

Increasing Compliance with International Humanitarian Law through Dissemination

By Denielle Brassil¹

“Everyone, whether military or civilian, should have a good knowledge of the Convention, and should themselves be imbued with the sentiments of which it is so profound an expression. That is the best means of guaranteeing that the Convention will be respected. No stone should be left unturned in the pursuit of so all-important an aim”²

Introduction

Laws regulating war have existed for as long as war itself.³ For thousands of years, the desire to limit suffering in war has been the subject of great philosophical deliberation and, according to the major religious traditions of the world, divine revelation.⁴ Since the mid-nineteenth century, it has also been a focus of public international law. As it exists today, International Humanitarian Law (‘IHL’) owes much to the work of Henry Dunant, who in 1859 witnessed the terrible suffering of the wounded and sick soldiers at the Battle of Solferino in Italy.⁵ He became a dedicated advocate of the need for law to protect individuals during war. His efforts led to the *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*,⁶ signed in Geneva on 22 August 1864 and the co-founding of the International Committee of the Red Cross (‘ICRC’), now part of the world’s largest humanitarian organisation, the International Red Cross and Red Crescent Movement.

¹ Denielle Brassil is a member of the Australian Red Cross NSW IHL Committee. She is a solicitor of the NSW Supreme Court and has a Bachelor in Laws (Hons I) and Arts (Development Studies) from the Australian National University and a Masters of International Humanitarian Law (LL.M./ M.A.S) from the Geneva Academy of International Humanitarian Law and Human Rights. She would like to acknowledge the assistance of Benjamin Coles in the preparation of this paper.

² Jean Pictet (ed), International Committee of the Red Cross (‘ICRC’), *The Geneva Conventions of 12 August 1949: Commentary I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Martinus Nijhoff, 1952), 349 (‘Commentary I’).

³ M. Sassoli and A A Bouvier, *How does Law Protect in War Volume 1* (ICRC, 2006), 121.

⁴ See, eg, Daniel Thurer, *International Humanitarian Law: Theory, Practice, Context - The Pocket Books of the Hague Academy of International Law Volume 10* (Martinus Nijhoff, 2011).

⁵ Sassoli and Bouvier, above n 3, 122.

⁶ *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*, opened for signature 22 August 1864, 22 Stat. 940 (entered into force 22 June 1865).

Today, IHL is a developed corpus of law and, reflecting changing needs, the focus of the international community has shifted away from the creation of new laws and towards strengthening compliance with those already existing.⁷ It is against this background that this paper examines the dissemination of IHL as a means of increasing compliance. In the *first* section I consider the legal requirement to disseminate found in treaty and customary law and conclude that dissemination is to be conducted not for its own sake, but to increase compliance. The *second* section sets out a potential framework for devising a dissemination strategy aimed at increasing compliance in two parts. The first part draws on the *ICRC Prevention Policy*⁸ and outlines a four-step process for formulating measureable, context-specific targets that allow the effectiveness of a programme to be tested. The second part identifies what dissemination activities can, and cannot, achieve with a view to assisting IHL practitioners choose an activity that aligns with their objectives. The *third* discusses dissemination in relation to two important audiences: “key actors” and victims of conflict.

1. Dissemination defined – the legal obligation

There is an obligation to disseminate in each of the *1949 Geneva Conventions*⁹ and the *Additional Protocols*¹⁰ and, according to the ICRC Customary Law Database,¹¹ the

⁷ See, eg, *Resolution 1*, 31st International Conference of the Red Cross and Red Crescent *Strengthening Compliance with International Humanitarian Law (IHL): The Work of the ICRC and the Swiss Government*, ICRC (1 December 2012) <<https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>>. (*Strengthening Compliance: ICRC and the Swiss Government*)

⁸ *ICRC Prevention Policy* (April 2010) ICRC <<https://www.icrc.org/eng/resources/documents/publication/p4019.htm>> (*ICRC Prevention Policy*)

⁹ See, eg, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (*Geneva Convention I*); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (*Geneva Convention II*); *Geneva Convention relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (*Geneva Convention III*); *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (*Geneva Convention IV*) (collectively, ‘*1949 Geneva Conventions*’) arts 47, 48, 127, 144 respectively.

¹⁰ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* opened for signature 12 December 1977, 1125 UNTS 3 (entered into force 7 December 1979) (*Additional Protocol I*); *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, opened for signature 12 December 1977, 1125

obligation also forms part of international customary law. It is one of the only implementation mechanisms to apply to international and non-international conflicts and in peacetime as well as war. This creates “at least in theory ... an almost ideal situation for universal knowledge”.¹² The obligations in the Geneva Conventions are expressed in more or less identical terms:

“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.”¹³

Additional Protocol I’s obligation is similarly worded¹⁴ whilst Additional Protocol II’s is less expansive: “[t]his Protocol shall be disseminated as widely as possible.”¹⁵ I will first address the requirements under the Geneva Conventions.

The parties are required to conduct dissemination so as to ensure the law “may become known to the entire population”. This is an obligation of means, not ends; states are not required to attain actual knowledge of the Conventions amongst their population. Rather, states must take the measures necessary to achieve the ends to which the obligation is directed. On one reading of the text, this ends is knowledge (“so that the principles ... may become known to the entire population”). However, applying a purposive approach to the treaties’ construction,¹⁶ I submit that dissemination is actually directed at increasing compliance with the law. The purpose of the implementation mechanisms in the Conventions is to see that the law is respected. This is reflected in the construction that has been given to

UNTS 609 (entered into force 7 December 1978) (*Additional Protocol II*) (collectively, *Additional Protocols*) arts 83 and 19 respectively.

¹¹ *Customary International Humanitarian Law Database*, ICRC, Rules 142 and 143 <<http://www.icrc.org/customary-ihl/eng/docs/home>>.

¹² Jean-Jacques Surbeck, ‘Dissemination of International Humanitarian Law’ (1983) 33 *The American University Law Review* 125, 126.

¹³ *Geneva Convention IV* art 144 (cf arts 47, 48 and 127 of *Geneva Convention I*, *Geneva Convention II* and *Geneva Convention III*, respectively).

¹⁴ Art 83(1).

¹⁵ Art 19.

¹⁶ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31(1) and, on the pre-existing obligation in customary law, see Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Brill, 2009), 370.

Common Article 1 of the Conventions, which obliges states to take the steps necessary to “respect and ensure respect” of the law.¹⁷ In the same way, I would argue, the obligation to disseminate requires dissemination to be carried out in order that the Conventions will be complied with.

A purposive approach to the obligation’s construction also favours a broad interpretation of the requirement to “disseminate the text” of the Conventions so as to encompass a range of activities to ensure compliance with the law. The word “disseminate” comes from the Latin, “to scatter, as seed in sowing”¹⁸ and means, “the act of spreading something, especially information, widely”.¹⁹ On a narrow reading, the obligation to “disseminate the text” might be limited to the act of circulating the Conventions’ written words. However, both the purpose and surrounding text militate against such an interpretation. Dissemination must be carried out so that the Conventions “may become known”. This would appear to require, at a minimum, that the Conventions be communicated in a fashion that allows them to be understood by their intended audience so that, for example, where literacy levels are low, parties would be obliged to provide aurally delivered dissemination, such as, through radio.²⁰ Further, the specific references to “the study” of the Conventions in “programmes of military and ... civil instruction” show that the obligation anticipates different activities being carried out. Finally, it is the reference to the “principles” of the Conventions that reveal that the scope of the obligation is not limited to the Conventions’ text only; some translation of the norms into its important component parts is needed, such as through education or training.

