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**GENERATING RESPECT FOR THE LAW: THE NEED FOR PERSISTENCE AND IMAGINATION\***

‘One of the worst enemies of the Geneva Conventions is ignorance.’<sup>1</sup>

Jean Pictet

**Introduction**

In a delicate balance, IHL is essentially a call to the belligerents in time of war to cause each other ‘as little injury as possible, without prejudicing their real interests’<sup>2</sup>. To protect, in such a violent situation as armed conflict, IHL has to be understood and correctly applied: it has to *come to life*.

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1. Jean Pictet, *Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, Commentary I*, Geneva, 1952, pp. 347-349.
2. Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws*, 1748, transl. Thomas Nugent and J.V. Pritchard, London, 1914. In French *De l'esprit des lois*, livre I, chapitre 3: ‘Le droit des gens est naturellement fondé sur ce principe que les diverses nations doivent se faire dans la paix le plus de bien, et dans la guerre le moins de mal qu’il est possible sans nuire à leurs véritables intérêts.’

Important obligations are set in this regard within IHL itself – among them the obligation to disseminate IHL and obligations relating to the domestic implementation of IHL. Without this effort, the substantive rules cannot fully take effect.

Indeed as part of the execution of the Geneva Conventions, States have an obligation to disseminate the law and to include it in military and if possible civil instruction. In legal terms, the importance of dissemination of IHL was first formally recognized in the 1906 Geneva Convention<sup>3</sup>. The Geneva Conventions of 1949<sup>4</sup> contain a more elaborate obligation for States, which is reiterated and developed in the Additional Protocols<sup>5</sup>. It was also found to be a customary rule of IHL<sup>6</sup>. States also have an obligation to implement IHL, in other words to pass domestic legislation and regulations, and put the necessary structures in place to give effect to rules contained in IHL treaties.

This article aims to take stock, for the first time, of efforts specifically directed to generating respect for IHL, and in particular through the dissemination of IHL (*i.e.* spreading information, engaging in dialogue or promotion) and its integration into national legislation, education, military doctrine and training. The article will not discuss in detail the elements of dissemination as a legal obligation, which have been already described elsewhere<sup>7</sup>. Furthermore, there are many complementary ‘building blocks’

3. Art. 26: ‘The signatory governments shall take the necessary steps [...] to make [the provisions of this Convention] known to the people at large.’ The 1929 Geneva Convention also contains a similar obligation, in Art. 27: ‘The High Contracting Parties shall take the necessary steps [...] to bring [the provisions of this Convention] to the notice of the civil population.’
4. See Articles 47-48 common to the First and Second Geneva Conventions: ‘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.’ Arts 127-144 of the Third and Fourth Geneva Conventions have similar wording, but specify that dissemination should be done among authorities responsible for the care of, prisoners of war and civilian protected persons, respectively.
5. See Additional Protocol I (AP I), Art. 83; and Additional Protocol II (AP II), Art. 19. AP I asks for specific measures with a view to strengthening the general obligation (see Art. 6 on qualified persons, Art. 82 on legal advisers in armed forces, and Art. 87(2) on the duty of commanders). AP II extends the scope of application of the obligation to non-international armed conflicts.
6. See ICRC, ‘Customary IHL’ database, Rule 142 (*vis-à-vis* the parties to the conflict) and Rule 143 (*vis-à-vis* the civilian population), available at: <https://www.icrc.org/customary-ihl/eng/> (consulted on 17 February 2016).
7. For an excellent overview of the obligation to disseminate the law, see the following sources: Sandesh Sivakumaran, *The Law of Non-international Armed Conflicts*, Oxford,

to creating respect for the law that will not be covered here, such as the development and clarification of new legal instruments, the role of sanctions, the development of compliance mechanisms or the use of ‘operational communication’ aimed at facilitating the acceptance of humanitarian actors.

In the 1984 ‘Mélanges Pictet’, two contributions were devoted respectively to the ‘dissemination’ of IHL and the ‘teaching’ of IHL in military institutions<sup>8</sup>. Both authors lamented the lack of motivation and capacity in this field, and presented a series of arguments to make the case for the adoption of education and dissemination measures. Thirty years later, we know that much has been accomplished. In a recent article, Marco Sassòli and Yvette Issar analyse the ‘Successes of IHL’<sup>9</sup>; Speaking of an ‘incredible growth’ of IHL, they describe its progress both in terms of substance and implementation mechanisms, including its dissemination:

Thirty years ago, IHL was largely a secret science... Today, however, the picture is quite different. The statements and other arguments of belligerents, both the hypocrisies and well-founded claims made by governments, rebels, terrorists, politicians, diplomats, NGOs activists, demonstrators and journalists constantly refer (correctly or not – but increasingly correctly) to IHL.<sup>10</sup>

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Oxford University Press, 2012, Chapter 10, section 2 on dissemination, pp. 434-437; Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015, in particular Chapter 30; ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2<sup>nd</sup> ed., ICRC/Cambridge University Press, forthcoming in 2016, in particular the commentary on Article 47. See also the factsheet on dissemination prepared by the ICRC Advisory Services on IHL, ‘The Obligation to Disseminate International Humanitarian Law’, February 2003, available at: [http://www.icrc.org/eng/assets/files/other/obligation\\_to\\_disseminate.pdf](http://www.icrc.org/eng/assets/files/other/obligation_to_disseminate.pdf) (consulted on 17 February 2016).

8. Jean-Jacques Surbeck, ‘La diffusion du droit international humanitaire, condition de son application’, in Christophe Swinarski, *Studies and Essays on International Humanitarian Law and Red Cross in Honour of Jean Pictet*, Geneva/The Hague, Martinus Nijhoff Publishers, 1984, pp. 536-549 and Pietro Verri, ‘Institutions militaires : le problème de l’enseignement du droit des conflits armés et de l’adaptation des règlements à ses prescriptions militaires’, in Christophe Swinarski, *Studies and Essays on International Humanitarian Law and Red Cross in Honour of Jean Pictet*, Geneva/The Hague, Martinus Nijhoff Publishers, 1984, pp. 603-619.
9. Marco Sassòli and Yvette Issar, ‘Challenges to International Humanitarian Law’, in Andreas von Arnould, Nele Matz-Luck and Kerstin Odendahl (eds), *100 Years of Peace Through Law: Past and Future*, Berlin, Duncker & Humblot, 2015, p. 182.
10. *Ibid.*, p. 188.

Beyond public statements, the number of activities specifically aimed at IHL dissemination, education, national implementation and military training has also grown considerably since the first ‘Mélanges Pictet’<sup>11</sup>. Unquestionable progress has been made in the broader sensitization of the general public. Furthermore, the development of international criminal law has given a new impetus to the notion of accountability for IHL violations and has changed the way we interpret and perceive this body of law. Over the years, many States have also set up their own structures (National IHL Committees/Commissions) to address IHL-related matters domestically<sup>12</sup>. Beyond the International Red Cross and Red Crescent Movement (the ‘RCRC Movement’), IHL promotion has found new advocates in civil society, academia and the military.

This article attempts to outline the main developments in this field, while calling for complementary studies to reach a full picture of the state of integration and dissemination of IHL in the world today. After making preliminary observations on ways of measuring progress, the article looks at the accomplishments of the main actors involved in the dissemination and integration of IHL, and at the challenges they have faced. It then suggests possible areas for improvement and orientations for the future.

### **How to measure progress?**

States are the main implementers of IHL. As such, they have an obligation to disseminate and integrate IHL into domestic legislation, policies and training. They are obliged to both disseminate the law among the *civilian* population and to include it into *military* training. States should also support efforts to respect IHL by other States or armed groups abroad. Non-State armed groups are also addressees of the Geneva Conventions: they should also undertake dissemination. This is especially important in an era dominated by increasingly fragmented non-international armed conflicts.

If States and non-State armed groups are the primary actors in the dissemination and implementation of the law as carriers of these legal obliga-

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11. As an indication, one can quote some of the figures published by the ICRC in its annual report 2014: over 400 universities in more than 100 countries received support for the teaching of IHL; 35 specialized ICRC delegates conducted or took part in more than 1,200 courses, workshops, round-tables and exercises involving some 45,000 military, security and police personnel in more than 160 countries; ICRC’s legal and technical advice to governments contributed to 96 ratifications of IHL treaties by 69 countries or entities, etc. ICRC, *Annual report 2014*, p. 94, available at: <https://www.icrc.org/en/document/ICRC-annual-report-2014>.

12. See the below discussion on ‘State authorities’.

tions, a growing number of secondary actors encourage and support States' efforts by reaching out to military and security forces, civil servants or the general population<sup>13</sup>. The RCRC Movement in particular has a mandate to support States in efforts to disseminate IHL<sup>14</sup>. While the ICRC may have remained a unique actor in this domain because of its ability to combine IHL knowledge, operational field presence and expertise in dissemination and integration of the law, other civil society actors have also developed a capacity to provide IHL training and education programs.

