Commentary

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In the following comments I shall try to develop some of the points Mr Meurant has touched upon, while at the same time attempting to give you an idea of how the whole problem of dissemination is perceived from Geneva, and more specifically, as viewed from the ICRC.

Mr Meurant stated that "there can be . . . no guarantee for . . . respect if humanitarian law is not properly understood and disseminated". I am tempted to add right away "in peace time", since there is no doubt in my mind that, due to its very nature, this type of teaching has to be done when the prospective user of humanitarian law has the time to analyse at leisure not only the technical difficulties (both legal and practical) involved in its application, but even more so the ethical obstacles, personal or systemic, which are very often at stake, in order to be fully prepared to apply it without restraint whenever the opportunity unfortunately occurs. This is not to say, however, that a different, accelerated process of teaching, albeit similar in essence, must not often be hastily set up in situations of emergency, once the fighting has actually started. To this day, the latter is almost a routine part of all ICRC delegates' work who, especially in the early stages of their actions, have no choice but to devote a sizeable amount of their time and resources to "crash" dissemination activities in order to be permitted to conduct their mission of ensuring the respect for humanitarian rules. This very factual problem has led the ICRC in the past few years to appoint in some of its delegations in different parts of the world a full-time dissemination delegate. Such is the case notably in El Salvador, where such a delegate has been conducting for over a year now a comprehensive "grass-roots" dissemination programme aimed at all the soldiers of the government forces, the numerous sections of the Salvadoran Red Cross, the guerilla forces and the population in general. The least one can say is that it has paid off handsomely if one compares the difficulties encountered in the beginning of the war and the current results obtained by our delegation.

This in turn leads me to two considerations, among others, which I consider as basic. First of all, it has been realised only recently — and this is not one of the less paradoxical aspects of the overall achievements of the International Red Cross community — that at least one of the main reasons why our world still witnesses so many violations of what we know to be the rules of international humanitarian law, can be summed up in one word: ignorance. This ignorance, however, has a quality of its own, which renders it quite disturbing insofar as the situations in which it deploys its effects make it lethal. That feature alone suffices to put these rules apart from other sets of rules which govern most aspects of our lives, and justifies that we grant them a very special attention.

This is not to say in any way that all violations are due to ignorance, far from

it. There is no doubt that in a number of cases, privates, commanders, political or other leaders have committed, or ordered the commission of, violations in full awareness of the illegality of their decisions, their motives ranging from patterns of irrational behaviour such as anger, fear, cowardice or fanaticism, to cold ideological or tactical choices. Some were tried and punished as a result, many others got away with it, in the short term at least.

At this point, I wish to point out that we therefore have two large fields here in which the distinguished scholars present in this room can make good use of their professional talents and human qualities, namely in teaching humanitarian law, and in shoring up the enforcement structures (as was so aptly underlined by Mr Thomson yesterday) insofar as the present state of international penal law still leaves it to each State party to the Conventions and Protocols to prosecute violators of their provisions.

Secondly, next to this first realisation came the awareness of the sheer magnitude of the task. A few figures might be of help here. To date, out of 168 independent countries existing in the world, 152 have ratified the Geneva Conventions or acceded to them. Twenty-six are bound by Protocol I and 23 by Protocol II. One hundred and thirty have a recognised Red Cross or Red Crescent Society. In theory at least, dissemination should, in each one of these 152 countries, reach eight different segments of the population which have been selected as the most likely to be in a position to implement some of the rules of the Conventions and the Protocols, should an armed conflict occur. I shall revert to some of them in a moment, but let me enumerate them here briefly. They are: 1. the armed forces; 2. National Red Cross and Red Crescent Societies; 3. government agencies and civil servants; 4. universities; 5. schools; 6. the medical profession; 7. journalists; 8. the population at large. Another element which may be added here is that, considering that it is advisable to adapt the content of one's message to the level of one's audience (upwards or downwards), we have devised a minimum of four levels of "sophistication": "I" is elementary, "II" is average, "III" is good, and "IV" is expertise, which obviously is what we deal with in this meeting.