An apparent ambiguity arises out of the obligation to provide “civil instruction” being qualified (as indicated by the words “if possible”) when the requirement to disseminate appears to be otherwise, unequivocally directed towards “the entire population”, including its civilian elements. The qualification suggests that it may not be necessary to provide

¹⁷ On the obligation to “respect and ensure respect”, see, eg, *Customary International Humanitarian Law Database*, above n 11, Rule 139; *Case Concerning Military and Paramilitary Activities against Nicaragua (Nicaragua v. United States of America) (Judgment)* [1986] ICJ Rep 14, [219]-[220].

¹⁸ *Macquarie Dictionary* <<https://www.macquariedictionary.com.au/features/word/search/disseminate/>>.

¹⁹ *Oxford Dictionary* <<http://oxforddictionaries.com/definition/dissemination>>.

²⁰ Cf *Geneva Convention III* art 41(1) and *Geneva Convention IV* art 99, which require the text of the Conventions to be in a language that can be understood by prisoners of war and protected civilians.

instruction on the Conventions to civilian audiences. Recourse to the *Commentaries* assists in resolving this difficulty. They indicate that the qualification was not intended to apply to all civilian dissemination. They describe “civil instruction” as referring to the narrow concept of inclusion within a school curriculum and report that the “constitutional scruples” of some federal states, which wished to “safeguard the freedom of provincial decisions” on educational matters, led the drafters of the Conventions to include the qualification.²¹ Similar concerns were apparently raised during the drafting of the equivalent provision in Additional Protocol I, which uses the word “encourage”.²² A construction that interprets “civil instruction” so to refer to the specific concept of a school curriculum, is supported by the use of the words “study” and “programmes”, both of which accord with the notion of a formal syllabus. Accordingly, the words “if possible” should not be understood to detract from the more general obligation to disseminate to the civilian population.

The content of what must be disseminated is also to be understood in light of the purpose of the obligation. As already noted, the use of the word “text” is not determinative of the obligation’s scope. The Articles also make reference to the “principles” of the Conventions. They are to be understood as including such great, humanitarian law concepts, likely to be already well-known to the reader, as, protection for those who do not, or are no longer participating in hostilities, care for the wounded and sick according to need and without adverse distinction on the basis of race, sex or religion, the prohibitions on unnecessary suffering and cruel and inhumane treatment, and the guarantee of proper judicial protections. However, knowledge – of the text or the principles – is not, of itself, sufficient. The content of what will need to be disseminated will vary according to the needs of the audience (taking into account their skills, capabilities and functions) and what is required to ensure respect of the law. The comments made by Dixon J of the High Court of Australia in the context of interpreting a purposive power in the *Constitution of Australia*, although originating in a completely different setting, offer a useful articulation of the concept:

“though [the section’s] meaning does not change... its application depends upon facts,

²¹ Pictet, *Commentary I*, above n 2, 349 and Jean Pictet (ed), ICRC, *The Geneva Conventions of 12 August 1949: Commentary III Geneva Convention relative to the Treatment of Prisoners of War* (Martinus Nijhoff, 1960), 614-615.

²² *Additional Protocol I* art 83(1) and Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff, 1987), 965-967.

and those facts may change, so may its actual operation”²³

Thus, for example, where dissemination is being carried out to members of the military, the content of what is disseminated will depend on the level of knowledge required in light of the person’s scope of responsibility. The higher in rank and responsibility, the more thorough a knowledge is likely to be required in order for the Conventions to be respected.²⁴

Whilst dissemination must be directed to the entire population, the Conventions, in addition, make specific mention of the obligation to include study of the Conventions in military programmes and, in Articles 47(2) and 48(2) of the First and Second Geneva Conventions respectively, the “armed fighting forces”, “medical personnel” and “chaplains”. Articles 127(2) and 144(2) of the Third and Fourth Conventions respectively also specifically make reference to those with responsibilities in relation to prisoners of war and protected civilians who must be in possession of the text of the Conventions and “specially instructed” in its provisions.²⁵ These audiences are particularly important to increasing compliance – military personnel, because they must apply the law and account for non-compliance before the courts and, also, because they are beneficiaries under the law.²⁶ Similarly for medical personnel and chaplains, as the *Commentaries* observe:

“[a]s these persons enjoy ‘rights’ under the Convention, they ought to make a special point of scrupulously observing the corresponding ‘duties’ which the Convention imposes on them.”²⁷

Dissemination directed towards those who benefit from the protections in the Conventions is perhaps not as obvious a priority as disseminating to those who must apply it. The importance of disseminating to victims of armed conflict as well as other, “key actors” who are capable of influencing the law’s application, is examined in more detail in section 3.

I will not expand upon the obligations in the Additional Protocols and customary law in any detail. As with the obligation to disseminate in the Conventions, there is a significant overlap with the obligations to “respect and ensure respect” of the law, and parties are required to

²³ *Andrews v Howell* (1941) 65 CLR 255 at 278.

²⁴ Pictet, *Commentary I*, above n 2, 348. See also *Geneva Convention I* art 45; *Additional Protocol I* art 87(2) and *Customary International Humanitarian Law Database*, above n 11, Rule 142.

²⁵ See also *Additional Protocol I* art 83(2).

²⁶ Pictet, *Commentary I*, above n 2, 349.

²⁷ *Ibid.*

take the measures necessary to ensure that their obligations under IHL are met.²⁸ In the result, states are obliged to disseminate treaty norms as well as customary law and the obligation extends, under both, to international and non-international conflicts. As well, Additional Protocol I includes a number of implementation mechanisms that are of relevance to the obligation to disseminate. For example, pursuant to Article 87(2), “commensurate with their level of responsibility”, commanders are responsible for ensuring, “that members of the armed forces under their command are aware of their obligations;”²⁹ Article 82 obliges states to ensure that legal advisors are available to advise, amongst other things, “on the appropriate instruction to be given to the armed forces”;³⁰ and Article 6 provides that, with the assistance of national Red Cross Societies, states are obliged to endeavour to “train qualified persons to facilitate the application of the Conventions and [the] Protocol”.

In light of the intersection with the obligation in Common Article 1 (and the equivalent obligations in the Additional Protocols and customary law), the utility of having a separate obligation to disseminate might be questioned when states are already required to do what is necessary to achieve compliance (including, as necessary, dissemination activities). However, the same might be said of the decision to include Common Article 1 in the Conventions at all or, to take the logic further, any implementation mechanism, when the principle of *pacta sunt servanda* means that parties are, in any case, bound to respect the treaties’ terms. The reason for including implementation mechanisms in IHL lies in the difficulties associated with

²⁸ On dissemination forming part of the obligation to “respect and ensure respect”, see, eg, *Customary International Humanitarian Law Database*, above n 11, Rule 142; *Additional Protocol I* art 80 (2) and accompanying commentary in Sandoz, Swinarski and Zimmermann, above n 22, 930; Toni Pfanner, ‘Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims’ (2009) 91 (874) *International Review of the Red Cross* 279, 283; J Meurant, ‘Dissemination and Education’ (1980) 9 *Australian Year Book of International Law* 364, 364; Michael Bothe ‘Conclusions by the chairman’ in Michael Bothe, Peter Macalister-Smith, Thomas Kurzidem (eds) *National Implementation of International Humanitarian Law*, (Martinus Nijhoff, 1990), 303; *Improving Compliance with International Humanitarian Law - ICRC Expert Seminars* (2003) ICRC <<http://www.icrc.org/eng/resources/documents/report/ihl-respect-report-011003.htm>>; *Integrating the Law* (May 2007) ICRC, 17 <http://www.icrc.org/eng/assets/files/other/icrc_002_0900.pdf> and Fausto Pocar, ‘Opening Remarks’ (Paper presented at “XXXVI Round table on current issues of international humanitarian law: Respecting IHL: challenges and responses”, San Remo, 5-7 September 2013), 16.