The following sections discuss this progress through the prism of the involvement of both 'primary' and 'secondary' actors and the concrete steps they are taking to create awareness of the law and integrate IHL into legislation, training or education. It is important to distinguish this from an attempt to attribute particular outcomes (e.g. the prevention of potential IHL violations) to particular efforts (e.g. one actor's dissemination program)<sup>15</sup>. Such a measurement has not been attempted yet on a large scale, and it may prove to be an extremely difficult exercise. Furthermore, it is impossible to ascertain whether or not IHL is on the whole better respected today than 10, 20 or 30 years ago, simply because there is no original benchmark set; conflicts have varied enormously in length, the motivations of the belligerents, the means and methods used, and even in the rules applicable to them. An additional difficulty is the common misconception that the suc-

13. In introducing the distinction between primary and secondary actors in the dissemination of IHL, and especially as regards armed actors, it is important to note that group cohesion is a very strong factor in the behaviour of armed actors that may involve strong prejudice against the 'other' (e.g. secondary actors involved in dissemination); endogenous factors, such as peer-pressure, will likely have a more determinative influence on group behaviour, than the efforts of outside actors. Therefore, there is a need for secondary actors to work on environmental factors and encourage the primary holders of the responsibility to disseminate IHL to fulfil their duty, while not attempting to substitute for them.
14. According to the Statutes of the RCRC Movement, National Societies have a mandate to disseminate and assist their governments in disseminating IHL; the ICRC has a mandate to disseminate IHL and prepare any development thereof, and the International Federation of Red Cross and Red Crescent Societies has a mandate to assist the ICRC in the promotion and development of IHL, and collaborate with the ICRC on its dissemination. See Arts 3, 5 and 6, Statutes, International Red Cross and Red Crescent Movement, adopted in 1986 (amended in 1995 and 2006), available at: <https://www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf>.
15. The ICRC's Prevention Policy makes a distinction between three key terms: 'impacts', or the 'ICRC's contribution to a broader change [...] within the sphere of indirect influence' (emphasis omitted); 'outputs', which 'are a direct result of the ICRC's efforts and are within the sphere of direct control', and 'outcomes', which 'can be attributed, at least partly, to the ICRC's efforts and are within the sphere of direct influence' (emphasis omitted). See ICRC, *ICRC Prevention Policy*, reference document, Geneva, 2010, p. 16, Figure: Spheres of influence.

cess or failure of the law should only be measured against recorded *violations* rather than in terms of instances of *respect* for the law. To the knowledge of the authors, very few studies demonstrating IHL-compliant behavior have been conducted to date. One can cite the approach of Andrew Bell, who studied the behaviour of different groups of US soldiers in Iraq and Afghanistan<sup>16</sup>. Combining historical case studies, survey work and interviews with US Army data on the number of prosecutions for war crimes, Bell concluded that there was a statistically significant difference between the behaviour of soldiers who received intensive IHL and ethics training, and those who did not. Other studies have typically used qualitative methods, drawing upon quantitative measurements (e.g. how many members of the armed forces have been trained) in combination with semi-structured interviews. For example, Kate Jastram and Anne Quintin<sup>17</sup> evaluated the progress made in integrating IHL course material into US law schools curricula by using as a baseline a survey of IHL taught in US Law Schools in 2007<sup>18</sup>. They concluded that IHL was largely integrated in the educational programs of US law faculties as a result of the ICRC's integration strategy.

Most actors in this field, however, do not measure the impact of their efforts through the number of violations of the law they have prevented (*i.e.* something that never occurred – while various factors could have contributed to this). They rather present *outputs*: programs and trainings that have taken place, legislation passed, structures created at the domestic level, and so on. In this contribution, we aim to take stock of progress by looking at these outputs.

### **A story of growing commitment and enduring challenges**

To discern progress, this section first looks at the accomplishments of the main actors involved in dissemination and integration of IHL, and the challenges they have faced. This is a story of growing commitment but also of enduring challenges, both for primary and secondary actors. We begin with a discussion of the primary actors.

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16. Andrew Bell, “‘Leashing the Dogs of War’: Law of War, Military Culture, and Restraint toward Civilians in War”, PhD Dissertation, Department of Political Science, Durham, Duke University, 2015.

17. Kate Jastram and Anne Quintin, ‘Prevention in practice: teaching IHL in US legal academia’, in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 2014, 987-1027.

18. ICRC, *Report: Teaching International Humanitarian Law at U.S. Law Schools*, Washington D.C. 2007 available at <https://www.icrc.org/eng/resources/documents/report/ihl-usa-teaching-report-260607.htm> (consulted on 17 February 2016).

### *State authorities*

In both their discourse and concrete actions, States have demonstrated their willingness to take on responsibilities in the field of dissemination and integration of IHL.

During the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent in December 2015, several States as well as the NATO and the EU reaffirmed the continuous importance of the dissemination of knowledge on IHL and humanitarian principles among various audiences. The resolutions<sup>19</sup> adopted during the 32<sup>nd</sup> Conference, as well as numerous pledges<sup>20</sup> undertaken by States were either specifically devoted to the dissemination efforts by States, and auxiliary role of National Red Cross and Red Crescent Societies (National Societies) and RCRC Movement in such efforts, or referred to the dissemination of respective norms among the armed forces or general public in line with States' international obligations. Two resolutions – devoted to sexual and gender-based violence<sup>21</sup> and health care in danger<sup>22</sup> – stressed the particular importance of dissemination with the pur-

19. See the resolutions adopted at the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent, 8-10 December 2015, available at: <http://rcrcconference.org/international-conference/documents/> (consulted on 17 February 2016).
20. See the database of pledges, 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent, 8-10 December 2015, available at: <http://rcrcconference.org/international-conference/pledges/> (consulted on 17 February 2016). Dissemination efforts were covered in both – open and specific pledges; see *inter alia*, for open pledges: 'Changing minds, saving lives and building resilience through values based education for all', OPS32022; 'Fundamental Principles of the International Red Cross and Red Crescent Movement', OPS32036; 'Sexual and gender-based violence during times of armed conflict or in the aftermath of disasters and other emergencies', OPS32037; 'Health care in danger: Respecting and promoting health care', OPS32038; 'Promotion and dissemination of international humanitarian law', OPS32039; and for specific pledges: 'Pledge on IHL Compliance by 15<sup>th</sup> Regional Seminar on International Humanitarian Law', Pretoria, South Africa, SP320003; 'Dissemination of IHL through regular seminars on various IHL topics', SP320012; 'Ethical Principles of Health Care in Times of Armed Conflict and Other Emergencies', SP320047; 'Permanent training of personnel of the Armed Forces on IHL and integration of IHL into internal regulations', SP320048; 'NATO pledge to the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent Movements [*sic*], NATO', SP320061; 'Increasing safer access, The Sri Lanka Red Cross Society', SP320063.
21. *Sexual and gender-based violence: Joint action on prevention and response*, Resolution, 32IC/15/R3, 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent, Geneva, 8-10 December 2015, available at: [http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-on-Sexual-and-gender-based-violence\\_EN.pdf](http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-on-Sexual-and-gender-based-violence_EN.pdf), para. 9 (consulted on 17 February 2016).
22. *Health Care in Danger: Continuing to protect the delivery of health care together*, Resolution, 32IC/15/R4, 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent,

pose of preventing violations of the respective IHL norms. Furthermore, references to IHL at the United Nations<sup>23</sup> and in public communications by high-level international officials<sup>24</sup> attest to the integration of IHL in the public discourse.

Beyond discourse, a good indicator of the growing adherence to humanitarian norms by States lies in the progress in ratification and national implementation of IHL-related treaties. Since the 1984 ‘Mélanges Pictet’, over a dozen IHL-related treaties have been adopted and ratified by States<sup>25</sup>; the UN Security Council has adopted the Statutes of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda; States have negotiated and adopted the Statute of the permanent International Criminal Court; most recently, the latest IHL-related treaty – the Arms Trade Treaty – has already been ratified by 79 States.

In addition to ratification, States have also been very active in the implementation of IHL-related treaties domestically<sup>26</sup>. While it is impossible to give a complete overview of *all* legislative, administrative and practical implementation measures that States have taken domestically over the last 30 years, a few indicators help paint a picture and give a sense of scale of the formidable task that national authorities face in this regard. A recent

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Geneva, 8-10 December 2015, available at: [http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-HCiD\\_EN.pdf](http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-HCiD_EN.pdf), para. 13 (consulted on 17 February 2016).

23. See e.g. United Nations Security Council, S/RES/2258 (2015), 22 December 2015 on Syria; United Nations Security Council S/RES/2225 (2015), 18 June 2015, on children in armed conflict; UN Human Rights Council, *The grave and deteriorating human rights and humanitarian situation in the Syrian Arab Republic*, UN Doc. A/HRC/30/L.5/Rev.1, 30 September 2015, paras 3, 4, 6, 7, 13, 20, 29.
24. See e.g. United Nations News Centre, ‘Ban, Red Cross chief voice concern of –“brazen and brutal” erosion of respect for humanitarian law’, 31 October 2015, available at: <http://www.un.org/apps/news/story.asp?NewsID=52431#.Vpp2lBgrKCQ> (consulted on 17 February 2016); European Union, ‘Commissioner calls for respect for humanitarian law as conflict intensifies in Syria’, 1 August 2012, available at: [http://ec.europa.eu/echo/news/commissioner-calls-respect-humanitarian-law-conflict-intensifies-syria\\_en](http://ec.europa.eu/echo/news/commissioner-calls-respect-humanitarian-law-conflict-intensifies-syria_en) (consulted on 17 February 2016); Remarks at the Security Council Stake-out Following Consultations on the Middle East, Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, New York, 21 December 2015, available at: <http://usun.state.gov/remarks/7069> (consulted on 17 February 2016).
25. See Figure 1, which attempts to give a “snapshot” of this progress as illustrated by the ratification rate of some of the key IHL instruments since 1984. For a list of IHL and IHL-related treaties, see ICRC, ‘Treaties, States Parties and Commentaries’, available at: <https://www.icrc.org/ihl>.
26. For a definition of ‘implementation’ as understood in this article, see ICRC, ‘Implementing International Humanitarian Law: from Law to Action’, available at: <https://www.icrc.org/en/war-and-law/ihl-domestic-law/documentation>.

report on national IHL implementation, prepared by the ICRC for the 32<sup>nd</sup> Conference, noted that *only* during the period 2011-2015, 121 States had become party to 26 IHL treaties and other relevant instruments through 244 acts of accession/ratification, and 57 States enacted 123 domestic laws or regulations and prepared a number of draft laws<sup>27</sup>. A good sense of the totality of legislation passed can be gained from the ICRC's National Implementation Database, which lists the main laws each State around the world has passed to implement IHL treaties<sup>28</sup>. Progress on national case law interpreting IHL has also been impressive, and can be tracked on the basis of the biannual updates that States provide on IHL case law to the ICRC, published regularly in the *International Review of the Red Cross*<sup>29</sup>. In addition, States – often supported by their National Societies – have created national structures to advise and assist them to implement and disseminate IHL – the National IHL Committees (or Commissions)<sup>30</sup>. While some of these structures predate the 1984 'Mélanges Pictet', many were created in the 1990s and 2000s, and today a total of 107 States, from all regions of the world, have set up such bodies. As will be discussed below, a number of States have also adopted national manuals on the law of armed conflicts, and undertaken steps to train members of their civilian administrations and their armed forces in IHL. Though not making the headlines, these are non-negligible achievements that States have themselves accomplished.

The steady (and in some cases steep) growth of ratifications, as illustrated in the below figure, as well as the sheer volume of national implementation measures undertaken by States testify to the overall readiness expressed by State authorities to take on responsibilities when it comes to IHL. This observation should not obscure the fact that several States –

27. ICRC, Progress report on '4-year action plan for the implementation of international humanitarian law', Resolution 2 of the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent, October 2015, Geneva, p. 3, available at: <http://rcrcconference.org/international-conference/documents/> (consulted on 17 February 2016)..