Returning to Mr Meurant's paper, I would like to add a few words concerning the legal basis for dissemination. Apart from Articles 47, 48, 127, and 144 of the four Conventions respectively, someone (I believe it was Dr Feliciano) quite correctly mentioned yesterday that the Protocols, and especially Protocol I, have more articles concerning dissemination than Articles 83 and 19 respectively which are a mere repetition of the articles of the Conventions, although the wording is stronger. I refer in the first place to Article 82 of Protocol I relating to legal advisers in armed forces, but also to Article 84 which makes it a duty for the High Contracting Parties to communicate to each other their official translations of the Protocol and of the laws and regulations adopted to ensure their application. By analogy, I would suggest that such a measure, although not a legal obligation, could be taken as far as the Conventions are concerned.

I refer in the second place to Article 6.1, which speaks in vague and non-binding terms of the obligation of a High Contracting Party to "endeavour to train qualified personnel to facilitate the application of the Conventions and of this Protocol (with the assistance of the National Societies)". It seems to me that this article perfectly answers our main concern, in terms of dissemination, that is

to say general lack of personnel, outside the ICRC delegates, prepared and learned enough to ensure compliance with, and respect for, the Conventions and Protocols in time of war. In their commentary to the Protocols, Bothe, Partsch and Solf express the view that "teams of lawyers, doctors and military personnel would be required . . . . It should be mentioned here that Article 82 imposes stronger obligations on the High Contracting Party regarding legal advisers in armed forces. This article is *lex specialis* to Article 6".[1]

Mr Meurant has kindly left it to me to say a few words about the role and activities of the ICRC in the field of dissemination. Without going into all the details, I would like to start by saying that the ICRC has itself long ignored the problem of dissemination, for three reasons in my view. First, it shared the common view that since the Conventions attribute the responsibility of disseminating their contents to governments, it was none of its business. This argument is still used today as an excuse by some National Red Cross Societies as well, in order to avoid the responsibilities involved. Secondly, it must be acknowledged that the ICRC has always had to face the priority of the needs of victims in the field, to whom it always chose to allocate most of its resources. Thirdly, one must also acknowledge the fact that the ICRC used to think of itself as widely known and respected in the world, which it actually was, and still is, to a much more limited extent.

Against this background, two events have come to force the ICRC to change its views on the whole problem completely. To start with, the Diplomatic Conference triggered a widespread renewed interest for International Humanitarian Law on the part of government officials and academics, who for the most part had long forgotten those treaties dating back to 1949. Pressure was put as a result on the ICRC for advice and help. Next, as Mr Meurant mentioned, a tragic occurrence in 1978 came as a shock for the Institute, when three of its delegates were ambushed and killed in Zimbabwe. The same year, I believe, no less than eighteen volunteers of the Nicaraguan Red Cross were killed in action during the civil war that toppled Mr Somoza. In 1981, an ambulance was ambushed in Lebanon and the driver and two nurses were killed. It had become clear by then that, if only for the sake of protecting Red Cross personnel, dissemination was to take a sharp new turn in the whole Red Cross community.

To capitalise on the fresh assets of the Diplomatic Conference, the ICRC embarked first on a series of regional seminars with the aim of teaching International Humanitarian Law to selected members of the Red Cross Societies and governments of each region, with the ultimate hope that they in turn would embark on dissemination activities once back home. Thus, a first such regional meeting was held in Warsaw in 1977 for Eastern and Western Europe, plus North America. It was followed in 1978 by the Kuala Lumpur Seminar, covering Asia and the Pacific, and by the Mombasa Seminar, for English-speaking Africa. In 1979 came the Bogota Seminar for Central and South America, followed by another one in Tunis for French-speaking Africa. Finally, the last meeting of this kind was held in Amman in 1981 for the Middle East. This first generation of seminars is now over. The second generation has been underway for some time now. I mean by that, seminars organised by national institutions such as Red

1. Bothe, M, Partsch, K, and Solf, W, *New Rules for Victims of Armed Conflict* (1982), 83.

Cross Societies, armed forces or universities in order to meet more specifically their own needs or those of their neighbours. The present meeting is a perfect illustration, being organised by a National Society and aimed at the academic world and government agencies of this region.