²⁹ *Customary International Humanitarian Law Database*, above n 11, Rule 142.

³⁰ *Customary International Humanitarian Law Database*, above n 11, Rule 141.

compliance. In 2011, the ICRC concluded a major study into the effectiveness of IHL.³¹ It concluded that “[t]he principal cause of suffering in armed conflicts remains the inability to respect the law in force, whether for lack of means or political will, rather than the deficiency or absence of rules.”³² It is submitted that dissemination is well-placed to address such concerns. It is also unique in that it is one of the few implementation mechanisms to enjoy strong state support.³³ How dissemination can be used to prevent violations is the focus of the next section

2. A two-part approach to developing an effective dissemination strategy

In view of dissemination being a means, not an ends; this next section is devoted to devising a results-based approach to dissemination that is aimed at increasing compliance. I have emphasised that, as a matter of law, such an approach is required. But it is, in fact, an axiom: as a matter of good policy it makes no sense for dissemination to be conducted for its own sake or in order to have the comfort of knowing that, if asked, people could recite the law

³¹ ‘*Strengthening Legal Protection for Victims of Armed Conflicts*’ (Report for the 31st International Conference of the Red Cross and Red Crescent No. 31IC/11/5.1.1, International Committee of the Red Cross, October 2011), 2 (‘*Strengthening Legal Protection for Victims*’).

³² *Strengthening Legal Protection for Victims*, above n 31.

³³ See, numerous resolutions of the United Nations Security Council, United Nations General Assembly, Human Rights Council and the International Conference of the Red Cross, referenced at: *Customary International Humanitarian Law Database*, above n 11, Rules 142 and 143; in particular, Resolution 21 of the Diplomatic Conference of The Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva 1974-1977 “Dissemination of knowledge of IHL applicable in armed conflicts”, annexed to the *Additional Protocols*. See, also, in the context of human rights law, Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, 80th sess, UN Doc CCPR/C/21/Rev.1/Add.13 (29 March 2004) on the obligation to “adopt legislative, judicial, administrative, *educative* and other appropriate measures in order to fulfil their legal obligations (emphasis added)” and “it is important to raise levels of awareness about the Covenant not only among public officials and State agents but also among the population at large”; *Erdogan and Others v Turkey* (European Court of Human Rights, Chamber judgment, Application No. 19807/92, 13 September 2006), [66]; *McCann v United Kingdom* (1995) 324 Eur Court HR (ser A), [212]-[213]; ECHR, *Nachova and others v Bulgaria*, ECHR, *Nachova and others v Bulgaria* (European Court of Human Rights, Grand Chamber judgment, Application No. 43577/98, 6 July 2005) [97], [103]; *Zambrano Velez et al v Ecuador* (Inter-American Court of Human Rights, Judgement, 4 July 2007), [87]. Cf, Protecting Powers (1949 Geneva Conventions arts 8, 8, 8, 9 respectively, *Additional Protocol I* art 5); formal enquiry procedure (1949 Geneva Conventions arts 52, 53, 132, 149 respectively); International Humanitarian Fact-Finding Commission (*Additional Protocol I* art 90) as discussed in *Strengthening Legal Protection for Victims*, above n 31, 12-16 and Pfanner, above n 28, 285-6.

correctly. Logically, there seems little doubt that teaching IHL is about increasing compliance. Yet, I would suggest, this simple truth is difficult to put into practice and, as a result, can be overlooked. Increasing compliance is an aim that is difficult to define, quantify or measure; how does a lecture to a group of teenagers in peacetime help prevent violations of the laws of war? Although statements outlining that dissemination is important are common, rarely is it explained precisely why or how. There is a risk, therefore, that dissemination is carried out because it is a good thing to do whilst the causal connection between the activity and its aims is never drawn.

This leads to two interrelated problems: dissemination conducted with poorly defined objectives and a perception that it is so. The former can lead to valuable time and resources being wasted. The latter can mean that important dissemination activities are not carried out or will struggle to find funding. Donors need results to measure effectiveness and, from the perspective of accountability, there is little difference between a programme run for vaguely defined reasons and one that has no reasons at all. An accurate assessment of its successes and failures is precluded in both. To prove effectiveness, therefore, requires clear aims and measurable targets. A results-based approach, according to the ICRC, is a “strategy that focuses on performance and the achievement of results”, a “logical model for identifying expected results and the inputs and activities needed to accomplish them”.³⁴ The following is provided as an example: “*25 health centres built in the Nminunga region,*” shows what has been done, but not what was achieved in terms of the effects it had on people’s lives, which is the aim of the programme.³⁵ By contrast, “*250 households in the Nminunga region can safely access a health post on foot in less than 40 minutes, thereby improving the health conditions of the region’s inhabitants,*” is a measurable means of showing how the activity impact lives, thereby achieving its purpose.³⁶ A results-based approach ensures that the outcomes of an activity align with the objectives being pursued.

The approach outlined in this section has two parts. The first part provides a process for converting the aim of a dissemination activity into targets³⁷ that are directed towards

³⁴ *Programme/project management: the results-based approach*, ICRC (2008), 13
<<https://www.icrc.org/eng/assets/files/publications/icrc-001-0951.pdf>>.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Cf* the language of the ICRC: outputs (“the products, goods and services that people receive as a result of ICRC activities and that are expected to lead to the achievement of outcomes”),

increasing compliance. I have used the widely-known “SMART” acronym as a starting point. Targets should be: Specific, Measurable, Achievable, Relevant and Timebound.³⁸ To use a simple example, an appropriate target would normally include each of the following components: a metric for measuring success (for example, proportion of people able to identify the red cross emblem), a class of person to whom it applies (children in NSW aged 5-12 years old), a quantitative or qualitative outcome that must be reached (40% of people surveyed) and a timeframe in which it needs to be achieved (before 31 December 2016). It also must be easily measurable, closely aligned with the outcome that is being pursued and robust enough that an assessment of whether the target has been achieved can be repeated and verified. The second part of the approach divides dissemination into three categories on the basis that different dissemination activities are capable of achieving different outcomes. Having defined the aims of an activity in the first part, the second is to assist practitioners to choose an activity that aligns with that objective.

Part 1: Define objectives

Dissemination is a preventative measure. Its aim is to increase compliance by preventing violations.³⁹ “Prevention”, however, is difficult to measure. Because it is termed in the negative, one must use counterfactual scenarios to prove what is, in essence, the existence of an absence: “if X had happened, then Y would never have occurred”. Accordingly, I have used the *ICRC Prevention Policy* to reframe prevention into positive terms. The Policy defines the conditions necessary to foster “an environment conducive to respect for the life and dignity of persons affected by armed conflict and other situations of violence; and respect for the ICRC’s work”.⁴⁰ The features of this environment are, according to the *ICRC Prevention Policy*, conducive to increasing compliance with IHL. Accordingly, they are utilised in this paper as a broad structure for devising a dissemination strategy. Those conditions are:

outcomes (“short-term outcome: the likely, or achieved, short-term effects of the output that are expected to lead to the achievement of medium-term outcomes; medium-term outcome: the likely, or achieved, medium term (1- to 5-year) effects of the short-term outcome that are expected to contribute to the impact”) and impact/goal (“primary and secondary long-term effects to which interventions contribute, positively or negatively, directly or indirectly, intended or unintended”): *Volume I Annual Report 2013*, ICRC, 11 <<https://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-introduction.pdf>>.