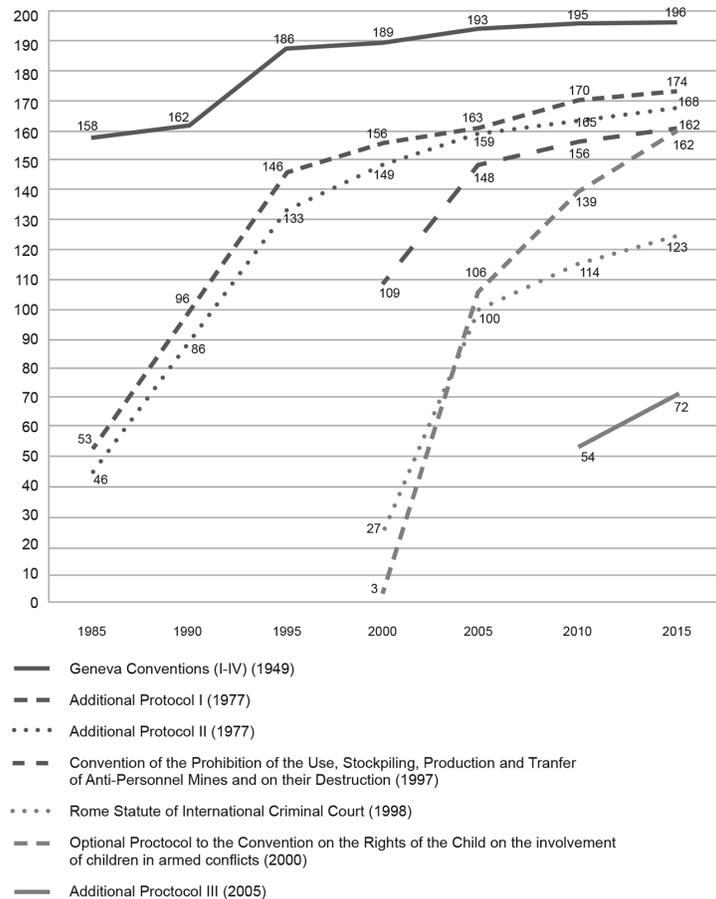
28. See ICRC, *National Implementation of IHL*, available at: <https://www.icrc.org/ihl-nat>.

29. For a recent example of a biannual update, see ICRC, 'What's new in law and case law around the world?', *International Review of the Red Cross*, 2014, Vol. 96, Nos 895/896, pp. 1093-1114.

30. More than 100 such mechanisms have been set up since their creation was first encouraged by the 26<sup>th</sup> International Conference of Red Cross and Red Crescent. For a complete table with all National Committees and their concrete table composition and mandates, see ICRC, *Table of National Committees and other national bodies on international humanitarian law*, 30 September 2015, available at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law> (consulted on 17 February 2016). See also 'Focus on national compliance mechanisms', in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 1043-1075 and in particular, Cristina Pellandini, 'Ensuring national compliance with IHL: The role and impact of national IHL committees', at p. 1045.

among them major military and economic powers – still have not become party to some of the most important IHL treaties, or that some States may have ratified IHL instruments but have not put in place effective measures to implement them.

**Figure 1: Status of ratifications and accessions to a few IHL or IHL-related treaties<sup>31</sup>**



**Note:** The vertical axis indicates the number of States, the horizontal one shows the respective years of ratification/accession.

31. Based on information from ICRC, Treaties and Documents, available at: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByDate.xsp>. The selection of treaties in this figure is based on a sampling of treaties (in addition to the four Geneva Conventions and their three Additional Protocols), adopted after 1984 and cut across different areas of IHL.

### *The armed forces*

In terms of military instruction, those who are on the frontlines of applying IHL – namely arms carriers – have also achieved significant progress, as exemplified by the statistics published annually by the ICRC<sup>32</sup>.

In recent years, much research has been conducted on behaviour of fighters in war<sup>33</sup>. The development of military training techniques to overcome the natural reluctance of soldiers to use their weapons on the battlefield has also been documented<sup>34</sup>. It has been shown that a majority of US soldiers during the Second World War did not want to kill: Only 15 to 25% of combat infantry were willing to fire their rifles, sometimes even when placed in situations of self-defence<sup>35</sup>. Modern armies, using pavlovian and operant conditioning, have learned how to overcome this reluctance, as well as natural self-preservation and other natural human feelings, such as compassion or pity. Arguably, similar techniques could be used to inculcate behaviour compatible with respect for IHL.

Over the past three decades, a number of armed and security forces have introduced specialized instruction on IHL in their ranks. These measures have ranged from information sessions to full-integration into practical exercises, doctrine and operational orders. In the United States for instance, Department of Defense (DoD) Directive 2311.01E reissues the Department's Law of War Program, which outlines its responsibilities regarding IHL training. Section 5.7 of the Directive states that '5.7. The Heads of the DoD Components shall: [...] [i]nstitute and implement effec-

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32. The term 'arms carriers' as used in this article refers to armed forces, security forces, police forces, non-State armed groups or private military or security companies. As such, these actors are extraordinarily diverse and they are called to use force in a variety of situations, not all of which are regulated by IHL, such as maintaining law and order in peacetime, engaging in combat operations, or responding to intermediary situations referred to as 'internal violence', 'tensions' or 'disturbances'.

33. For instance Michel Goya's *Sous le feu : La mort comme hypothèse de travail*, Paris, Tallandier, 2014, analyzes the specific psychological conditions that combat in recent conflicts has created. On 'moral disengagement', see also Albert Bandura, 'Selective Moral Disengagement in the Exercise of Moral Agency', in *Journal of Moral Education*, Vol. 31, N° 2, 2002, 101-119; Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York, Penguin Books, 1963; Stanley Milgram, *Obedience to Authority: An Experimental View*, New York, Harper & Row, 1974.

34. For an analysis of the impact of military training on the firing rate of the US soldier, see Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, New York, Black Bay Books, 1996.

35. Brigadier General Samuel Lyman Atwood Marshall, 'Men Against Fire: The Problem of Battle Command in Future War', in *Infantry Journal*, Washington, DC, 1947.

tive programs to prevent violations of the law of war, including law of war training and dissemination, as required by [IHL]<sup>36</sup>. The United Kingdom *Law of Armed Conflict Manual* also includes several sections detailing the country's obligations in terms of military training<sup>37</sup> but also in terms of dissemination to the civilian population at large<sup>38</sup>, to medical personnel, chaplains and to all civilian and military personnel in charge of applying the Geneva Conventions and their Protocol<sup>39</sup>. The French *Manuel du droit des conflits armés* also refers to the Commander's obligation to ensure respect for IHL<sup>40</sup>. In all cases, military training and dissemination are considered as essential elements to ensure respect for the law. In addition to military personnel, States understand the importance of training civilian personnel attached to the armed forces or charged with a particular role related to the application of IHL – such as judge advocate generals or staff in Ministries of Defense or Foreign Affairs.

This being said, progress has been uneven. As a recent study on the state of 'law of war' training programs worldwide concluded, 'countries around the world have developed widely varying approaches to training their troops', and still a lot of countries around the world experience a lack of such training<sup>41</sup>. This, more often than not, stems 'from an absence of knowledge and opportunity.'<sup>42</sup> The type of military structure a country has and its level of involvement in armed conflicts will have an incidence on the type of training it chooses to invest in. Where training *is* provided, military and civilian leaders can often make different choices as to the way they will integrate IHL training, the materials and resources that they will use, and

36. See Directive 2311.01E, 'DoD Law of War Program', 9 May 2006, available at <http://www.dtic.mil/whs/directives/corres/pdf/231101e.pdf>. Sections 5.1.5, 5.7.4, 5.8.1, and 5.11.9 also refer to IHL training and dissemination.

37. *UK Law of War Manual*, Section 16.4.

38. *Ibid.*, Section 16.3.

39. *Ibid.*, Section 16.3.1.

40. To the question 'Who is in charge of ensuring respect for the law of armed conflict?' (original: 'Qui est en charge du respect du droit des conflits armés?'), the Manual answers that 'Le commandement assume une responsabilité générale en la matière et doit s'assurer que les membres des forces armées connaissent leurs droits et appliquent les obligations qui en sont le parallèle. Il est à ce titre responsable de leur instruction.' See Ministère de la Défense, Secrétariat général pour l'administration (France), *Manuel du droit des conflits armés*, ed. 2012.

41. USIP, 'Law of war training: Resources for Military and Civilian Leaders', Laurie R. Blank and Gregory P. Noone, Washington DC, 2008. The study includes a directory of national training programs of 28 countries and the bilateral, regional or international training courses offered by 12 countries. It also provides data on 18 countries receiving external training from these and other sources, and lists 16 other countries that provide training but did not submit detailed information for the survey.

42. *Ibid.*, p. 3.

the degree to which they will resort to external providers. The stages at which such training is provided, and factors related to the duties and responsibilities of personnel will also be determinative of the level of IHL instruction provided.

The main challenge today as regards armed forces seems to be moving beyond *ad hoc* information sessions to full integration of IHL into a continuous cycle of training. Arguably still too few armed forces have achieved this objective. In 2014, when the *International Review of the Red Cross* asked Brigadier General Richard Gross, US Army Legal Counsel to the Chairman of the Joint Chiefs of Staff, about the main IHL-related lessons learnt by the US from all the operations that followed 9/11, he went straight to the question of military training:

It is very ineffective to try to train military forces on *jus in bello*, the principles of IHL and the rules of engagement in a classroom setting with PowerPoint slides... IHL has to be inculcated throughout all of our other military training and it has to be constantly reinforced and trained.<sup>43</sup>

Integration also means making IHL a seamless part of the operational training, for its rules to be ‘owned’ by members of the armed forces. This requires a certain translation of the language of international obligations into concrete operational terms. As Andrew Carswell remarks, ‘a tactical military manual governing the employment of artillery that already contains profession-specific terms accurately reflecting the principles of distinction, proportionality and precautions in attack is far more likely to influence conformity with the law than a manual that sets out treaty provisions verbatim.’<sup>44</sup>

Two main specialised actors have been involved in supporting integrated IHL training efforts by armed and security forces: the ICRC through its network of specialised delegates<sup>45</sup> and the International Institute of

43. ‘Interview with Brigadier General Richard C. Gross’, in *International Review of the Red Cross*, Vol. 96, N° 893, 2014, 13-27, p. 15.

