

# Training the armed forces to respect international humanitarian law

## The perspective of the ICRC Delegate to the Armed and Security Forces of South Asia

by **David Lloyd Roberts**

This paper will briefly examine the legal obligation placed on States to respect international humanitarian law and to train their armed forces in the subject. The practical problems this can create and how they might be overcome will also be addressed. The approach taken by the International Committee of the Red Cross (ICRC) to training in general and the particular approach being used in South Asia will be discussed.

### Background

Cicero is reputed to have declared: “Laws are silent amidst the clash of arms”. This is a rather off-putting point of view for a legal adviser to the armed forces or an ICRC delegate charged with spreading knowledge of the law. Apart from pure ignorance of the law, which can easily be remedied, this sort of scepticism and cynicism, as apparent in Cicero’s time as it is today, is one of the main hurdles that have to be overcome in convincing the armed forces of the need to respect the law.<sup>1</sup>

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The present article is an edited version of a talk that the author often gives to target audiences in South Asia.

<sup>1</sup> See Françoise J. Hampson, “Fighting by the rules”, *IRRC*, No. 269, March-April 1989, p. 118, or George H. Aldrich, “Compliance with the law: Problems and prospects”, in Hazel Fox and Michael A. Meyer (eds), *Effecting compliance*, British Institute of International and Comparative Law, London, 1993, pp. 3-13.

As far back as 1907, Hague Convention IV stated: "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". The Geneva Conventions of 12 August 1949 go slightly further. Each of the four Conventions stipulates that the States Parties have an obligation to "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 be known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains" (Articles 47, 48, 127 and 144 respectively). A similar provision is to be found in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Article 25). The requirement to disseminate the law is reinforced in 1977 Protocol I additional to the Geneva Conventions (Articles 82 and 83).

There is therefore little doubt as to the responsibility of States and their respective Commanders-in-Chief to train their armed forces in international humanitarian law.

### **Problems of training armed forces in the law**

Although the obligation to teach and train is perfectly clear, in reality the task is not quite that simple and the practice of States in general is far from encouraging. Some States are known to provide regular courses of instruction, and considerable efforts are or were made in such places as Yugoslavia, India and Poland.<sup>2</sup> But what on earth happened in Yugoslavia? Evidently the laws did indeed become "silent" amidst the intercommunal strife as the former Yugoslavia tore itself apart in recent years, a period which has seen some of the worst violations of international humanitarian law since the Second World War. No doubt the fragmentation of this State, the breakup of its armed forces and the subsequent lack of proper leadership, command and control had much to do with these violations. This is a very sobering and up-to-date example of a failure to implement the law — despite apparent good training — and a warning to us all not to be complacent and to try and do better in the future.

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<sup>2</sup> G.I.A.D. Draper, "The place of laws of war in military instruction", lecture, *RUSI Journal*, Vol. 111, London, August 1966, p. 193 (note 10).

Even in the very best of armed forces there will always be constraints on the time available for training. At a military academy or staff college a commandant will be pulled in numerous directions to include more of this or that in the syllabus. It is a brave commandant who insists on maintaining a module on the “Law of Armed Conflict”. Yet it is at these very institutions that a nation’s future high command must be instructed in the provisions of the law which are one day likely to influence them and their decisions as commanders. In the light of a nation’s obligation to provide this instruction, ignorance of the law is inexcusable. It is in peacetime that we have the time to consider the law. Once the “balloon goes up”, it is too late. Just as we might teach drills and principles for attack and defence, so as a matter of routine we should also include elements of the law so that they become second nature and will not be dismissed in the fog and confusion of battle.<sup>3</sup>

A further problem as far as professionals in the armed forces are concerned is that study of the law, albeit of great interest to lawyers, might leave most operational officers and certainly almost every soldier absolutely cold. The very word is likely to conjure up thoughts of dusty old books, of boredom, of remoteness and, quite bluntly, of irrelevance. This apprehension can and of course must be overcome by good, well thought out and well presented training, by trainers who are experienced in operations and are therefore credible and, above all, who believe in their subject.