³⁸ *Programme/project management: the results-based approach*, above n 34, 60.

³⁹ Note the ICRC draws a distinction between an overall aim of preventing violations and its specific prevention approach: *ICRC Prevention Policy*, above n 8, 3, 5.

⁴⁰ *Ibid* 5.

- “clear and comprehensive international law (international humanitarian law and other fundamental rules that protect persons in situations of violence) that adequately addresses contemporary humanitarian problems, universally accepted and, in case of treaties, ratified;
- national legislation and administrative measures incorporating the law;
- national and international mechanisms permitting violations of the law to be sanctioned, and providing reparation for victims;
- arms carriers’ commitment and capacity (e.g. structure, resources, effective chain of command) to respect the law and the ICRC’s work, in particular through integration of the law into doctrine, education, training and sanctions systems;
- appropriate knowledge, understanding and acceptance of the law and of the ICRC by government officials, academics, members of civil society, the media and the general public;
- public discourse void of language aimed at dehumanizing ethnic, racial, religious or political groups or discriminating on the basis of gender/sex; and
- alternatives to risk-taking behaviour available to vulnerable populations (i.e. populations at risk).”⁴¹

The *ICRC Prevention Policy* is predicated on an understanding of people’s behaviour derived from Daniel Muñoz-Rojas and Jean-Jacques Frésard’s ICRC study, *Roots of Behaviour in War* study⁴² (‘RBWS’).⁴³ A core assumption of the Policy, which reflects one of the major findings of this study is,

“behaviour is more effectively changed by modifying the environmental conditions that influence it than by directly trying to alter people’s opinions, attitudes or outlooks”.⁴⁴

The RBWS study examined the reasons why people violate IHL and whether the ICRC took due account of these reasons in their prevention strategies.⁴⁵ It incorporates a literature

⁴¹ Ibid 9.

⁴² Jean-Jacques Frésard, *The Roots of Behaviour in war: A Survey of the Literature*, ICRC (2004), 27 and Daniel Muñoz-Rojas and Jean-Jacques Frésard, ‘The Roots of Behaviour in War: Understanding and Preventing IHL Violations’ (2004) 86 (853) *International Review of the Red Cross* 189.

⁴³ *ICRC Prevention Policy*, above n 8, 7.

⁴⁴ Ibid 8.

⁴⁵ Muñoz-Rojas and Frésard, above n 42, 190

review, surveys of weapons' bearers in four war-torn countries, questionnaires completed by ICRC delegates and the findings of the ICRC's 1999 *People on War* survey, which interviewed some 15,000 civilians and combatants in 16 countries, including 12 war zones and four of the five Security Council permanent members.⁴⁶ The study concluded that a weapon bearer's moral or ethical beliefs are, overall, less important than the person's environment in affecting the law's application.⁴⁷ That was so because environmental pressures, including factors such as partisan allegiance, group conformity and obedience to authority, have a strong bearing on individual behaviour.⁴⁸

The RBWS study found that environmental factors limit the extent to which an individual's behaviour is directed by his or her own attitudes and opinions:

“[w]ithout denying that individuals have the capacity to act in accordance with the dictates of their conscience, it has to be admitted that ordinary men who have become combatants are, in certain circumstances, moved by other parameters.”⁴⁹

The following statement by a member of an armed group who participated in an ICRC IHL dissemination seminar in Gaza in 2007, illustrates, for example, the significant role that an organisation's hierarchy can have:

“There are things we learned here that surprised us. Things we weren't aware of but as to whether our actions will change on the ground, that is up to our leaders. They decide. Not us.”⁵⁰

The RBWS concluded, “the main effort to influence the behaviour of combatants has to proceed from a different approach [than affecting the knowledge and attitudes of individual combatants to one] involving the incorporation of norms of IHL into military orders, policies and instruction.”⁵¹ Compliance with IHL, therefore, must become a part of the “structures and systems” that can affect, positively or negatively, respect for the law.⁵²

⁴⁶ Muñoz-Rojas and Frésard, above n 42, 190 and *The People on War Report: ICRC Worldwide Consultation on the Rules of War* (October 1999) ICRC <https://www.icrc.org/eng/assets/files/other/irrc_853_fd_fresard_eng.pdf> (*People on War Report*).

⁴⁷ Muñoz-Rojas and Frésard, above n 42, 196, 203-204.

⁴⁸ Ibid 193-194, 203-204.

⁴⁹ Ibid 203.

⁵⁰ Katya Adler, *Red Cross gives war lessons in Gaza* (19 November 2007) BBC News <http://news.bbc.co.uk/2/hi/middle_east/7102248.stm>.

⁵¹ Muñoz-Rojas and Frésard, above n 42, 205.

⁵² *ICRC Prevention Policy*, above n 8, 7-8.

How to formulate the right target – four steps

The following is a four-step approach for identifying a specific aim for a dissemination activity. Dissemination is just one aspect of building an environment conducive to respect⁵³ and this discussion assumes that dissemination will take place as part of a “coherent, overall strategy”⁵⁴ involving a multiplicity of activities.⁵⁵ A detailed results-based methodology for formulating such a strategy is available on the website of the ICRC.⁵⁶ Although the four steps below are formulated at a general level they are designed to be adapted to the specific context in which the dissemination activity will occur.⁵⁷ There are a variety of factors that will impact on the scope and content of a dissemination activity, one major influence will be, for example, whether the activity is intended to be deployed before, during or after a conflict.

As the Prevention Policy constitutes an exhaustive statement of the conditions necessary to ensure compliance with IHL, it provides a useful framework for identifying the purpose to which new dissemination programmes should be directed. The *first step*, therefore, is to identify any gaps in a state’s environmental conditions.⁵⁸ For example, in relation to the environmental condition, “national legislation and administrative measures incorporating the law,” a particular state may be lacking legislation implementing the Rome Statute. However, as is discussed below, dissemination activities are limited in what they can achieve. Directly, they can change knowledge, attitudes or behaviour.⁵⁹ As such, once the gap in a state’s environment is identified, the *second step* is to identify the extent to which the gap is caused by a deficiency in a relevant stakeholder’s knowledge, attitudes and behaviour.⁶⁰ The purpose of a dissemination program should be to remedy that deficiency. Continuing the example of the state that has not implemented the Rome Statute, a reason for this failure to

⁵³ Vincent Bernard, ‘The ICRC’s Evolving Experience in Prevention’ (Paper presented at “XXXVI Round table on current issues of international humanitarian law: Respecting IHL: challenges and responses”, San Remo, 5-7 September 2013), 83.

⁵⁴ *ICRC Prevention Policy*, above n 8, 19.

⁵⁵ See, ‘5.2 Combining activities to reach objectives’, *ibid* 19-20.

⁵⁶ *Programme/project management: The results-based approach*, above n 34.

⁵⁷ *ICRC Prevention Policy*, above n 8, 11-12.

⁵⁸ See, *ibid* 11-12, 17-18; ‘Problem identification’, *Programme/project management: The results-based approach*, above n 34, 31-37.

⁵⁹ Muñoz-Rojas and Frésard, above n 42, 204; Frésard, above n 42, 105.

⁶⁰ See, ‘5.1 Identifying key stakeholders’ in *ICRC Prevention Policy*, above n 8, 19 and ‘Operational Strategy’, *Programme/project management: The results-based approach*, above n 34, 43-52.

act may be that the parliamentarians lack sufficient knowledge of what it is the Rome Statute requires a state to do.