44. Andrew Carswell, ‘Converting treaties into tactics on military operations’, in *International Review of the Red Cross*, Vol. 96, N°s 895-896, 2014, 919-942, p. 925.

45. The ICRC publishes regularly new reference publications with the aim of assisting armed forces in incorporating the applicable law into military strategy, operations and tactics. See, for instance, ICRC, *Handbook on International Rules Governing Military Operations*, Geneva, ICRC, 2013, available at: [www.icrc.org/eng/resources/documents/publication/p0431.htm](http://www.icrc.org/eng/resources/documents/publication/p0431.htm) (consulted on 17 February 2016). See also ICRC, *Integrating the law*, available at: <https://www.icrc.org/eng/resources/documents/publication/p0900.htm> (consulted on 17 February 2016). The ICRC also organizes

Humanitarian Law (IIHL) in San Remo<sup>46</sup>. Active since 1970, the IIHL aims to give officers an opportunity to learn how to take IHL into account in the execution of military operations. Both the ICRC and the IIHL are geared toward those armed forces which are the most likely to engage in military operations or are already taking part in conflict or other situations of violence. Other forms of training support have included bilateral assistance between armed forces<sup>47</sup>, as well as trainings offered by regional organizations or peacekeeping training centers<sup>48</sup>.

### *Non-State armed groups*

Non-State armed groups are often parties to conflicts, especially in the ever more prevalent non-international armed conflicts of today. They are bound by IHL in times of conflict<sup>49</sup>, though the question of the exact contours of their obligation to disseminate IHL among their members and to the civilian population under their control, is not entirely settled. The ICRC's study on customary IHL has noted that 'although practice with respect to the obligation of armed opposition groups to encourage the teaching of international humanitarian law to the civilian population under their control is limited, it is important that "information concerning [rules of international humanitarian law] be given to civilians everywhere, with a view to securing their strict observance". In practice, armed opposition groups have frequently allowed the ICRC to disseminate international humanitarian law to civilians living in areas they controlled.'<sup>50</sup>

annual workshops for senior military officers to discuss the legal framework applicable to modern military operations and is regularly invited to provide the humanitarian perspective in training scenarios and military exercises of armed forces around the globe. For more information, see: [www.icrc.org/en/armed-forces](http://www.icrc.org/en/armed-forces) (consulted on 17 February 2016).

46. See International Institute of Humanitarian Law, homepage, available at: <http://www.iihl.org> (consulted on 17 February 2016).
47. See e.g. Defense Institute for International Legal Studies, NATO's Partnership for Peace Training and Education Program, available at: <https://www.diils.org/node/1455541/about/programs> (consulted on 17 February 2016).
48. See e.g. Asia Pacific Centre for Military Law, homepage, available at: <http://apcml.org> (consulted on 17 February 2016); the IHL course of the Peace Operations Training Institute, available at: [http://cdn.peaceopstraining.org/course\\_promos/international\\_humanitarian\\_law/international\\_humanitarian\\_law\\_english.pdf](http://cdn.peaceopstraining.org/course_promos/international_humanitarian_law/international_humanitarian_law_english.pdf) (consulted on 17 February 2016), and the rest of the organizations mentioned in the survey by L. Blank and G. Noone.
49. See Olivier Bangerter, 'Reasons why armed groups choose to respect international humanitarian law or not', in *International Review of the Red Cross*, Vol. 93, N° 882, 2011, 353-384, p. 357.
50. See ICRC, Rule 143, available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule143](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule143)

Furthermore there are some specific considerations that need to be taken into account when it comes to studying the adherence of armed groups to IHL. First, it has been shown that the characteristics of the environment in which rebellions emerge act to constrain rebel organizations and shape the patterns of violence that civilians experience<sup>51</sup>. Second, most non-State armed groups do not have the same capacity or structure in place as States that could provide for systematic IHL instruction of fighters. Third, as has been iterated in the past, ‘armed groups often lack sufficient incentive to abide by IHL, given that implementation of their IHL obligations is usually of little help to them in avoiding punishment under domestic law for their mere participation in the conflict.’<sup>52</sup> Finally, before the outbreak of armed conflicts (thus in many circumstances before the formation of the armed group), unless an armed group is made up of former military personnel, the only information potential members may have received on IHL would have been through mainstream dissemination programs directed to the general public (school education, sensitization campaigns on the radio, etc.).

It is nevertheless possible to find indications of the ways in which some armed groups adhere to some of the norms underpinning IHL, and the reasons why. For instance, as regards safeguarding the provision of healthcare in armed conflict, the ICRC has reported that, from 36 armed groups consulted across ten contexts in the Middle East, South Asia, Africa and South America, the vast majority agree that there is a need to respect

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51. J.M. Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, Cambridge, Cambridge University Press, 2007. On the behaviour of armed groups see also Olivier Bangerter, *loc. cit.* note 49; Geneva Academy of International Humanitarian Law and Human Rights, *Reactions to Norms, Armed Groups and the Protection of Civilians*, Geneva, 2014, available at: [http://www.geneva-academy.ch/docs/publications/Policy%20studies/Geneva%20Academy%20Policy%20Briefing%201\\_Amed%20Groups%20and%20the%20Protection%20of%20Civilians\\_April%202014.pdf](http://www.geneva-academy.ch/docs/publications/Policy%20studies/Geneva%20Academy%20Policy%20Briefing%201_Amed%20Groups%20and%20the%20Protection%20of%20Civilians_April%202014.pdf) (consulted on 17 February 2016); Geneva Academy of International Humanitarian Law and Human Rights, *Rules of Engagement Protecting Civilians through Dialogue with Armed Non-State Actors*, Geneva, 2011, available at: <http://www.geneva-academy.ch/docs/publications/Policy%20studies/Rules-of-Engagement-EN.pdf> (consulted on 17 February 2016); Sandesh Sivakumaran, *The Law of Non-International Armed Conflicts*, Oxford, Oxford University Press, 2012, Chapter 10, ‘Implementation and Non-Judicial Enforcement’, p. 430. Eric David also devotes a chapter of his book to this subject, *Principes de droit des conflits armés*, Bruylant, Brussels, 1994.
52. See International Humanitarian Law Research Initiative, ‘Improving Compliance with International Humanitarian Law’, ICRC, background paper prepared for informal high-level expert meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004, p. 4.

and protect health care<sup>53</sup>. Some of these groups had already included IHL norms related to health care in their internal doctrine, education, training and ‘sanctions’ mechanisms. Concrete factors influencing these groups’ behavior towards the provision of healthcare, included among others: the group’s extent of territorial control, their organizational capacity, the level of command and control, the group’s specific tactics and those of their opponents.

Similarly, armed groups have used the opportunity to demonstrate their commitment to IHL by signing ‘Deeds of Commitment’ designed by the NGO Geneva Call to signal their willingness to adhere to a specific IHL-related norm (e.g. the prohibition of anti-personnel landmines, the protection of children from the effects of armed conflict, and the prohibition of sexual violence in armed conflict) and allow for monitoring of such commitment. Much remains to be understood as to the mechanics of integration (or ownership) of IHL norms across different non-State armed groups and over time.

As regards the work of those providing IHL dissemination to non-State armed groups, the key challenge remains the very *ability* to provide such training.

One clear challenge is counterterrorism regulations, which ‘curtail the work of humanitarian organizations in territories controlled by designated terrorist groups, or in States that, it seems, increasingly paint humanitarian efforts as a threat to their sovereignty’<sup>54</sup>. Even without sanctions being actively imposed, counterterrorism legislation without sufficient exceptions for humanitarian actors conducting training and education risks having a ‘chilling’ effect on IHL dissemination. This means that humanitarian organizations that could potentially reach those groups would choose not to engage with them due to the legal risk they and their personnel would face.

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53. ICRC, *Safeguarding the provision of Health Care*, 2015, available at: <https://www.icrc.org/eng/resources/documents/publication/p4243.htm> (consulted on 17 February 2016).

54. Naz Modirzadeh, ‘International law and armed conflict in dark times: A call for engagement’, in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 737-749, p. 743. See also Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi, ‘Legislating against humanitarian principles: A case study on the humanitarian implications of Australian counterterrorism legislation’, in *International Review of the Red Cross*, Vol. 97, Nos 897-898 (forthcoming). See also Supreme Court of the United States, *Holder v. Humanitarian Law Project*, 561 U.S. (2010), 130 S. Ct. 2705; *Australian Criminal Code*, div. 102.5; Kate Hagan, ‘“Terror Arrest” at Gunpoint: Police Warned’, in *Sydney Morning Herald*, 5 February 2010.

On the other end of the spectrum lies the outright rejection by certain groups of IHL as a Western construct. As humanitarian engagement continues despite these challenges, and as non-State armed groups continue to morph, the need for a comprehensive and structured understanding of dialogue with different non-State armed groups (based on the combined experience of different actors' efforts in recent years) will become ever more urgent.

### *Academia and civil society*

Over the past three decades, the study of IHL has become its own discipline in higher education. Specialized degrees in IHL are offered by a number of universities, in particular in Europe and North America<sup>55</sup>, and IHL modules are integrated in degrees not just in international law, but also in international relations, political science, security studies and so on<sup>56</sup>. A staggering number of publications specifically dedicated to IHL have become available<sup>57</sup>, including contributions in academic journals<sup>58</sup>. Addi-

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55. European examples include the Geneva Academy of International Humanitarian Law and Human Rights (formerly Centre universitaire de droit international humanitaire or CUDIH) in Switzerland, the Université Paris II Panthéon-Assas, Université d'Aix Marseille and Université de Caen in France, the University of Essex in the United Kingdom, the University of Leiden in the Netherlands, and the University of Belgrade in Serbia. In the US, one can mention the Harvard University, the American University Washington College of Law, Emory University, the University of Berkeley; In Canada – the Université Laval, among others. IHL modules are taught in faculties in Australia (e.g. University of Melbourne, Australian National University, and the University of Sydney), South Africa (e.g. University of Pretoria, University of Johannesburg), across Latin America (in universities in Argentina, Brazil, Colombia, Uruguay), as well as in the Middle East (in universities in Israel, Lebanon, Tunisia). This is by no means an exhaustive picture of all institutions around the world providing IHL education; the level of IHL teaching varies across contexts and institutions. Rather, it is an indicative sampling which demonstrates a broader trend of increasing familiarity with this body of law in academic circles across different regions, especially among law faculty members.