Commanders must demonstrate, by their interest in and emphasis on training in peacetime and of course by their behaviour in war, that they respect the law. A soldier is very quick to pick up a remark or an action from a superior. Commanders have a clear responsibility to uphold the law and to make their orders absolutely clear and unambiguous. Good training and the setting of high standards and sound examples in peacetime will be followed through in battle. There is an old military saying which runs “train hard, fight easy”; perhaps “train hard, fight easy and legally” would be more to the point! The example of command is of paramount importance in upholding the law. Setting a bad example and loose or ambiguous command have certainly been the cause of grave breaches of the law in the past, perhaps the most poignant instance in recent history being the My Lai massacre. It now seems likely that the International

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<sup>3</sup> See also Yves Sandoz, *Implementing international humanitarian law*, Henry Dunant Institute, Geneva, 1995, p. 5.

Criminal Tribunal for the Former Yugoslavia will provide equally harrowing examples.

The problems arising in training and disseminating international humanitarian law range from scepticism and cynicism to severe constraints on training time in academies, colleges and units. Then there is the apparent remoteness and irrelevance of the subject. However, for any truly professional armed force, problems are there to be overcome. Let us now turn to this more positive, challenging and important aspect of the whole topic.

### **The overall approach to training**

The time available for training armed forces will be subject to many demands — internal security operations, ceremonial parades, other training priorities such as basic fitness and battle-craft, and even pure and simple guards and duties. This section of the paper will suggest ways and means of achieving our aim within these very real constraints.

#### *Credibility and relevance*

A soldier can understand why he has to learn the basic principles of camouflage and concealment or how to use his weapon correctly. The law, difficult as it might at first appear, must be presented in an equally meaningful, credible and digestible way.

The expression “international humanitarian law” is well understood by lawyers and military instructors, but the term “law of war” will mean much more to students in the classroom or on a training exercise. The credibility of the law of war is much enhanced when the instructor points out that it was born on the battlefield. It is very much soldiers’ law moulded by our forefathers in the midst of battle. The law is rich in military tradition and rooted in age-old custom (ruses of war vs perfidy, the truly customary white flag of truce, etc.). Its rules are straightforward. As one of the principles of war is “simplicity of action”, the law of war has also to be simple and straightforward. Furthermore, although the law certainly places limitations on the waging of war, in no way are these intended to tie one of a soldier’s hands behind his back in battle. The law fully accepts the concept of military necessity, and in no area does it ever conflict with the principles of war. All that it does is remind a soldier and his commander that there are certain minimum standards of behaviour in war which, if sensibly applied, can and will alleviate the suffering of victims affected by the fighting. There is nobility in fighting and possibly dying

for your country. There is just as much nobility and honour in showing humanity and compassion to your defeated foe or to the civilians caught up in the battle. The law of war shows how this can and should be achieved.

### *Choice of instructors*

It is important not only that the content is presented in a credible way but also that the instructor is credible. There is no substitute, when teaching soldiers or officers, for first-hand experience of conflict. The rapport and understanding in both directions will be immediate and will make any teaching more relevant and acceptable. Having an instructor or indeed a lawyer with operational experience is of great benefit in teaching the law of war. The ICRC's approach runs very much along these lines. Retired officers from various countries (some with a legal background but most without) are trained in the law and then deployed throughout the world to offer training and advice to the armed forces.

### *The dynamic nature of the law*

An important aspect of the overall approach to training is to emphasize that the law is not archaic but strives to keep up to date. Certainly an explanation should be given of the meaning of the two main strands of the law: the law of Geneva and the law of The Hague. We should then draw attention to the newer law, such as the 1977 Additional Protocols and the 1980 Convention on Certain Conventional Weapons. Developments as recent as those that occurred in 1996, when new protocols dealing with laser weapons and mines were added to the 1980 Convention, are also important in showing how the law of war keeps up to date and alive to the realities of the modern battlefield.