The *third step* is to formulate an appropriate metric by which the deficiency, and any change, may be measured.⁶¹ For instance, the proportion of politicians who can correctly identify what the Rome Statute requires of their state when asked.⁶² This step is where the impact the activity is hoped to have is clearly defined. The *fourth step* is to define the dissemination program's target – or in other words, the value of the metric at a specific point in time, the attainment of which, constitutes the dissemination programme's success. In the example: by 31 December 2016, 80% of politicians, when asked, correctly identify the requirements of the Rome Statute. The final step is determining whether a dissemination activity should be pursued in order to achieve this target and, if so, what type of activity. This is explored in the following section.

Part 2: Choosing a dissemination activity capable of achieving the objective

To decide whether a dissemination activity is capable of achieving an objective requires an understanding of the impacts that the activity can have.⁶³ As foreshadowed above, dissemination activities are capable of achieving directly: changes to knowledge, attitudes and behaviour.⁶⁴ Dissemination activities that impact a participant's knowledge, I have termed "awareness raising activities".⁶⁵ They include traditional forms of dissemination, such as, lectures, information days and the circulation of printed education material as well as radio programmes, exhibitions, theatre and online games. I have used the term "law promotion activities" to describe dissemination that is directed to changing participants' attitudes. They aim to persuade people of the advantages of applying IHL. A presentation to

⁶¹ See, 'Intervention logic', *Programme/project management: The results-based approach*, above n 34, 57-70.

⁶² As another example, the Australian Red Cross set up a survey where visitors to their website 'Even Wars have Laws' could vote on whether they believed torture was appropriate in some circumstances.

⁶³ See, a similar approach taken in Sally Harmsworth and Sarah Turpin, 'Creating an Effective Dissemination Strategy: An Expanded Interactive Workbook for Educational Development Projects' Innovations Team, Higher Education Funding Council for England (July 2000) <<http://www.innovations.ac.uk/btg/resources/publications/dissemination.pdf>>.

⁶⁴ Muñoz-Rojas and Frésard, above n 42, 204; Frésard, above n 42, 105.

⁶⁵ On awareness raising: see, Richard Sayers, 'Principles of Awareness-Raising for Information Literacy, a case study, UNESCO Bangkok (2006) <<http://unesdoc.unesco.org/images/0014/001476/147637e.pdf>>.

key political stakeholders on why complying with IHL is a sound strategy both militarily and politically is an example of a law promotion activity. The third category, which I have termed “capacity building activities”, are dissemination activities that are capable of impacting directly on behaviour.⁶⁶ Whilst ultimately all prevention activities are aimed at changing behaviours (that is, increasing compliance and preventing violations), capacity building activities have an explicit focus on behaviour and aim to provide participants with the practical skills and technical capacity to carry out a task.

The three categories of activities are not mutually exclusive and a particular dissemination activity might be capable of changing a participant’s knowledge, attitudes and behaviour; in which case, the activity could be included in all of the three categories. In particular, awareness-raising and law promotion activities very often overlap because people are taught what the law is (awareness raising activity) whilst also being persuaded of its benefits (law promotion activity). However, there are important differences and the RBWS confirmed, what might seem like common sense, that knowledge of a norm will not necessarily engender a positive attitude towards it, let alone lead to the norm being complied with.⁶⁷ Accordingly, below I briefly describe where the strengths and limits of each of these types of activities lie. The type of dissemination activity chosen for a programme will depend on whether the impacts that the activity is capable of achieving can assist the realization of the desired objective.

Awareness-Raising and Law Promotion – strengths and weaknesses

Awareness-raising and law promotion activities are, by definition, most effective where a change to knowledge or attitudes is, in itself, the desired result. An example of where this is likely to be the case is in relation to the environmental condition in the *ICRC Prevention Policy*:

“[a]ppropriate knowledge, understanding and acceptance of the law and the ICRC by government officials, academics, members of civil society, the media and the general public”.⁶⁸

Awareness raising and law promotion activities are well-matched to achieving this aim:

⁶⁶ On the definition of capacity building: see, United Nations DESA Capacity Development Office, United Nations (2012) <<http://www.un.org/esa/cdo/>>.

⁶⁷ Muñoz-Rojas and Frésard, above n 42, 196.

⁶⁸ *ICRC Prevention Policy*, above n 8, 9.

awareness raising activities to develop people’s knowledge and understanding; and law promotion activities to establish acceptance of the law. The condition itself reflects the obligation to disseminate to the “entire population” in each of the Geneva Conventions and Additional Protocol I. As the *Commentaries* to the Conventions exhort: “man should be made familiar from childhood with the great principles of humanity and civilization, so that they may become deeply rooted in his consciousness.”⁶⁹ The RBWS found that establishing “normative references” in a society in this way can increase compliance with IHL by preventing people being “drawn into a cycle of vengeance which leads them to pay less and less heed to the application of IHL”.⁷⁰

Awareness-raising activities might also be used to achieve the environmental condition of building the “commitment and capacity” of arms carriers “to respect the law and the ICRC’s work”.⁷¹ Knowledge of the law is important for guaranteeing its respect applying the basic rationale that a person is unlikely to correctly and uniformly apply a law that he or she does not even know. This self-evident reasoning is one of the main reasons behind an obligation to disseminate being included in the treaty law.⁷² However, as reflected in the findings of the RBWS, there are limits to what knowledge and personal conviction alone can achieve in terms of increasing compliance with IHL. Drawing on the results of the *People on War* study, the RBWS found that although the Geneva Conventions themselves were not widely known,⁷³ a basic knowledge of, and attachment to, international humanitarian principles was widespread.⁷⁴ Accordingly, it was submitted, whilst “[i]t might be thought that some violations of IHL can be attributed to ignorance of the law. This could be a partial explanation, but it should not be accorded too much importance.”⁷⁵ The RBWS observed a “gulf” between a combatant’s knowledge and values on the one hand and their behaviour on the other,⁷⁶ concluding the “[m]ere awareness of IHL or favourable attitudes towards it are not sufficient to produce a direct impact on the behaviour of the combatants.”⁷⁷ Interviewees

⁶⁹ Pictet, *Commentary I*, above n 2, 349.

⁷⁰ Muñoz-Rojas and Frésard above n 42, 193.

⁷¹ *ICRC Prevention Policy*, above n 8, 9.

⁷² Pictet, *Commentary I*, above n 2, 349.

⁷³ *People on War Report*, above n 46, 18

⁷⁴ Muñoz-Rojas and Frésard, above n 42, 191.

⁷⁵ Frésard, above n 42, 100.

⁷⁶ Muñoz-Rojas and Frésard, above n 42, 196.

⁷⁷ *Ibid* 200.

tended to relativise their obligations when faced with their application to real-life scenarios.⁷⁸ Consequently, when devising dissemination strategies, due consideration should be given to the potentially limited impact that awareness-raising and law promotion activities can have on changing offending behaviours.

Capacity-building

The strength of capacity building lies, by contrast, in its ability to impact behaviours directly by providing the skills and training required to act in a certain way. Its most obvious application is to the behaviour of arms carriers. They are the most likely to be called on to apply the law and, accordingly, the most at risk of violating it. It can be used to bridge the gap between a combatant's adherence to a norm and its application.⁷⁹ In the *ICRC Prevention Policy* changing arms carriers' behaviour is articulated in terms of "commitment and capacity" and building environmental factors, including: "structure, resources [and an] effective chain of command" and the "integration of the law into doctrine, education, training and sanctions systems".⁸⁰ This reflects the RBWS findings just referred to:

"[r]ecognizing that the mere teaching of legal norms will not result, in itself, in a change in attitude or behaviour, the ICRC approach has gradually shifted in the past two decades from dissemination of the law to its integration into the doctrine, training and operations of military and police forces."⁸¹

Capacity-building activities provide a means to integrate compliance into existing training and, through practice and repetition, to establish clear standards of behaviour.