56. In 2014, the ICRC interacted with more than 400 universities and faculties worldwide, a majority of which had IHL courses integrated in their respective curricula.

57. As an example, see the latest IHL quarterly bibliography prepared by the ICRC library and research service, available at: <https://www.icrc.org/eng/resources/documents/misc/icrc-ihl-bibliography.htm> (consulted on 17 February 2016).

58. Founded in 1869, the *International Review of the Red Cross* is the oldest specialised publication in this field. One can mention as well the *Yearbook of IHL* published by TMC Asser, the *Israeli Law Review*, the *African Yearbook on International Humanitarian Law*, the *International Law Studies blue book series* published by the Stockton Centre of the US Naval War College and a new specialized academic journal: the *Journal of Humanitarian Legal Studies*. The US Library of Congress also has a repository of IHL related materials many of them available online: [https://www.loc.gov/rr/frd/Military\\_Law/Geneva-Conventions\\_materials.html](https://www.loc.gov/rr/frd/Military_Law/Geneva-Conventions_materials.html) (consulted on 17 February 2016).

tionally, conferences, workshops, seminars and summer schools are specifically dedicated to specific IHL topics<sup>59</sup>.

In the field of research and exploration, one can mention the efforts of the Program on Humanitarian Policy and Conflict Resolution (HPCR), established in 2001 to serve as a laboratory of new ideas and stimulate reflections and debate on contemporary IHL issues<sup>60</sup>. Two of its offspring, the Advanced Training on Humanitarian Assistance (ATHA)<sup>61</sup>, and Professionals in Humanitarian Assistance and Protection (PHAP)<sup>62</sup> are actively contributing to the promotion of IHL through onsite training, web seminars and the production of briefs and policy papers. As does the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy)<sup>63</sup>, which in addition to providing specialist higher education degrees has contributed to IHL research and dissemination through several publications, online databases, events and even smartphone applications<sup>64</sup>. Interestingly, some academic centres dedicated to training students in humanitarian action have also integrated IHL into their curricula, teaching it as a practical tool and allowing humanitarian practitioners to see the relevance of the legal framework to their field work<sup>65</sup>.

Increasingly, academic actors aim to make IHL expertise relevant to the practical needs of civil society, through the work of IHL clinics, the-

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59. In 2015 alone, some 15 regional conferences, courses, colloquia, workshops and students' competitions dedicated to IHL, each of them involving up to 150 participants, were organized by the ICRC and academic partners around the world. Source: ICRC, Annual Report 2015 (forthcoming).

60. Program on Humanitarian Policy and Conflict Research, Harvard Humanitarian Initiative, available at: <http://www.hpcrresearch.org> (consulted on 17 February 2016).

61. The Advanced Training Program on Humanitarian Action, available at: <http://www.atha.se/> (consulted on 17 February 2016).

62. Professionals in Humanitarian Assistance and Protection, available at: <http://phap.org/> (consulted on 17 February 2016).

63. The Geneva Academy of International Humanitarian Law and Human Rights, available at: <http://www.geneva-academy.ch/> (consulted on 17 February 2016).

64. See *inter alia* the 2015 War Report, available at: <http://www.geneva-academy.ch/policy-studies/research-projects-and-policy-studies/the-war-report-project>, proposing classification of armed conflicts worldwide or the online *Weapons Law Encyclopedia*, available at: <http://www.weaponslaw.org/> (consulted on 17 February 2016), describing technical and legal aspects of a range of weapons used in armed conflicts.

65. See for instance the Centre for Education and Research in Humanitarian Action in Geneva, available at: <http://www.cerahgeneve.ch/home/>, the Harvard Humanitarian Initiative, available at: <http://hhi.harvard.edu/education/husehr#overview> (consulted on 17 February 2016), and the Network on Humanitarian Action ('NOHA'), available at: <http://nohanet.org/masters> (consulted on 17 February 2016).

matic seminars and professionalizing internships<sup>66</sup>. Academic experts give regular interviews in the media, and make interventions in events open to the general public. Such interventions<sup>67</sup> are especially important given the frequency of conflict-related news in the media. By explaining specific legal issues in simple terms, they help build a necessary bridge in peoples' minds between factual news reports and applicable rules.

IHL has also been increasingly discussed and debated on the internet, and in particular on specialized legal blogs such as *Opinio Juris*<sup>68</sup>, *Just Security*<sup>69</sup>, *Lawfare*<sup>70</sup> or *EJIL Talk!*<sup>71</sup>. Most of the blog posts refer to real-life issues, such as the challenges to humanitarian assistance in Yemen, the bombing of the Médecins Sans Frontières (MSF) hospital in Kunduz, the starvation of civilians in Syria, and attacks by and against the Islamic State.

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66. See for instance, the work conducted by students from the Geneva Academy, the University of Geneva and the Graduate Institute of International and Development Studies on practical IHL tools such as fictitious case studies or real ones from 'How does law protect in war? Online', available at: <https://www.icrc.org/en/document/how-does-law-protect-war-online-platform> (consulted on 17 February 2016), as well as humanitarian issues addressed by the ICRC and others (protection of health care in armed conflicts, violence in urban areas).
67. See e.g. Françoise Bouchet-Saulnier, 'Pour Médecins sans frontières, "la guerre doit s'arrêter à l'entrée de l'hôpital"', in *Le Monde international*, 8 October 2015, on the hospital attack in Kunduz, available at: [http://www.lemonde.fr/international/article/2015/10/08/pour-medecins-sans-frontieres-la-guerre-doit-s-arreter-a-l-entree-de-l-hopital\\_4784875\\_3210.html](http://www.lemonde.fr/international/article/2015/10/08/pour-medecins-sans-frontieres-la-guerre-doit-s-arreter-a-l-entree-de-l-hopital_4784875_3210.html) (consulted on 17 February 2016). Andrew Clapham, 'Humanitarian and Human Rights Law' (video), 13 March 2015, on the difference between humanitarian law and human rights law, available at: [https://www.youtube.com/watch?v=\\_Z4wqFeD6us](https://www.youtube.com/watch?v=_Z4wqFeD6us) or Marco Sassòli, 'Exclusive Interview: Application of international humanitarian law to war in east Ukraine' (video), 8 June 2015, on the conflict in Ukraine, available at: <https://www.youtube.com/watch?v=JM7yDf6gSRY> (consulted on 17 February 2016). See also International Peace Institute, *Is international humanitarian law still fit for purpose?*, 6 April 2014, available at: [https://www.youtube.com/watch?v=\\_udhfrxMLPQ&feature=youtu.be](https://www.youtube.com/watch?v=_udhfrxMLPQ&feature=youtu.be) (consulted on 17 February 2016).
68. For instance, Gabor Rona, 'A Response to Ohlin about IHL and IHRL', in *Opinio Juris*, 17 January 2012, available at: <http://opiniojuris.org/2012/01/17/a-response-to-ohlin-about-ihl-and-ihrl/> (consulted on 17 February 2016).
69. For example, Aaron L. Jackson, 'ISIS in the United States: Which Legal Regime Applies?', in *Just Security*, 11 January 2016, available at: <https://www.justsecurity.org/tag/international-humanitarian-law/> (consulted on 17 February 2016).
70. Articles tagged 'International Humanitarian Law' on *Lawfare*, available at: <https://www.lawfareblog.com/tagged/international-humanitarian-law> (consulted on 17 February 2016).
71. *EJIL Talk!*, available at: <http://www.ejiltalk.org> (consulted on 17 February 2016).

NGOs originally specialised in international human rights law (IHRL), such as Human Rights Watch<sup>72</sup> and Amnesty International<sup>73</sup>, or in the provision of medical assistance such as MSF<sup>74</sup>, have begun to regularly make reference to IHL in their reports and public statements. Some NGOs have also been created domestically with the specific purpose of promoting IHL and making it relevant to domestic debates<sup>75</sup>.

Despite the growing number of academic programs, the teaching of IHL and related disciplines is threatened in current global financial context, where NGOs struggle to get funding and academia suffer from budget pressures and face competition from other legal branches, such as business law. Some programs are threatened even in regions directly affected by conflict or violence<sup>76</sup>.

### *The International Movement of the Red Cross and Red Crescent*

As mentioned previously, the components of the RCRC Movement (ICRC, IFRC and National Societies) are important secondary actors responsible for dissemination of IHL. The Statutes of the RCRC Movement and resolutions of the International Conferences of the Red Cross and Red Crescent give them a subsidiary role to that of States in relation to dissemination. In practice, RCRC Movement actors have been at the forefront of efforts to promote IHL and have often helped create initiatives and promoted ownership of IHL programs among authorities, armed actors or academia. National Societies are often themselves assisted by the ICRC in terms of IHL expertise, dissemination materials or other capacity building.

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72. For instance see the IHL section of the Human Rights Watch website, available at: <https://www.hrw.org/tag/international-humanitarian-law-laws-war> (consulted on 17 February 2016).

73. For instance see Amnesty International recent call for accountability for war crimes in Yemen, 'Yemen: Call for suspension of arms transfers to coalition and accountability for war crimes', 7 October 2015, available at: <https://www.amnesty.org/en/press-releases/2015/10/yemen-call-for-suspension-of-arms-transfers-to-coalition-and-accountability-for-war-crimes/> (consulted on 17 February 2016).

74. For instance on the public statements about the attack on the MSF hospital in Kunduz see: <http://www.msf.fr/actualite/dossiers/attaque-sur-hopital-kunduz-en-afghanistan>

75. As an example, one can mention specifically the work of ALMA in Israel, available at: <http://www.alma-ihl.org/vision> (consulted on 17 February 2016). For a recent article on the work of ALMA see Ido Rosenzweig, 'Promoting respect for IHL by NGOs: The case of ALMA – Association for the Promotion of IHL', in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 1029-1042.

76. As an example, see <https://www.icrc.org/en/document/russian-federation-knowing-ihl-first-step-towards-applying-it> (consulted on 17 February 2016).

There is currently no comprehensive study of the work done by National Societies in this field. On the basis of information collected by the ICRC, in 2013 over 40 National Societies worldwide were conducting IHL education programs and activities specifically directed towards youth. Some National Societies have been particularly active over the years, even making dissemination of IHL a core activity<sup>77</sup>. Some have developed their own tools, activities or programs such as moot court competitions, courses, academic events, blogs or IHL online didactic materials. However, not all National Societies have developed IHL dissemination activities and even where they have, they have not always inscribed them into coherent, sustained strategies<sup>78</sup>. Some National Societies may face organizational challenges, a lack of local capacity or fundraising problems. Therefore, there is still room for improvement to fulfill this important part of National Societies' mandate.

