit.*, note 23, p. 29.

[40] It is said that the one member of the British Army Legal Service who was sent to provide advice in the South Atlantic conflict did not reach the islands until Port Stanley had been recaptured by the British because the transport of other personnel and equipment had a higher priority. It is not known whether the lack of a qualified lawyer made a material difference to the implementation and enforcement of the Geneva Conventions.

[41] The legal adviser is to advise commanders at the appropriate level on the application of the Conventions and Protocol and on the appropriate instruction to be given to the armed forces. The advisers are to be available both in peace-time and during armed conflicts. It is not clear whether the adviser is to proffer advice or only to give it on request. His role in relation to the investigation of possible breaches of the Conventions and Protocol is not clearly defined. The military commanders would not appear to be bound by the advice given. The relationship between the commander and the legal adviser, almost certainly of lower rank, will need to be developed in peace-time if it is to work well during a conflict. In both Israel and the Federal Republic of Germany, the independence of the legal adviser is assured by making him militarily accountable to the commander but accountable in matters of law to his commanding officer in the legal service. See generally, *Shefi, D.*, "The status of the legal adviser to the armed forces: His functions and powers", *Revue de Droit Pénal Militaire et de Droit de la Guerre*, XXII-3/4, 1983, p. 259; Moritz, G., "Legal Advisers in Armed Forces—Position and functions", *Recueils de la Société Internationale de Droit pénal militaire et de Droit de la Guerre*, Bruxelles, 1982, p. 483; Draper G.I.A.D., "Role of Legal Advisers in Armed Forces", *IRRC*, No 202, January-February 1978, p. 6; Green, L. C., "The Role of Legal Advisers in the Armed Forces", 7 *Is Ybk HR* (1977) p. 154; Fleck, D., "The employment of legal advisers and teachers of law in the armed forces", *IRRC*, No. 145, April 1973, p. 173.

alliance, such as NATO. Some NATO States are bound by Protocol I and others are not. There needs to be agreement as to what rules would bind the armed forces in the event of a conflict to avoid the problem of an American giving what is, for him, a lawful order to a Norwegian, for whom it would be unlawful to obey the order. Co-operation in training in humanitarian law would therefore serve two purposes. The provision of resources is a matter of the priority attached to compliance with the Geneva Conventions and that, in turn, depends on political will.

The third problem identified in relation to the provision of effective dissemination raises the same issue. It is also one of the elements which accounts for the scepticism of the armed forces. It would therefore appear that the central problem in establishing effective dissemination of humanitarian law lies in convincing the armed forces of the importance of compliance with the Geneva Conventions. In a democracy at least, that is a matter of political will. It has already been seen that the one-sidedness of war crimes trials and the violations of rules prohibiting the use of certain weapons cause the armed forces—and others—to question the effectiveness of the law of armed conflicts.[42] In that case, it is for the general public to create the necessary political will on the part of governments. Civilians only appear to find the matter important when it concerns them, usually on account of the participation of their State in an armed conflict.[43] The first step, then, must be to educate public opinion. The emphasis in Article 83 of Protocol I on dissemination amongst the civilian population and the increased willingness of national societies of the Red Cross to take part in such activities may help to promote awareness of humanitarian law obligations. When public opinion is educated, it can then be mobilized. This was done most effectively in the United States during the Vietnam war. The existence of a campaigning organization, like Amnesty International, of unquestionable impartiality and independence, would facilitate the mobilization of international public opinion. The Red Cross campaigns for the implementation of and respect for the provisions of humanitarian law in general and has made specific pleas in this regard to the belligerents involved in such conflicts as those in Afghanistan, the Western

[42] Verri, *op. cit.*, note 13, pp. 610-611.

[43] Compare the provision of courses in military law in university courses in Israel; Shefi, *op. cit.*, note 40, p. 264, with Levie's experience in the USA during and after the Viet Nam war; Levie, H. S., "Teaching Humanitarian Law in Universities and Law Schools", 31 *American University Law Review*, (1982), No. 4, p. 1005.

Sahara and Kampuchea and the parties to the Iran-Iraq conflict.[44] It has also urged other High Contracting Parties to bring pressure to bear on the belligerents for the implementation of their obligations. In addition, the ICRC has sought to obtain Israel's recognition of the *de iure* applicability of the Fourth Geneva Convention to the occupied territories. The Red Cross cannot, however, expose specific violations of humanitarian law on account of its real need to maintain confidentiality in order to be allowed to fulfil its humanitarian function.

The need for impartial and well-documented evidence of specific violations has been shown in the field of human rights law. Complaints from groups relying on such evidence cannot be dismissed out of hand either by the government in question or by other governments under the pressure of domestic and international public opinion. Such reports provide an informed basis for effective campaigning. If an appropriate organization were to be established, it would form a bridge between Amnesty International and the Red Cross. It should be remembered that the mobilization of public opinion in this way can only take place in democracies. Only in such States can the public create the political will to ensure the effective dissemination and implementation of humanitarian law. Such pressure does, nevertheless, have an indirect effect on other States, as is shown by experience in the related field of international human rights law. It is now accepted that a State's human rights practices are not merely a matter of domestic jurisdiction. Changing attitudes is a slow process. It is up to the public, lawyers and human rights activists to create a climate of opinion in which the armed forces know that the effective implementation of humanitarian law is important. This will be evidenced by increased resources for improved training and the certainty of investigation and prosecution for any alleged violation of the rules. The test of effective dissemination of humantarian law lies not in the number of copies of the Conventions that are distributed, nor even in the number of legal advisers, but in the conduct of members of the armed forces during a conflict. The best peace-time preparation lies in the inculcation of "the law habit" by ensuring that the requirements of humanitarian law are taken into account in the

[44] See generally, "Under the Presidency of Mr. Alexandre Hay: the ICRC from 1976 to 1987 — Controlled expansion", *IRRC*, November-December 1987, pp. 621-630.

planning of operations and training exercises. Anything less is inconsistent with the obligation of States "... to ensure respect for the... [*Geneva Conventions* and *Protocol I*] ... in all circumstances".

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