The methodology for training combatants is already well-developed within military systems.⁸² It aims to make certain behaviours automatic⁸³ and to this end it is repetitious,⁸⁴

⁷⁸ Ibid.

⁷⁹ Frésard, above n 42, 100.

⁸⁰ *ICRC Prevention Policy*, above n 8, 9. See, also, *Integrating the Law*, above n 27.

⁸¹ *Violence and the use of Force*, ICRC (2011), 56 <<https://www.icrc.org/eng/resources/documents/publication/p0943.htm>>.

⁸² Sandoz, Swinarski and Zimmermann, above n 22, 964; Frésard, above n 42, 25.

⁸³ Frésard, above n 42, 25.

⁸⁴ See, eg, Frésard, above n 42, 53 and Frederic de Mulinen, 'Transformation of modern law of war into documents for practical application' in F Kalshoven and Yves Sandoz (eds), *Implementation of International Humanitarian law* (Martinus Nijhoff, 1989) 445, 454.

continuous⁸⁵ and practical,⁸⁶ aimed at building “‘muscular memory’ so that reactions become almost instinctive.”⁸⁷ Typically, training is framed in positive terms and clearly specifies what is required from combatants.⁸⁸ It is designed “to prompt an appropriate response in a crisis situation in which the individual’s ability to judge for himself is impaired”.⁸⁹ Such standardized behaviour is central to military discipline: it simplifies command structures and ensures the coherency of the movement.⁹⁰ Training is also the means by which a combatant learns to control his or her fears and to turn to fight the enemy even when the body’s instincts might be telling them to flee.⁹¹ So understood, military training is designed to make behaviour automatic and reflexive because this is essential to the maintaining of an effective military force.

Capacity building activities can, therefore, also be used to make the application of IHL standardized, automatic and reflexive.⁹² They can utilise existing training programmes and methodologies and integrate compliant behaviours into basic exercises, stimulations, and pre-

⁸⁵ See, eg, *Integrating the Law*, above n 27, 18; Mulinen, above n 84, 454; Pietro Verri, ‘Institutions militaires: le problème de l’enseignement du droit des conflits armés et de l’adaptation des règlements à ses prescriptions humanitaires’ in *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet* (Martinus Nijhoff 1984), 614; Colonel Robert Remacle ‘How and Why Should the Law of Armed Conflict be Taught’ in *LOAC Symposium Brussels, Belgian Presidency Interallied Confederation of Reserve Officers* (Belgian Presidency Interallied Confederation of Reserve Officers, 2000), 31.

⁸⁶ See, eg, Verri, above n 85, 615; Remacle, above n 85, 32; Michael Bothe, ‘Conclusions by the chairman’ in Michael Bothe, Peter Macalister-Smith, Thomas Kurzidem (eds) *National Implementation of International Humanitarian Law* (Martinus Nijhoff, 1990), 272; Jean-Surbeck, ‘La diffusion du droit international humanitaire, condition de son application’ in *Studies and Essays on international humanitarian law and Red Cross principles in honour of Jean Pictet* (Martinus Nijhoff, 1984), 544; Harry Almond Jr, ‘The Teaching and Dissemination of the Geneva Conventions and International Humanitarian Law in the United States’ (1982) 31(4) *American University Law Review* 981, 983.

⁸⁷ Frésard, above n 42, 53.

⁸⁸ Ibid 85; David Lloyd Roberts, ‘Teaching the Law of Armed Conflict to Armed Forces: Personal Reflections’ 82 *International Law Studies* 121, 123; Verri, above n 85, 615; Mulinen, above n 84, 453.

⁸⁹ Frésard, above n 42, 25.

⁹⁰ Ibid quoting Thierry de Montbrial and Jean Klein (eds), *Dictionnaire de stratégie* (Presses universitaires de France, 2000).

⁹¹ Frésard, above n 42, 53.

⁹² *Integrating the Law*, above n 27, 29; *South Africa, Law of Armed Conflict Manual*, cited in *Customary International Humanitarian Law Database*, above n 11, Rule 142; Roberts, above n 88, 129.

deployment preparations.⁹³ Humanitarian law should not be “taught” as something outside of normal training;⁹⁴ IHL is likely to be at its least effective when it is perceived as being “exceptional” or “marginal”.⁹⁵ Incorporating IHL into normal training and career development provides an opportunity for its respect to be “a question of order and discipline and behaviour according to the orders given by superiors.”⁹⁶ This means that the dissemination of IHL should also be led by military leaders.⁹⁷ Combatants should be aware that the officers who have operational control and responsibility for enforcing discipline are committed to IHL and its underlying values.⁹⁸ This enhances the capacity and commitment of soldiers to comply with IHL by ensuring that the environmental factors that influence an individual’s behaviour (military discipline, command structures etc) are aligned with compliance.

It can also militate against the type of ambiguity that can lead to violations. As the RBWS noted:

“[w]hile violations of IHL may sometimes stem from orders given by ... an authority, they seem more frequently to be connected with a lack of any specific orders not to violate the law or an implicit authorization to behave in a reprehensible manner.”⁹⁹

Through integrating IHL into training and an officer’s professional development, compliance can be internalized so that it forms part of standardized behaviour, meaning that even where there is ambiguity in the orders given, the automatic and instinctive response is to act in compliance with IHL, knowing that this is what is expected.

However, uncertainty cannot be removed entirely: opacity in the law’s application will, on occasion, give rise to situations where there is no clear answer as to how to act. For example, there are a number of open standards in IHL, particularly in the conduct of hostilities. These are “like a yellow light” in that there may be different interpretations of what is required and

⁹³ Remacle, above n 85, 3 and Sandoz, Swinarski and Zimmermann, above n 22, 964.

⁹⁴ Almond, above n 86, 983.

⁹⁵ Mulinen, above n 84, 452 and Remacle, above n 85, 32.

⁹⁶ Mulinen, above n 84, 453.

⁹⁷ See, eg, Remacle, above n 85, 33; Emmanuel Bello, ‘A proposal for the dissemination of IHL in Africa pursuant to the 1977 Protocols additional to the Geneva Conventions of 1949’ (1984) 23 *Military Law and Law of War Review* 311, 316.

⁹⁸ Remacle, above n 85, 33.

⁹⁹ Muñoz-Rojas and Frésard, above n 42, 194.

there is no prescribed mode of behaviour for a given situation.¹⁰⁰ Accordingly, for training to be realistic, credible and practical, it must also enable arms carriers to problem solve.¹⁰¹ Capacity building is a means for building such skills: through the use of stimulated scenarios, soldiers can practice how to respond to the challenges that they are likely to face in the field.¹⁰² Additionally, through training, soldiers can learn to escalate difficult issues, where appropriate, to a decision-maker who is higher in command or a legal advisor.¹⁰³ With sufficient training, this response too can be made instinctive.