Over the years, the ICRC has developed a wide array of programmes, activities and tools related to IHL. This includes specifically adapted pedagogical tools and courses that have been addressed to youth<sup>79</sup>, academic

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77. A recent survey asked National Societies to describe the activities they are tasked to perform as auxiliaries in the humanitarian field, showed that the promotion of IHL is among the top most often mentioned areas of activity (being preceded only by activities related to disaster management and health). The total number of National Societies, which responded to this survey was 46. As the introductory note of the document incorporating the survey clarifies, 'caution needs to be exercised when interpreting numbers [...] as the geographical distribution of the responses is not well balanced, and a large majority responses were received from [...] National Societies with higher capacities'. Furthermore, the results of the survey 'do not allow any statement about the impact of the described activities.' See ICRC, 'Overview report on the implementation of resolutions and pledges of the 31<sup>st</sup> International Conference', October 2015, pp. 1 and 8.

78. A cursory survey conducted by the authors found that only 48 National Societies mention dissemination of IHL on their website.

79. Exploring Humanitarian Law (EHL), for instance, is a resource pack for teachers to introduce students aged 13-18 to the basic rules of IHL. It was designed by the ICRC in close association with the Education Development Center, Inc. (EDC). The premise on which this project was built was that young members of society stand to benefit from discussions at an early age around respect for life and human dignity, civic responsibility, and solidarity. For more information, see the website, available at: <https://www.icrc.org/eng/what-we-do/building-respect-ihl/education-outreach/ehl/exploring-humanitarian-law.htm> (consulted on 17 February 2016).

institutions<sup>80</sup>, arms carriers<sup>81</sup>. Since their creation in 1994, the ICRC's Advisory Services have also assisted States in the implementation of their international obligations under IHL at the national level<sup>82</sup>.

This area of the ICRC's work has multifaceted dimensions: Different activities within the organization's work have been described as efforts of 'dissemination', 'communication', 'promotion', 'networking' or 'implementation' and they often overlap. The ICRC has engaged audiences as diverse as the international media, armed groups, religious leaders, diplomats, school children, and so on. It also hosts a wide range of in-house expertise related to such engagement, including from international law, military training, education and pedagogy, communication, psychology, and so on. In its field delegations, the ICRC's communication teams and its network of field-based legal advisers and military experts have developed countless dissemination tools in dozens of languages and with a wide range of local partners such as the National Societies, armed forces, academia and governments but also artists, religious and community leaders or NGOs.

Drawing on decades of experience and research specifically conducted to understand the roots of behaviour in war<sup>83</sup>, in 2007 the ICRC produced a policy that clarified the ambitions of the organization regarding the prevention of suffering in armed conflict and other situations of violence<sup>84</sup>. It came up with a holistic vision of what is needed to achieve this goal. Today, alongside protection, assistance and cooperation, *prevention* is one of the ICRC's four main approaches towards ensuring 'respect for the lives,

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80. The first ICRC delegate assigned to work with academia was appointed in 1997. In 1995 already, the ICRC took part in preparing the Multi-faculty Programme for Humanitarian Action at the University of Geneva (PPAH), renamed later the Centre for Education and Research in Humanitarian Action, CERAH. In 2002, the ICRC supported the creation of the University Centre for International Humanitarian Law (CUDIHL) (now called the Geneva Academy of International Humanitarian Law and Human Rights, ADH), also in Geneva. The ICRC continuously develops new tools for the academic circle. For more information on ICRC's work with academia, see ICRC, 'Education and outreach', available at: <https://www.icrc.org/en/what-we-do/building-respect-ihl/education-outreach> (consulted on 17 February 2016).

81. See ICRC, 'Dialogue with weapon bearers', available at: <https://www.icrc.org/en/what-we-do/building-respect-ihl/dialogue-weapon-bearers> (consulted on 17 February 2016).

82. See ICRC, 'Domestic law and IHL', available at: <https://www.icrc.org/en/war-and-law/ihl-domestic-law> (consulted on 17 February 2016).

83. Daniel Muñoz-Rojas and Jean-Jacques Frésard, 'The Roots of Behaviour in War: Understanding and Preventing IHL Violations', ICRC, Geneva, 2004, available at: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0853.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0853.pdf).

84. M. Sassòli and Y. Issar, *op. cit.*, note 9, p. 188.

dignity and physical and mental well-being of persons affected by armed conflict and other situations of violence.’<sup>85</sup> The approach aims to be pragmatic, structural and systemic, focusing on the environmental factors that shape the behaviour of people involved in armed conflict. The budget the organization spends on activities falling under the ‘prevention’ chapeau has varied between 12% – 14% of the overall ICRC budget since 2010, and reached 146 million in 2014<sup>86</sup>. At the field level, prevention activities are taking place in every delegation of the ICRC around the world. In 2014, the ICRC had 87 delegations and missions covering more than 80 countries<sup>87</sup>. Special efforts are made by local teams to adapt the content and design of tools and messages to each context and actor.

Today, beyond domestic actors, the ICRC also aims to deepen its engagement with global policy-makers, as the likelihood that crisis situations will continue to have transnational dimensions in the future rises. These policy-makers may be influential States, international organizations, academic institutions or business actors. The ICRC’s 2015-2018 Institutional Strategy<sup>88</sup> thus prioritizes greater participation in humanitarian policy debates and making the humanitarian perspective relevant to high-level policy making<sup>89</sup>.

### Areas for further engagement

The objective of influencing behaviour, especially in armed conflict, is an incredibly ambitious one. Following developments in research over the past decades, we now know much more about the interrelated factors that contribute to building an environment conducive to respect for the law. To be effective in the future, both primary and secondary actors involved in

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85. ICRC, ‘Prevention Policy’, in *International Review of the Red Cross*, Vol. 91, N° 874, 415-430, p. 415.

86. Based on the prevention expenditure from the emergency appeals budget as reported in the annual reports from 2005 to 2014, available at: <https://www.icrc.org/en/annual-report> (consulted on 17 February 2016).

87. For the list of activities falling under the category of ‘promotion and implementation of IHL’, see ICRC Annual Report 2014, p. 17, available at: <https://www.icrc.org/en/document/ICRC-annual-report-2014> (consulted on 17 February 2016).

88. ICRC 2015-2018 Strategy, 2015, p. 11, available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4203.pdf> (consulted on 17 February 2016).

89. The series of conferences and debates on law and policy issues initiated in 2013 at the new ICRC conference centre in Geneva, The Humanitarium. See ICRC, ‘Humanitarium: Centre for international exchange and debate on humanitarian law, policy and action’, available at: <https://www.icrc.org/humanitarium> (consulted on 17 February 2016).

dissemination and integration of IHL have to embrace this complexity. Below we discuss some possible orientations and areas of future investment in terms of research, funding or institutional engagement.

### *Disseminating and implementing the law as a way to recommit to IHL*

Speaking at the UN Security Council recently, Christine Beerli, the ICRC's Vice President, called upon States to reaffirm their commitment to IHL on the occasion of the World Humanitarian Summit in Istanbul in May 2016:

At the Summit, the ICRC very much wants to see a significant and practical recommitment by States to their obligations to protect and assist the civilian population in armed conflicts. [...] IHL rules must be known, understood and implemented by the parties to an armed conflict if its purposes are to be fulfilled. This is a multifaceted process which requires that appropriate action be taken by actors at the national, regional, and international levels.<sup>90</sup>

Adoption of national legislation, education, and integration of the law should go hand in hand with political will. The above sections have demonstrated that progress has taken place at the level of the legislative and regulatory measures. States can give a signal that their commitment is a lasting one by continuing to build strong domestic legislation reflective of IHL obligations, but also coupling that with investment in youth education and in military doctrine and instruction.

Failure to fulfil the obligation to disseminate IHL has never been sanctioned and one may wonder what the consequence of *not* disseminating IHL entails. For instance, courts could take into account the availability of IHL training programs in the military when appreciating the responsibility of the State for IHL violations and/or the criminal responsibility of its agents in case of alleged war crimes.

It is interesting to note that the Inter-American Commission has creatively requested the Court to require that Peru conduct IHL training to its armed forces as a *remedy* for IHL violations in 2011<sup>91</sup>. This could contribute to States and courts looking at this obligation in a new light.

90. Protection of civilians – ICRC statement to the UN Security Council, 2016, available at: <https://www.icrc.org/en/document/icrc-vice-president-speech-protection-civilians-un-security-council-debate> (consulted on 17 February 2016).

91. IACHR, *Jeremías Osorio Rivera y otros v. Perú*, Case N° 11.845, Report N° 140/11, 31 October 2011, para. 161: 'Consequently, the Commission is asking the Inter-American

Recommitting to IHL could also take place through the development of specific national IHL dissemination strategies with concrete indicators in mind. Within the framework of the current discussion on strengthening compliance with IHL through the creation of a regular meeting of States, one can envisage four main manifestations of State policy that could be examined to monitor progress at the level of respect for the law:

1. Adhesion to IHL treaties and integration of IHL rules into national legislation;
2. IHL-compliant orders, instructions and public speeches by political, military and opinion leaders;
3. Efforts in training and dissemination of IHL, for example at military academies<sup>92</sup>, but also among the civilian population;
4. Sanctions and enforcement measures, including not only the repressive (disciplinary or criminal) mechanisms put in place domestically, but also the willingness to make alleged perpetrators accountable.

States (and possibly non-States armed groups, *mutatis mutandis*) could use these four manifestations as a means to measure the progress of their national IHL programs and to identify possible lacunae. Such a system of ‘measuring progress’ would also be useful for international organizations and NGOs, which support dissemination and integration of IHL to measure and adapt their own outputs. Where violations are committed at the individual level despite clear orders and the existence of military training, it would be useless to work towards more military integration, and efforts would thus have to be directed towards strengthening accountability mechanisms. Conversely, insufficient adhesion to international instruments,

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Court to order the following reparations: [...] Take the necessary steps to prevent similar events from occurring in the future, in accordance with the duty of prevention and the obligation of guaranteeing the fundamental rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law at the training schools of the Armed Forces.’