### *Acceptance of the difficulties involved in applying the law*

In the overall approach to training in the law of war it must be accepted that the soldier in battle will sometimes encounter severe difficulties and pressures which might mitigate his training or incline him away from the rules he is supposed to obey. Despite his belief in and his enjoyment of the profession of arms, a soldier knows at the back of his mind that it can be a tough life. After all, there are not too many professions that require you as a matter of duty to be prepared to lay down your life for your country, regiment or unit. There may be fear, fatigue, frustration, anger, hunger and stress, which in turn may prompt a desire for revenge or retribution. We must accept these as part and parcel of the military life,

but we can certainly try to control them as best we can. It is this vital element of control that must be emphasized over and over again in the teaching of the law of war. Personal discipline and excellent leadership are vital. Both are made easier when one knows what exactly is allowed and what is not.

Let us now turn to the ICRC's approach to teaching the law of war and to the methods adopted to suit the particular requirements in South Asia.

### **Teaching the law of war: The ICRC's approach**

In terms of dissemination of the law of war to the armed forces the ICRC really has a supporting role: to assist the military wherever possible in carrying out their responsibilities in this regard. How is this done?

The staff of the division responsible for this activity at ICRC headquarters in Geneva comprises five officers, with a Major General as a consultant. In addition, throughout the world, at various ICRC regional delegations, there are several "delegates to the armed and security forces". Most of them are retired officers and all have seen some form of operational service with the armed forces of their own countries or with the United Nations. Their task is to make contact with the armed forces of the region where they are working and to explain how and to what extent they can offer assistance. It is neither their mandate nor their intention to take on full responsibility for the training of the armed forces in the law of war.

The ICRC delegates to the armed forces can offer their expertise in a number of areas.

- They can share their wide-ranging practical experience gained during armed conflict.
- They can provide access to good teaching material produced by the ICRC, specifically tailored to the needs of the armed forces, and translated into relevant languages. Delegates can also pass on up-to-date information on humanitarian issues such as anti-personnel landmines, the proposed guidelines for United Nations forces, and laser weapons.
- ICRC delegates always have to be impartial and neutral in their teaching. It is for the students and staff of colleges and academies to relate the law to their own particular circumstances.

- Because they have been soldiers and have sat through lectures at their own military academies or staff colleges, they know how easy it is for lecturers to send students to sleep!<sup>4</sup> They try therefore to inject realism and interest into their talks and to motivate their audience by a mix of programming and up-to-date training aids.
- Aware of the problems of time and programming, instructors are prepared to be flexible enough to meet any particular requirement. For example, a course need not necessarily take place for two or three full days. It could be spread over a week, with morning or afternoon sessions allowing other activities to take place in between.
- In addition to lectures and courses, the instructors can also offer assistance with seminars and training programmes and can provide training booklets.

Of course, courses can be tailored to the specific needs of the navy and the air force as well as those of the army and paramilitary forces.

### **Teaching the law of war in South Asia**

The post of a permanent ICRC delegate to the armed and security forces in South Asia was established in June 1995. The delegate is based at the regional delegation in New Delhi and covers India, Pakistan, Sri Lanka and Afghanistan.

#### *The role of a delegate to the armed and security forces*

The delegate's first task is to make or re-establish contact with the armed forces throughout his region. It is only when one looks at the vast extent of the region that this relatively simple task appears as a rather daunting but nevertheless fascinating challenge. The region stretches from Afghanistan in the north through Pakistan, Nepal and Bhutan, across to Bangladesh and then southwards to India and Sri Lanka. It includes countries at war and at peace, some of the largest democracies in the world and also some of the largest armed forces, paramilitary and police forces worldwide.

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<sup>4</sup> At the Royal Military Academy Sandhurst there is the well-known fable of the instructor who angrily exclaimed: "Jones, wake up Smith next to you". Jones is reputed to have replied: "Sir, with the greatest respect, as you put him to sleep, perhaps it would be best if you woke him up"! History does not relate how officer cadet Jones's career progressed thereafter.

