

Introduction: The Road to Compliance

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International humanitarian law (IHL) has at its core, the principles of humanity, neutrality, impartiality and independence. These principles are not only enshrined in Conventions, but are also found in the Statutes of the International Red Cross Red Crescent Movement, agreed at the International Conferences of the Red Cross, and in UN General Assembly and Security Council resolutions.

Compliance with the law rests on several factors, most notably knowledge and understanding of the rules and timely and effective means of investigating and prosecuting violations. However, at the most fundamental level, respect for IHL can only be achieved if there is an understanding and an acknowledgement that these rules are grounded in our common humanity. This is a challenge that is increasing as we see both political encroachments on the principles of neutrality, impartiality and independence in the humanitarian sector and armed actors who publicly vaunt their disregard for human life, let alone the rules of war.

In November 2014, Australian Red Cross held a two-day conference, entitled 'From Principles to Practice: Securing compliance with the laws of war' at the University Club of Western Australia. The conference brought together a cross-section of practitioners from the legal, humanitarian, academic, military and political fields, to discuss challenges to improving compliance with IHL and to share best practices and highlight ways forward.

Speakers included the Swiss Ambassador to Australia His Excellency Marcel Stutz; Minister for Foreign Affairs, The Hon. Julie Bishop MP; Senator the Hon. Michaelia Cash; WA Attorney General, The Hon. Michael Mischin; members of the Australian Defence Force; academics from the University of Western Australia, Deakin University and the University of Melbourne; a humanitarian worker from Medecins Sans Frontieres; representatives from the International Committee of the Red Cross, Australian Red Cross and Cruz Vermelha de Timor-Leste; and former and current judges, investigators, prosecutors and defence lawyers from the International Criminal Court, the International Criminal Tribunal for the Former

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Yugoslavia (ICTY) and the UN International Investigation Commission for Lebanon, including current ICTY Prosecutor Serge Brammertz.

The conference discussions covered topics ranging from the prevention of breaches through dissemination and training; to criminal prosecutions as a means of strengthening respect for the law; the advantages and disadvantages of implementing compliance mechanisms and operational realities in the field.

A small selection of the papers is included in this edition of the UWA Law Review.

To introduce the papers, I wish to highlight some fundamental ideas on compliance with IHL from the perspective of Australian Red Cross.

In terms of compliance with IHL, it is worth noting that first and foremost it is States who have the obligation to ensure knowledge and understanding of the rules. This obligation is included in the Geneva Conventions of 1949 and their Additional Protocols and includes the responsibility to promote respect for and understanding of the principles amongst the armed forces but also 'the entire population'. This is an extraordinary obligation, unprecedented in any other international convention or treaty.

The question is, why did States feel compelled to include this provision, what was its intent, and do States do enough to demonstrate conformity with the law?

In 1968 the Proclamation of Tehran, adopted at the International Conference on Human Rights, stated that education should 'promote understanding, tolerance and friendship among all nations'. The commentaries to the 1977 Additional Protocols to the Geneva Conventions tell us that from the beginning of the preparatory discussions to the Diplomatic Conference it was the unanimous view of the experts that dissemination of the treaty rules was of primary importance, and education was thought a better guarantee of respect for the rules than any sanction. The Diplomatic Conference strongly supported the view, shared by the ICRC, that education and understanding of the rules of IHL would promote adherence during times of armed conflict.

The obligation for High Contracting Parties to disseminate the Conventions and the Protocols as ‘widely as possible’ gives some latitude to States. At the time of drafting there was concern that the capacity to disseminate and educate may be limited in some cases. However, there is provision for States to receive assistance in this dissemination role and both the ICRC and National Societies are invited to offer their services.

In this regard, the Australian Red Cross IHL dissemination programme is extensive and an example of the breadth and depth of dissemination that can be achieved through the effective operation of our auxiliary relationship with government. Our IHL team train and educate both ‘conflict-facing’ and ‘non-conflicting facing’ target audiences. The former includes the Australian Defence Force and in some instances the Australian Federal Police. But it also includes humanitarians, businesses working in conflict-affected and fragile states, journalists, the medical community, public servants and politicians who are making decisions about Australia’s role in complex environments abroad.

Most of the IHL dissemination work of Australian Red Cross is deeply grounded in sharing knowledge and understanding of the law. Its purpose is to provide a critical balance between military necessity and humanity and to limit the effects of armed conflict on those caught up in its environs. IHL is a set of laws deeply imbued with fundamental humanitarian values and the obligation to disseminate the Conventions and their protocols provides us with an opportunity to promote humanitarian values, and common understanding not only among all nations, but also among all peoples.

This is critically important, not only as a legal obligation but if, through learning about IHL you grow to understand that even in armed conflict, when humankind is at its worst, and most vulnerable, that there are rules to protect those who are not fighting, those who are exposed and particularly at risk of harm and suffering, and that these rules apply to everyone equally, then we strengthen the idea that all people are – universally interdependent through fundamental principles of humanity. In this way we can also understand that Compliance with the law is one half of the equation – the promotion of humanity is the other.

This Conference was an opportunity to explore how the law ensures these values and principles are applied, and how compliance with the law serves to ensure that the critical balance between military necessity and humanity is protected.