92. Elisabeth Stubbins Bates calls for the sharing of research on effective military training in IHL and to create a ‘collaborative rubric for informative, standardized reporting on IHL training’. Such a rubric would enable States and researchers ‘to share best practice and future innovations on IHL training, using a streamlined, cost-effective tool.’ Elisabeth Stubbins Bates, ‘Towards effective military training in international humanitarian law’, in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 2014, 795-816, p. 795.

potentially accompanied with a general climate of impunity, would rather point to a systemic, top-down driven problem of willingness to respect IHL. In other words, the four indicators above could serve as a matrix that could assist in identifying priorities in dissemination and integration activities. Furthermore, it would offer a unique opportunity to learn lessons and record best practices that could be shared elsewhere. Again, measuring progress by non-State armed groups would require more creative thinking, resources and energy. It would also require a dialogue with States to create the necessary space for continued humanitarian engagement to take place.

### *Developing a research agenda*

As mentioned before, no comprehensive study has been done yet to capture the state of IHL dissemination and integration in the world today. The efficiency of efforts, in this field as in any other, depends on a solid understanding of possible gaps and complementarities. This could be an area for further academic research.

Academic institutions and think-tanks could contribute to the fostering of knowledge of IHL, not only through their teaching activities but also through research and the development of new pedagogical tools, translating research and breaking down complex points into understandable language. IHL also needs to be taught and discussed beyond law faculties, in a cross-disciplinary fashion.

For its part, the ICRC has taken on a number of initiatives to stimulate research in the way forward for dissemination and integration of IHL. The *International Review of the Red Cross* recently dedicated a thematic issue to the topic of 'Generating Respect for the Law'<sup>93</sup>, and the present article largely draws on the contents of this issue. In 2016, the ICRC's Law and Policy Department will continue to solicit the views of experts, share lessons learnt and explore new avenues for the promotion of IHL in a cycle of conferences and debates in Geneva and elsewhere. In 2016, the ICRC will also undertake a joint collaboration with the three IHL clinics of Leiden University, Herzliya Interdisciplinary Centre, Radzyner School of Law and

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93. See Vincent Bernard, 'Editorial: Time to take prevention seriously', in *International Review of the Red Cross*, Vol. 96, Nos 895-896, 2014, 689-696. See also Vincent Bernard, 'IHL dissemination: the ICRC's evolving experience in prevention', in Michel Veuthey (ed.), *Respecting International Humanitarian Law: Challenges and Responses*, International Institute of Humanitarian Law 36<sup>th</sup> Round Table on Current Issues of International Humanitarian Law (San Remo, 5<sup>th</sup>-7<sup>th</sup> September 2013), 2014, pp. 79 *et seq.*

Emory Law School to identify and document IHL ‘success stories’, meaning instances of respect for the law and their positive outcomes.

Finally, as mentioned above, in light of the pre-eminence of armed groups in conflicts around the world today, the ICRC has commissioned a research project on better understanding why certain non-State armed groups commit to ‘norms of restraint’ when engaged in armed conflict while others do not, and what influences this process<sup>94</sup>. The study aims to inform the policies and practices of the ICRC and other humanitarian organizations when seeking to improve respect by non-State armed actors for IHL norms.

### *Creating a unity of purpose in promoting respect for IHL*

Today, in view of the increasing number of actors that engage in IHL dissemination, there is an opportunity to mutually reinforce efforts. Coordination of efforts – a recurring challenge for humanitarian workers in the past decades – is just as relevant in this field of work: secondary actors in particular could combine their efforts and expertise in order to reach out to the various primary actors and those influencing them and to avoid duplication of efforts. This implies a comprehensive mapping of the current state of promotion and integration of IHL before seeking coherence and complementarities between actors and actions. Isolated promotion activities may have their own merits, but prevention efforts work best when part of a multi-dimensional strategy.

In view of this need for coordination of efforts but also because of the protracted nature of many current conflicts, long-term engagement in generating respect for the law calls for reconsidering the traditional boundaries between development work and emergency relief<sup>95</sup>. This has implications for planning, budgeting and developing partnerships.

Nevertheless, it should be kept in mind that not all actors are well positioned to carry out training in IHL for parties to armed conflicts. For

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94. ICRC, *Roots of Behaviour in War, ICRC seeks researchers*; Terms of reference available at: <https://www.icrc.org/en/document/roots-behaviour-war-update-study> (consulted on 17 February 2016).

95. See, e.g., ICRC, *Urban Services During Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, Report, 2015, p. 34, available at: [https://wedit.icrc.org/sites/default/files/document/file\\_list/icrc-002-42491.pdf](https://wedit.icrc.org/sites/default/files/document/file_list/icrc-002-42491.pdf) (consulted on 17 February 2016).

instance, organizations with strong public advocacy strategies cannot simultaneously hope to engage constructively with all parties to a conflict.

Unity of purpose among actors could be created around well-identified humanitarian problems. As the ICRC prevention policy states: 'A prevention response should be developed in light of the particular humanitarian problems anticipated or encountered and in line with the specific environmental factors making the occurrence of such problems more or less likely.'<sup>96</sup> In recent years, several issues have been put on the humanitarian research and diplomatic agendas. These include violence against health care, sexual violence in armed conflict and the possible risks that the use of new technologies in armed conflict might entail. Recommendations on how to tackle these phenomena converge in one aspect: they all point to the adoption of preventive measures<sup>97</sup>.

### *Developing a professional capacity for IHL advocacy and integration*

Over the past two decades, the growth of academic literature on IHL and the proliferation of academic programmes specifically teaching this branch of international law has expanded the pool of expertise on IHL and contributed to a gradual professionalization of staff working on the development and promotion of this branch of law<sup>98</sup>. Established in 1989, the Jean-Pictet international competition on IHL<sup>99</sup> has not only trained new

96. ICRC, 'Prevention Policy', *loc. cit.*, note 85, p. 420.

97. See, e.g., Vincent Bernard, 'Editorial: Violence against health care: giving in is not an option', in *International Review of the Red Cross*, Vol. 95, N° 889, 2013, 5-12, p. 11; Vincent Bernard and Helen Durham, 'Editorial: Sexual violence in armed conflict: from breaking the silence to breaking the cycle', in *International Review of the Red Cross*, Vol. 96, N° 894, 2014, 427-434, p. 433; ICRC, 'Autonomous weapon systems: Is it morally acceptable for a machine to make life and death decisions?', Statement, 13 April 2015, available at: <https://www.icrc.org/en/document/lethal-autonomous-weapons-systems-LAWS> (consulted on 17 February 2016).

98. See, e.g., Geneva Academy of International Humanitarian Law and Human Rights, available at: <http://www.geneva-academy.ch/llm-master> and <http://www.geneva-academy.ch/executive-education/executive-master> (consulted on 17 February 2016); University of Essex, available at: [https://www.essex.ac.uk/coursefinder/course\\_details.aspx?course=LLM+M10512](https://www.essex.ac.uk/coursefinder/course_details.aspx?course=LLM+M10512) (consulted on 17 February 2016); Washington College of Law, available at: <https://www.wcl.american.edu/humright/llm/> (consulted on 17 February 2016); Hebrew University of Jerusalem, available at: <http://law.huji.ac.il/eng/muamadim.asp?cat=2367> (consulted on 17 February 2016); University of Viadrina, available at: <https://www.rewi.europa-uni.de/de/studium/master/ihl/index.html> (consulted on 17 February 2016).

99. See Concours Jean-Pictet, available at: [http://www.concourspictet.org/index\\_fr.htm](http://www.concourspictet.org/index_fr.htm) (consulted on 17 February 2016).

lawyers in this field but contributed to create active supporters of IHL. Established in 2002 as the former University Center for IHL, the Geneva Academy has also greatly contributed to the creation of new generations of qualified lawyers.

Similarly, progress has been achieved in other domains relevant to dissemination, notably in the field of communication where there are now academic curricula<sup>100</sup>. Humanitarian workers have been especially eager to learn more about the legal framework applicable in times of armed conflicts and of the relevance of IHL to their work, and several organizations have developed IHL trainings specifically tailored to humanitarian workers<sup>101</sup>.

This illustrates the need to take the teaching of IHL beyond law faculties and explore possibilities of teaching IHL as it relates to business, financing, international affairs, health, or national security studies. Exploring these links could possibly help produce new knowledge and insights about behavior in armed conflicts, and stimulate creativity in future approaches to generating respect for the law.

‘There is a sense that the humanitarian endeavour is in the early, but very definite, stage of moving towards a more professional structure, mak-

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100. For instance IHL is taught at the communication and media faculty at the Edith Cowan University in Australia (<http://redcross.org.au/iHLandjournalism.aspx> [consulted on 17 February 2016]); at Moscow State University, Russian Federation, UNESCO Chair on Communication (<http://orbicom.ca/en/2012-06-20-21-40-12/chairs/106-russia-moscow.html> [consulted on 17 February 2016]). The University of Lyon 2 in France is offering a master in ‘Communication humanitaire et solidarité’ (<http://www.univ-lyon2.fr/formation/masters-2/master-2-communication-humanitaire-et-solidarite-264748.kjsp> [consulted on 17 February 2016]). See also the Massive Open Online Course on humanitarian communication organised by the CERAH available at: <http://www.cerahgeneve.ch/training/mooc-humanitarian-communication-addressing-key-challenges-massive-online-open-course/> (consulted on 17 February 2016).

101. Professionals in Humanitarian Assistance and Protection (PHAP) organises three day core trainings and advanced workshops on IHL in different parts of the world: <https://phap.org> (consulted on 17 February 2016). IHL courses are also offered by the Red Cross and Red Crescent Movement. Since 2001, the ICRC runs IHL courses in English (in Naivasha, Kenya). Two yearly courses are run in French (one organised every year in partnership with the Belgian, French and Swiss National Societies of the Red Cross and one in Dakar, Senegal). Courses are advertised on the ICRC law and policy platform: <https://www.icrc.org/en/war-and-law/law-and-policy> (consulted on 17 February 2016). One can also mention the courses offered by the Finnish Red Cross (<https://www.redcross.fi/iHLforhumanitarians> [consulted on 17 February 2016]).

ing it timely and opportune to examine all aspects of such an evolution.’<sup>102</sup> The professionalization of dissemination and integration work is possibly about moving beyond specialization (*i.e.* military training, legal implementation, communication etc.) and going toward training staff to apply a holistic view to this type of work.