To make contact and build up credibility and trust entails a great deal of travel and much patience. The key is to establish links at the highest possible level, normally at Chief or Vice Chief of Staff level. Here the task is to encapsulate in the shortest possible time, because such men are extremely busy, our mandate and what we can offer. This is the most crucial step in the entire process. Many of the forces already include instruction in the law of war in their military training programmes. Our task then is to focus on particular areas where we can be of assistance. It is important to strike the right chord. Having secured agreement in principle at this high level, the key is normally turned and the gates are opened. (The worst-case scenario would be: "Well thank you very much for your visit, but we are already fully aware of the Geneva Conventions. However, some of the books you mention would be very useful to us: could you possibly provide us with 10,000 of them"?! Not quite what we are aiming at.)

Having established contact at Chief of Staff level, we are usually requested to hold a further meeting with the directors of training establishments. Here the briefing has to go into much more detail. We have to carefully define our capabilities and indeed our limitations, not least of which are the staff we have available and time and programming constraints. Our aim is not only to give the best possible instruction but also to give it at the right level. In this way we start on a high note and rapidly gain credibility and win confidence in our work. Having explained our offer of assistance in detail, we then hope for firm requests for courses and workshops and so our programme develops for the year.

Within this rather straightforward approach, there are still several hurdles to be overcome. Our eagerness to assist must be sensibly balanced against the ability of the armed force in question to reorientate its curriculum or simply to find time for us in its already full programme. Progress from the initial meetings to actually giving a course can take months. In the case of one armed force in the region it has taken some 12 years to gain limited acceptance. In other cases we have been asked to start "next week"!

### *How the system operates*

*Comprehensive approach.* As mentioned above, the post of delegate to the armed and security forces in the South Asia region is relatively new. At the outset it was important to decide how, with the limited staff and time available, we could best plan our programmes, at least for the first few years. We decided on a two-strand approach.

- We would offer courses for *military academies* and *staff colleges*. It is vitally important that the foundations of knowledge of the law of war be laid at the beginning of an officer's career, at the military academy, while that knowledge can be reinforced later on, at the staff college. The ICRC's aim is to give instruction in the law to every officer in the region entering the armed forces. Why this high-level approach? In the first place it suits the capabilities and particular characteristics of our instructors. Most have been instructors at staff colleges, so they blend in well with their surroundings, they know their audience, language is not a problem and they are easily accepted. The other point is the *multiplying effect* of this instruction. If one considers that a young officer will immediately command 30 men and soon a company of 100, and that a staff college graduate will command a battalion of some 600 men or an important staff branch, then it is obvious that this training can reach and influence people far beyond the individual officer concerned.
- In line with our scarce resources and in order to enhance this multiplying effect, we also concentrate on *courses for instructors*. Last year the ICRC trained over 100 instructors during 5 to 8-day workshops in the region. Participants are provided with teaching files containing lesson plans and visual aids. The courses give prominence to methods of instruction and production of training programmes. Of necessity, the number of participants is kept to about 20-25 junior and warrant officers. Their task thereafter, through their units or formations, is to give instruction at the lower levels, such as battalion or company level. It is too early at this stage to quantify the impact of these courses. However, the eagerness of the instructors who pass through our hands and the backing we receive from the parent formations augurs well for the multiplying effect of these activities.

*The retired officer concept.* The concept of a "pool" of officers trained in Geneva and available to assist in their own or indeed other countries has been established for some time. In the region, a course was held last year for 16 mostly retired officers from India, Sri Lanka, Bangladesh and Nepal. Retired officers have the time to teach and are not going to be distracted by considerations of postings or promotion. All the volunteers are requested and appointed through their own countries' Directors of Training. This is a guarantee of their credibility and acceptance within their own armed forces. Their activities and teaching needs are coordinated by the delegate in New Delhi. During courses they are accompanied by the latter or by another representative of the ICRC delegation in the country concerned.

*What we offer*

Training is given at three main levels, and is now being extended to cover the three services — army, navy and air force — and the paramilitary.