Putting the two-part approach together

Applying the two-part approach, it is possible to formulate a dissemination strategy that has clearly defined, measurable targets and which deploys dissemination appropriately to achieve those targets. Having well-articulated aims will allow for the success of a dissemination programme to be accurately and transparently assessed. It will also enable a practitioner to identify where the effectiveness of a programme fell down. If the specific target has not been met, then the means for achieving that target were either wrongly chosen or ineffectively executed. On the other hand, if the targets that were set have been achieved and the deficiency remains, then it will be apparent that the metrics did not accurately align to the deficiency identified. Finally, if the deficiency is removed but the gap in the environmental conditions is not rectified, then it will be necessary to reassess whether the deficiency was correctly identified. It may be that a component of the broader strategy has failed – not necessarily, the particular dissemination activity used. In any event, a more accurate assessment of the successes and failures of a programme is available, which provides the information needed to learn and improve.

Part 2 outlines what dissemination can achieve – and also what it cannot. It complements the process outlined in Part 1 in two ways. *First*, it prevents dissemination being deployed to remedy a deficiency in the environmental conditions necessary for increasing compliance with IHL where it is not capable of doing so (see step 2). I have emphasised that a dissemination activity will be appropriate if what is required is a change of people's knowledge, attitudes or behaviour. The converse of this is a dissemination activity will likely

¹⁰⁰ Mulinen, above n 84, 447.

¹⁰¹ Remacle, above n 85, 33; Sandoz, Swinarski and Zimmermann above n 22, 964.

¹⁰² *Integrating the Law* above n 27, 26-31.

¹⁰³ Mulinen, above n 84, 447.

be unsuccessful if its objective is to achieve something different from, or additional to, these three changes. *Secondly*, it assists a practitioner, once a target for success has been arrived at, to choose a dissemination activity that is capable of achieving that target. By being cognizant of the strengths and weaknesses of different types of activity, a practitioner will be better equipped to design a dissemination programme that is capable of affecting the change required.

3. Observations on specific target audiences

In practice, many of the issues which dissemination activities are required to address concern individuals: politicians, combatants and law enforcement officials are examples of people whose decisions and conduct will be central to the extent to which a state creates the necessary environmental conditions for IHL compliance. As such, it is convenient to make some observations on the degree to which dissemination activities may be appropriately tailored to meet common goals associated with different target audiences. I have focused on two groups: key actors and victims in conflict.

Key Actors

The *ICRC Prevention Policy* places particular emphasis on the importance of targeting ‘key actors’ in dissemination efforts.¹⁰⁴ These are the individuals who are capable of impacting negatively or positively on the “systems and structures” that contribute to an environment conducive to respect for IHL: “the key individuals who – because of their power or hierarchical position – have the capacity to bring about the intended change”.¹⁰⁵ Accordingly, they are capable of affecting the achievement of a number of the *ICRC Prevention Policy*’s conditions for an environment conducive to the respect of IHL.¹⁰⁶ They can include: the judiciary, private sector leaders, religious leaders and prominent civil society members.¹⁰⁷ They are the most likely to be able to affect changes to people’s environment and therefore, to their behaviour. The task of identifying the relevant key actors will be highly context-specific and whether it is their knowledge, attitudes or behaviour that would benefit from change, as shown above, a dissemination activity might appropriately be deployed to meet that need.

¹⁰⁴ *ICRC Prevention Policy*, above n 8, 7-8; *Integrating the Law* above n 27, 12.

¹⁰⁵ *ICRC Prevention Policy*, above n 8, 7-8.

¹⁰⁶ *Ibid* 9.

¹⁰⁷ *ICRC Prevention Policy*, above n 8, 8.

Laws and policies that support compliance are an important part of building an environment conducive to respect. In a similar way as training is directed towards establishing clear standards of behaviour, there should be rules and procedures (including texts such as military manuals, handbooks, rules of engagement) that set out the behaviour expected of soldiers.¹⁰⁸ Combatants should not be left to apply the law without guidance.¹⁰⁹ The law should be interpreted into operationally useful rules “and its concrete consequences drawn at all levels”.¹¹⁰ Dissemination can assist ensure such mechanisms are in place. For example, the creation of domestic laws to implement IHL may require training for legislators and policy makers. Similarly, training on how to effectively enforce sanctions might be needed for prosecutors and judges.

The means by which dissemination is deployed to achieve these changes will be context-specific and, at step 2 of the process I have outlined above, involves an assessment of whether, for example, there is an issue of political will or a problem of technical expertise. If it is the former, and the policy-makers do not want to implement IHL, then changing their attitudes, and the attitudes of the stakeholders that hold influence over them (for example, political staffers, powerbrokers or legal advisors), might be an appropriate aim. Law promotion activities would be, in this context, the most effective means of achieving this target. If it is an issue of skill on the other hand, because a policy-maker is insufficiently resourced to implement the changes required, then the desired outcome would be a change in behaviour, most effectively achieved through capacity-building. These activities can show a person step-by-step exactly what needs to be done (for example, the development and implementation of a new prosecution policy), and how it can be done (for example, sample policies, access to international resources, a checklist for how to prepare a brief of evidence, etc.).¹¹¹ However, there is no value in learning how to write a policy that will never be implemented and there may be a need for a combination of law promotion and capacity-building activities as well as other activities; the approach can, of course, be tailored to the

¹⁰⁸ Muñoz-Rojas and Frésard, above n 42, 203.

¹⁰⁹ *Violence and the use of Force*, above n 81.

¹¹⁰ *Ibid.*

¹¹¹ See, also, ICRC Advisory Services, *The ICRC Advisory Services on International Humanitarian Law*, ICRC (1 January 2015) <https://www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law#.VNhObVOUc_M>.

aims to be achieved.¹¹²

Where the political will to implement a change is lacking, dissemination activities and, in particular, law promotion activities, can be used to convince key actors that complying with IHL is, in fact, in the best interests of the party.¹¹³ For example, the military advantages of complying with IHL could be promoted as: by treating captives humanely opponents may be encouraged to surrender rather than fight to the death;¹¹⁴ misuse of the protective emblem is likely to endanger one's own sick and wounded;¹¹⁵ civilians should be treated humanely lest one is faced with fighting not only the opponent's armed forces but also the entire civilian population;¹¹⁶ as a matter of politics, "one should not behave to one's adversary in such a way as to make subsequent reconciliation impossible,"¹¹⁷ and because the most effective and economical use of firepower is that which targets only those people or objects that offer a definite military advantage. There is no military gain to be had from unnecessary destruction,¹¹⁸ "[t]he only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy and for this purpose it is sufficient to disable the greatest possible number of men."¹¹⁹ Dissemination can, therefore, be used to promote to key actors the idea that IHL strikes an appropriate balance between humanity and military requirements.

Activities that seek to change the attitudes of key actors are beneficial not just because they have the power to enact the laws, policies and other measures required to effectively implement the law – but because the political will of those in charge will shape how those laws work in practice in a myriad number of ways. This includes whether a policy will be interpreted overly narrowly and legalistically or whether it is given a generous construction according to its intention and tenor; whether a commander will investigate and sanction

¹¹² See, *ICRC Prevention Policy*, above n 8, '5.2 Combining activities to reach objectives'.

¹¹³ Verri, above n 85, 613; Remacle, above n 85, 35, Diane Guillemette, 'Legal advisors in armed forces' in F Kalshoven and Yves Sandoz, (eds) *Implementation of International Humanitarian law* (Martinus Nijhoff, 1989) 133, 140.

¹¹⁴ Guillemette, above n 113, 140.

¹¹⁵ *Ibid* 141.

¹¹⁶ *Ibid* 142.

¹¹⁷ Almond, above n 86, 988.

¹¹⁸ *Ibid* 989 and Guillemette, above n 113, 142.