Investment in ‘generating respect for the law’ will need political buy-in on the part of the leadership of humanitarian organizations. It requires the allocation of resources, the recruitment of competent staff, a concerted internal prevention strategy and the capacity to coordinate with other actors so as to detect and reinforce complementarities. Investing in prevention means a commitment to continuity, long-term vision and preserving institutional memory.

### *Harnessing the digital revolution*

Digital technologies are changing how societies approach many activities, perhaps especially education. Educational institutions, especially in North America, are broadening their student base and exploring ways of engaging students through virtual classrooms, distance learning, and Massive Open Online Courses (MOOCs). In the assessment of the World Disasters Report of 2014, for ‘humanitarian education to truly be transformed, further pedagogical innovation is needed.’<sup>103</sup>

IHL dissemination is now taking place through digital technologies – via web seminars<sup>104</sup>, online courses<sup>105</sup>, and various e-briefings<sup>106</sup>. These

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102. Peter Walker and Catherine Russ, ‘Fit for purpose: the role of modern professionalism in evolving the humanitarian endeavour’, in *International Review of the Red Cross*, Vol. 93, N° 884, December 2011, 1193-1210, p. 1209.
  103. IFRC, *World Disasters Report 2013: Focus on technology and the future of humanitarian action*, Report, Geneva, 2013, p. 115, available at: <http://www.ifrc.org/PageFiles/134658/WDR%202013%20complete.pdf> (consulted on 17 February 2016).
  104. The HPCR hosts both a Live Web Seminar series on Contemporary Challenges to Humanitarian Law and Policy, and a Humanitarian Assistance Podcast. All recordings are available at: <https://itunes.apple.com/us/podcast/hpcr-podcasts/id355897368?mt=2> (consulted on 17 February 2016).
  105. In 2014, the ICRC produced its ‘Online training centre’ which includes eight modules on the basics of IHL for non-specialized audiences. The modules are available in French, Spanish and English. See ICRC, *The basic rules and principles of IHL*, [https://www.icrc.org/en/document/basic-rules-and-principles-ihl#.VDuMgGd\\_v10](https://www.icrc.org/en/document/basic-rules-and-principles-ihl#.VDuMgGd_v10) (consulted on 17 February 2016).
  106. See for instance: <https://phap.org/civicism/event/info?id=326> (consulted on 17 February 2016).

materials are sometimes used for ‘blended learning’ trainings (*i.e.* a combination of complementary online and onsite training). One advantage of this is that it allows people from all over the world to engage with one another. For example, the Syrian Virtual University (SVU)<sup>107</sup>, established by the Syrian Ministry of Higher Education in 2002 to provide a virtual education to students around the world, has recently agreed on inclusion of IHL in the curricula of SVU as a compulsory course, to be integrated in the International Public Law curriculum.

Another frontier that has been opened is the use of video games and virtual reality simulators. Indeed, video games are used worldwide at an unprecedented scale for leisure, but also increasingly for formal training (professional training, game-based training approach). Even armed forces are relying on video games for training, military exercises or recruitment<sup>108</sup>. In the past years, the ICRC has invested into building in-house capacities to develop its own virtual reality tools (training videos or video simulations) for its training activities and interactions with both armed forces and non-State armed groups. The inclusion of IHL parameters into such simulations is well-suited to transforming respectful attitudes into reflexive action on the battlefield. Through the acquisition of IHL-conform reflexes, it could help to more deeply and effectively instil IHL norms than would be possible with the deployment of a few IHL trainers in military schools.

In parallel, the ICRC seeks to engage with video game developers to make sure that players are exposed to the same dilemmas as real soldiers. Admittedly, research could not establish a causal link between the consumption of video games portraying violence and violent behaviour as such. The ICRC, however, is concerned that this normalization of IHL violations in video games induces players to believe that there are no rules in war<sup>109</sup>.

When direct access to non-State armed groups is impossible, the use of e-learning could be seen as a possible alternative to onsite training. The

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107. See the Syrian Virtual University website, available at: <https://www.svuonline.org/SVUIS/index.ph> (consulted on 17 February 2016).

108. See, e.g., Tim Mahon, ‘Immersive training spreading across NATO’, in *DefenseNews*, 23 April 2015, available at: <http://www.defensenews.com/story/defense/training-simulation/2015/04/23/training-immersive-itsec-iitsec-simulation-nato-virtual/25772997/> (consulted on 17 February 2016).

109. Ben Clarke, Christian Rouffaer and François Sénéchaud, ‘Beyond the Call of Duty: Why shouldn’t video game players face the same dilemmas as real soldiers?’, in *International Review of the Red Cross*, Vol. 94, N° 886, 2012, 711-737.

ICRC recently developed e-learning materials using video games technologies to reach out to armed groups in the Middle East. These virtual reality training tools have been tested with armed groups themselves and adapted to the realities they face<sup>110</sup>. In the same line of thought, Geneva Call has produced a series of video spots as part of an information campaign on IHL in Arabic media, titled 'Fighters not killers'<sup>111</sup>. It has also recently developed a mobile application to raise awareness on the law of war<sup>112</sup>.

The ongoing 'digital revolution' is an opportunity to take stock and revisit approaches involving youth. It provides new channels of communication and engagement on humanitarian issues, values and norms beyond the formal education system (which also remains important with programs such as Exploring Humanitarian Law still being conducted in many countries). We know that 'children and youth represent the majority of the population in most countries affected by armed conflicts and are thus disproportionately affected by war.'<sup>113</sup> They are also the recruitment base of armed groups. By all indications, young people are going to be *even more* connected via new technologies in the future. To harness the power of new technologies will thus also mean the ability to reach out to youth and solicit their ideas about reducing and preventing suffering and devastation in armed conflict.

## Conclusion

The collective experience in dissemination and integration of IHL, as captured in this piece, attests to the complexity and ambition of the task at hand. War is a crime-prone environment and violations of IHL do take place in all conflicts. Still, unlike other regimes, IHL has very few monitoring and enforcement mechanisms. It relies on self-enforcement by parties to the conflict, and there are important practical or political limits to this.

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110. The ICRC module is currently available in Arabic only, at the following website: <https://www.icrc.org/ar/document/law-armed-conflict-essentials>.

111. Geneva Call, *FIGHTER NOT KILLER Campaign launched by Geneva Call against violations in Syria*, 17 May 2013, available at: <http://www.genevacall.org/fighter-killer-campaign-launched-geneva-call-violations-syria/> (consulted on 17 February 2016).

112. Geneva Call, *FIGHTER, NOT KILLER: A mobile application to raise awareness of the law of war among armed groups*, 19 May 2015, available at: <http://www.genevacall.org/fighter-killer-mobile-application-raise-awareness-law-war-among-armed-groups/> (consulted on 17 February 2016).

113. United Nations, *Youth and Armed Conflict*, available at: <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-armed-conflict.pdf> (consulted on 17 February 2016).

As seen, when it comes to States, progress in integration and dissemination has been uneven across different parts of the world and some of the most important States have not accepted to commit to some of the legal instruments. Non-State armed groups face a set of challenges of their own, and while commitment to some IHL norms is possible for some groups, others may reject IHL altogether.

In recent times, the universal appeal of IHL seems to be particularly challenged in a climate of radicalization, disillusion with the efficacy of international mechanisms and – most recently – the ostentatious display of gross violations of IHL on the internet and in the media as a tactic to spread terror. According to some observers, there is even an ‘erosion of respect for IHL’<sup>114</sup>.

In this regard, there is an important dimension of which Marco Sassòli and Yvette Issar remind us: ‘all of us should endeavour, whenever possible and when it is true, to show that IHL is very often respected’<sup>115</sup>. The authors believe that this is necessary because ‘anyone consulting media and NGO reports would be led to believe IHL is almost never complied with’. We agree with Sassòli and Issar that ‘the imbalance of perception is not only inaccurate but also extremely dangerous, and can result in a vicious circle of non-respect’<sup>116</sup>.

Measuring the progress of the dissemination and integration of IHL is a much-needed effort going forward, and it involves several dimensions. First, there is a need for a comprehensive ‘directory’ on the concrete actions that different actors are undertaking to generate respect for the law. For example, there is no comprehensive catalogue of the efforts of the various armed forces in the world, and more research is needed to understand motivations behind non-State armed groups’ behaviour. Second, actors involved in dissemination and integration of IHL need to be results-oriented: one cannot measure impact without having set clear baseline objectives and some indicators for progress<sup>117</sup>. This article has attempted to suggest at least four parameters which may be taken into account to track

114. Adama Dieng, ‘Le respect du droit humanitaire’, in *Le Temps*, 1<sup>st</sup> February 2016, available at: <http://www.letemps.ch/culture/2016/02/01/respect-droit-humanitaire> (consulted on 17 February 2016).

115. M. Sassòli and Y. Issar, *op. cit.*, note 9, p. 226.

116. *Ibid.*, p. 225.

117. The ICRC has itself developed a set of indicators that can help track in the constant adaptation and refinement of prevention activities. See the section on prevention in ICRC, ‘Annex I to the Annual Report 2014: The ICRC’s Operational Approach to Result-based Management: Improving Humanitarian Action’, pp. 71-72.

progress by primary and secondary actors alike. Third, more work can be done towards building an evidence base on the link between *outputs* and *impact* in terms of respect for IHL on the ground<sup>118</sup>.

The horrifying news which keep flowing from Syria and Iraq may actually be more the symptom of the failure of the international community to broker peace in the region than an erosion of respect for IHL as such. However, the build-up of violence and crimes which characterizes such long-term conflicts, may weaken the credibility of IHL in the public opinion and, most importantly, in the mind of the next generation. Rather than giving in to the discourse of IHL's lack of relevance to today's conflicts, we submit that there is a need for persistence and renewed imagination and political will to apply the law. This is needed primarily among States and non-State actors, for whom investing in promotion and integration of IHL could be seen as a voluntary way to recommit to and fulfil their obligations. Persistence is also needed among 'secondary' actors working in this field, and their donors, in order to pursue or develop this long-term commitment.

Committing to disseminate and integrate IHL is not only a legal obligation: it is a smart investment in the future, in view of the much higher costs implied by any remedial action after a conflict; above all, it is our collective responsibility, in view of the suffering and irreplaceable loss of life that we can still prevent.

### **Vincent Bernard**

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### **Mariya C. Nikolova**

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118. See the guiding principles of the ICRC Prevention Policy: 3.4 Results-oriented, pp. 422-423.