*Junior ranks.* Here for the time being instruction is being relayed through our instructors' courses. During these courses we stress the fact that for soldiers classroom instruction should be kept to the bare minimum. One or two 45-minute lectures might be appropriate to set the scene. The best training at this level will be given as part of normal field instruction or on exercises. Ambush drills, section attacks, fighting in built-up areas (FIBUA) exercises and so on can all incorporate a small element of law of war training. Capture drills, evacuation and treatment of the dead and wounded, treatment of the adversary's medical staff, respect for protected property, drills for dealing with the white flag of truce and even for dealing with humanitarian aid vehicles can all be built into normal field exercises with little or no additional work. At the end of each training period the tactical and law of war lessons can be brought out as part of normal debriefing. Tactics and issues relating to the law are seen to be part and parcel of the same subject; they become routine, a matter of normal behaviour in action. This training of soldiers can always be enhanced. Soldiers love watching videos and a training video is probably one of the best methods available of imparting information on the law. Small booklets on the law of war which also include a section on first aid are available from the ICRC. In the past year the regional delegation has produced such booklets for the Indian Army, the Border Security Force of India and the Royal Nepalese Army. Each contains a foreword by the respective Commander-in-Chief.

*Young officers.* If we can do nothing else we should at least ensure that young officers, many of whom will be future commanders, have the opportunity to learn and reflect on the subject from the beginning of their careers. Three to four periods at the beginning of the cadets' study, and then the same time again during their last term to look at broader issues, is really all that is required in terms of formal instruction. During their training, field exercises and model room exercises should always include at least one problem relating to the law of war. As the course progresses, case studies and military history can be used to illustrate lessons on the law. Officers should also know what elements of the law to pass on to their soldiers and how this should be done.

*Senior officers and staff officers.* The staff college or senior commanders' courses offer ideal opportunities to reinforce notions of the law of

war learnt as a cadet. The officers attending these courses will all be filling important posts in the future, and some will be destined for high command. Broader issues of the law should now be studied, such as command responsibility and implications for logistics and planning. There would be absolutely no harm in rehearsing once more the rules of the law of war applicable to the conduct of military operations. Case studies based on recent wars and operations can be used to highlight concerns relating to the law of war. There are many lessons to be drawn from, for example, the Gulf War or the experience of United Nations forces in the former Yugoslavia. Legal issues arising from UN operations should be addressed at this level. What law is applicable to peacekeeping operations, or to peace enforcement? What are the guidelines for UN forces as regards respect for international humanitarian law? What do we need to teach troops in terms of the law before they depart on a UN operation?

*Some further remarks*

*Information on the ICRC, its role and its place within the Red Cross and Red Crescent Movement.* All our courses include information on the International Red Cross and Red Crescent Movement. The role of the ICRC in conflict zones is emphasized, in particular its detention and protection activities. Wherever possible the National Red Cross or Red Crescent Society of the country concerned is encouraged to give a talk on its tasks. This is particularly useful in South Asia, where there is a need for close cooperation between the armed forces and the National Societies during relief operations in the event of cyclones, floods or earthquakes.

*Production of training syllabi.* In addition to teaching, the delegate to the armed and security forces helps if requested with the production of training syllabi for the various levels of instruction. With increasing frequency we are being asked to draw up proposals for programmes, to advise on training aids and to produce summaries in the local language to assist the instructors we have trained.

*Production of training films.* This is very much in the conceptual stage. South Asia has some of the best film-makers in the world, but no country in the region has a training film focusing on the law of armed conflict. Such a film is an excellent training aid and we will actively encourage the idea of making one. Our role here would be to produce a draft script, to advise and to assist in the production as best we can.

*The law and UN operations.* Many of the armies and indeed the paramilitary forces of the region are actively involved in UN operations. Here we can assist in two ways. Units can request our assistance prior

to their departure on a UN mission. Because the ICRC will be present in the same country, we are able to portray the prevailing problems from the humanitarian angle and explain our working methods. This can help overcome difficulties once the units are deployed. There is great eagerness to learn not only how humanitarian organizations are operating in a particular country but also about the extent to which they can interact and cooperate with UN forces. We also take the opportunity to explain the law applicable in such operations. Such sessions have been held in Nepal and in India.