¹¹⁹ *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg*, opened for signature 11 December 1868, [1901] ATS 125 (entered into force 11 December 1868).

breaches or turn a blind eye; or whether the politically powerful will be prosecuted or sheltered from the law.¹²⁰ Therefore, law promotion and awareness-raising activities are also of significance in influencing the “the informal, sub-state world of norms”.¹²¹ According to Thurer:

“[t]he most effective means to ensure compliance seem to be those directed towards significant actors such as the armed forces and the police, with the intention of making them respect human values, uphold or restore public order, and provide protection to individual human beings. These individuals must be brought to personally firmly believe in these basic standards...”¹²²

Establishing the political will to commit to, and implement IHL, is an indispensable aspect of increasing compliance with the law.¹²³

The importance of disseminating IHL to key actors highlights a tension at the core of the *ICRC Prevention Policy* between the respective weight to be given to individual agency and environmental factors in determining a prevention or dissemination strategy. There is a circularity involved in attempting to reconcile the two perspectives: changing people’s behaviour requires modification of their environment, yet the way to modify the environment is through individuals, who are themselves, a product of their environment. On the one hand, dissemination emphasises the agency of the individual; the idea that people can change. However, dissemination is also a means by which the influence of environmental factors, such as obedience and conformity, are reinforced. In a dissemination strategy, a focus on only individual or environmental conditions to the exclusion of the other is unlikely to be effective. As the RBWS has highlighted, an individual’s convictions can be overcome through the application of external pressures. Yet, as a matter of logic, an over-emphasis on the influence of environmental factors will mean that there can be no change at all. Some

¹²⁰ *Integrating the Law*, above n 27, 23-25 and Sylvie-Stoyanka Junod, ‘La diffusion du droit international humanitaire’ in *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet* (Martinus Nijhoff 1984), 360, 367.

¹²¹ Hakan Hyden, ‘Implementation of International Conventions as a social-legal enterprise: examples from the Convention on the Rights of a Child’ in Jonas Grimheden and Rolf Ring (eds) *Human Rights Law: From Dissemination to Application, Essays in Honour of Goran Melander* (Martinus Nijhoff Publishing, Leiden 2006), 375.

¹²² Thurer, above n 4, 377.

¹²³ Almond, above n 86, 983; *ICRC Prevention Policy*, above n 8, 9; Verri, above n 85, 613; Meurant, above n 28, 367.

combination of the two is therefore required. The compromise reached by the ICRC in its Prevention Policy – a focus on key individuals who are capable of reforming their environment – is one that takes account of the limitations of each perspective but is not paralysed by them.

Victims of armed conflict

Another ‘key audience’, but one not often associated with the power to change their environment, is victims of armed conflict. Ignorance of the law amongst victims and witnesses can contribute to violations and create a feeling of helplessness.¹²⁴ Therefore, they are an audience for dissemination that deserves particular attention.¹²⁵ The RBWS found, “[i]f the acknowledgement of [IHL] principles is firmly rooted, attitudes encouraging people to seek the protection offered by the norms tend to become predominant.”¹²⁶ The legal obligation to disseminate in the *Geneva Conventions* also emphasises that people who benefit under the law must be provided knowledge of it.¹²⁷

Dissemination, and capacity-building in particular, can be used to teach victims’ advocacy groups and human rights organisations to utilise the law effectively. The need for more knowledge in this area was highlighted by the RBWS, which found victims of armed conflict are usually convinced of the value of humanitarian norms, but are seeking more knowledge about them:

“for the civilian population, the wish to see certain limits applied to war is often greater than their knowledge of the rules existing in this regard. The

¹²⁴ Surbeck, ‘La diffusion du droit international humanitaire, condition de son application’, above n 86, 540.

¹²⁵ See, also, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UNGAOR, 60th sess, 64th mtg, UN Doc (16 December 2005), [2] and [3]; Fausto Pocar above n 28, 16; Nicholas Leader, ‘Humanitarian Policy Group Report: The politics of Principle: the principles of humanitarian action in practice’ (Report, Overseas Development Institute, March 2000) <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/311.pdf>>; *International Humanitarian Law*, Diakonia <<http://www.diakonia.se/en/How-we-work/Advocacy-and-policy/Conflict-and-justice/Peace-and-justice-in-Israel-and-Palestine/International-humanitarian-law/>>.

¹²⁶ Muñoz-Rojas and Frésard, above n 42, 192. See, also, Surbeck, ‘La diffusion du droit international humanitaire, condition de son application’, above n 86, 540.

¹²⁷ See, eg, *1949 Geneva Conventions arts 47(2), 48(2), 41(1) and 99*, respectively and Pictet, *Commentary I*, above n 2, 349.

longer the conflict and the greater the number of casualties, the more civilians call for the norms to be respected.”¹²⁸

Dissemination can empower victims to hold their governments to account by legal and non-legal means, for example, through training on the protections in the law, how to bring a claim before a court, document violations, advocate for change and undertake international and national fundraising.

Capacity-building activities are likely to be the most effective at changing approaches to advocacy as they are aimed at teaching, in a practical way, what can be done. By way of example, a programme that provided cameras to people in the West Bank so that they could document violations of the law taught the participants in the programme, not just what they could do, but provided them with the means and skills to enable them to do it.¹²⁹ However, again, the choice of activity will depend on where the need lies, it may be that there is a strong civil society presence in the country with excellent advocacy expertise, in which case, awareness-raising and law promotion might be the better choice of activity – to inform them about IHL and convince them of its value as a tool for activism. In light of the success of some of the international campaigns spearheaded by non-government organisations and victim’s groups in the past (for example, the banning of landmines and cluster munitions), the gathering momentum in favour of developing an effective system for reparations, and the current focus of the ICRC on strengthening compliance and new implementation mechanisms, there appears to be important opportunities available for empowering victims, through dissemination, to continue to advocate for increased compliance and to participate in the law’s development.

Conclusion

The purpose of dissemination is to increase compliance with IHL so to alleviate suffering in armed conflict. In this paper I have outlined a framework for how it can be used to achieve this ends using a results-based approach, which enables the strengths of a chosen dissemination activity to match the objectives being pursued. In this respect, dissemination is just one tool in a broader prevention strategy aimed at fostering the conditions necessary to

¹²⁸ Muñoz-Rojas and Frésard, above n 42, 193.

¹²⁹ *The Camera Project*, B’Tselem – the Israeli Information Center for Human Rights in the Occupied Territories <http://www.btselem.org/video/cdp_background>.

create an environment conducive to the respect of IHL. Nonetheless, its function in that strategy is discrete and, where its objectives have been specifically defined, its effectiveness can be more accountably and transparently assessed. The four-step analysis is a simple means for achieving this.

In order to be effective, dissemination activities should capitalise on their strengths, avoid weaknesses, and be tailored to achieving the desired objective. Accordingly, considerable emphasis has been placed in this paper on both the limits of what dissemination can achieve and its strengths. I have outlined that dissemination can directly change three things – attitudes, knowledge and behaviours – and when deployed appropriately to affect those changes, can contribute to the attainment of the environmental conditions necessary for increasing compliance with IHL. The particular use of dissemination to key actors and the victims of armed conflict are two examples where dissemination has the potential to enable significant change. An awareness of the different impacts of dissemination activities enables an activity to be deployed that is adapted to, and capable of, achieving the intended change. The three categories of dissemination activities – awareness raising, law promotion and capacity building are means for understanding these impacts. However, they should not be understood as encumbering the important task of developing new and innovative dissemination ideas for the future.