*Human rights law.* Quite clearly, our mandate is to give instruction in the law applicable to international and non-international armed conflict. Of course the forces are interested not only in this law but also in the law applicable to low-intensity conflict (internal security operations, etc.) Here domestic law and international human rights law apply. In order not to complicate our message or confuse the audience we invite local specialists in human rights law to cover this topic. In India, for example, we have a consultant who served for 30 years as a police officer commanding the Central Reserve Police Force and the National Police Academy. He is able to lecture on the law applicable to such situations with credibility and the benefit of vast experience.

*Training police forces.* The ICRC has been requested to hold courses for the police in the region. Our approach is to agree only if we are the only ones available to assist or sponsor such events, and our role is very much that of a facilitator. While we take the opportunity to give an overview of international humanitarian law and the role of the ICRC, the bulk of the course is conducted by a police consultant from our pool in Geneva or one of our local consultants. In the past year the ICRC has organized two such courses, one for the Sri Lankan police and one for the Indian North Eastern Police Academy in Assam.

*Operational dissemination.* The regional delegation in India visits places of detention in Jammu and Kashmir, on the basis of a Memorandum of Understanding with the Government of India. In conjunction with this task we have conducted five courses for the paramilitary forces in the area to date. The courses combine general information on the role of the ICRC and its working methods with the basic rules of international humanitarian law. In this way we hope to promote better understanding of the ICRC while putting across the basic humanitarian rules.

### **Reaction to our training and results achieved**

The reaction to ICRC's training courses in the region has been favourable. A head of delegation attending a recent course pointed out that

none of the participants had questioned the law of war in terms of its implementation or operational applicability. He had obviously expected the audience of senior and experienced officers to have at least some doubts or arguments. This may have something to do with their good manners, but I believe it has more to do with the straightforward nature of the law and the realization that there is absolutely nothing in its provisions that any reasonable sailor, soldier or airman or their commanders could not apply in a conflict situation.

In terms of prior knowledge of what we teach, the situation is quite interesting. Before the start of a course many profess good knowledge of the law. As the course develops, most are quite prepared to admit they knew far less than 50% of the subject-matter. In some particular aspects of the law there is complete lack of knowledge. Almost to a man, for example, participants regard the white flag as a sign of surrender and not, as intended in the law, as a sign that a party to the conflict might simply wish to negotiate. A senior officer on one of our courses remarked that after many years he now understood why, when he was a young officer approaching a party who showed a white flag and insisting on their surrender, his comrade was shot and killed and he was wounded.

Results are very difficult to quantify. One can boast of the number of students who have passed through our hands or enumerate the courses held (in our region, 1,500 students and some 25 courses since June 1995). The true results will be seen only on the ground, in some far-flung corner of the region. If only 10% of what we teach is remembered, if a soldier as a reflex action or a senior officer as a function of his rank and command thinks, no matter how briefly, of the law and applies it, then our work will have been worthwhile.

In more practical terms, results can perhaps be gauged by certain developments in the region. Some examples: the fact that we are invited back to an academy or staff college; requests to extend our activities by training instructors who will teach at all levels in the armed forces; requests for delegates to attend high-level and normally restricted service seminars, and even to lecture at them; invitations to run joint seminars with the armed forces; the setting-up this year of a Directorate of International Humanitarian Law in the Sri Lankan Army; individual requests for literature and advice on the law of war; the broadening of our dissemination activities to include the air forces and navies of the region; the knowledge of the ICRC and the Movement that comes with our courses and the consequent better understanding and cooperation, particularly in the field. These are all positive and encouraging results.

## Conclusion

Let us end where we began, with Cicero. Humanity has made great strides since his comment on the silence of the law amidst the clash of arms. No doubt the cynical will, like the great orator, quickly point out that many of these advances have not been in mankind's best interests. The horrors of war remain with us. Weapons of war have been developed to incredible levels of sophistication.

As weapons have developed, so too has mankind tried to control or limit their use. While cynicism will persist and further advances will be made in weaponry, let us never forget that one of the *very best weapons* the military has in its arsenal to limit the excesses to which these two problems can give rise is *training in the law of war*. Our role in South Asia is to assist the armed and security forces as best we can in this sphere.

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