Turning back to the eight main types of audiences that we would like to reach in our dissemination activities, I would like to put the emphasis especially on the academic community and on journalists. In universities, especially in law schools, teachers who want to include International Humanitarian Law in their programmes are faced with a triple problem which Mr Meurant also mentioned: lack of time, overburdened programmes and lack of interest on the part of students. In an attempt to overcome all three, I would suggest that, as a very minimum first step, a general introduction to International Humanitarian Law, even a short one, within the framework of the normal course on Public International Law, is a must. Where a course on Human Rights exists, the topic of International Humanitarian Law can then rather be included in such a course. Both would aim, I would think, merely at drawing the attention of students to the existence of this very specific part of Public International Law. Where possible, an optional course on International Humanitarian Law *per se* should be offered as a further step for those students who would wish to study the subject in depth. Here I would like to quote three professors who have come to grips with the problems involved in the teaching of humanitarian law, and made interesting remarks. Professor Michael Bothe, from West Germany, is of the opinion that the Protocols, far from discouraging from the point of view of teaching, are all the more fascinating for law students who wish to decipher the mysteries both of international treaty negotiations and of interpretation of resulting provisions.[2]

Professor Eric David, from Belgium, underlines another aspect:[3]

> "In fact that lack of student faith in humanitarian law resides mainly in their knowledge of its many violations. To say that humanitarian law is frequently infringed is a commonplace; and it is because infringements are a common occurrence that the uninitiated are sceptical. Yet while the mechanics of humanitarian law are well known, the mechanics of its breach are little known. Why is humanitarian law violated? . . . Indeed, only the full understanding of violation as a phenomenon will enable students to see that respect for humanitarian law is an obligation imposed not only by law and morals but also by reasoning and necessity."

Finally, Professor William O'Brien, from Georgetown University, underlines the contribution that some university programmes can make to elucidate the meaning and bearing of some concepts (in this case the notion of military necessity):[4]

> "The issue of military necessity raises a number of complex theoretical and practical problems. Here again, the ability of international relations programs to marshall the knowledge, insights and methodologies of various disciplines may provide students with an interdisciplinary, analytical

2. *Report on the European Seminar on Humanitarian Law* (Krakow 1979), 62.
3. Ibid, Addendum, 22.
4. O'Brien, "The *Jus in Bello* in International Relations Studies", (1981–82) 31 Am ULR 1011, 1017

> framework with which to solve these problems and to determine when, if ever, military necessity may properly override the proscriptions of the law. When a belligerent invokes extraordinary security measures or seeks to direct reprisals against a recalcitrant or rebellious enemy civilian population, the result may be whole array of social science questions concerning the effectiveness of various deterrents and sanctions, as well as political, legal, and moral issues concerning the plea of military necessity and the underlying claim of *raison d' état*. Even if the student concludes that there are 'supreme emergencies' or cases of 'overriding military necessity', the very process of having wrestled these complex issues to conclusion will doubtless increase the students' overall understanding of and respect for the *jus in bello*.[5]

He further concludes: "The role of the universities should be to educate the potential leaders of the nation, and, thereby, the whole Society, to accept and live by values that underlie the *jus in bello*."[5]

And another category of people, whose contribution to dissemination was underlined by Professor Shearer, is constituted by the journalists and the media. They can indeed actually play a watchdog role and complement the work of the International Red Cross in this respect, when the latter has to remain tongue-tied in some instances. The issue is rather complex and has not, I believe, been thoroughly researched yet. May I suggest nevertheless that there is ground for future developments here, if only because many journalists are, like Red Cross delegates, what I would call "practical idealists".

Since time is running out, I would like, finally, to offer a few other arguments pertaining to the "why" of dissemination, which Mr Meurant outlined in his paper. Apart from the fact that a country bound by the Conventions is under a legal obligation to instruct its nationals in International Humanitarian Law and to ensure its respect, from a military point of view (here I borrow ideas expressed by Mr Hays Parks, from the US Department of Defense):

(a) dissemination of International Humanitarian Law is worth serious consideration because one should promote the most economical use of military resources, otherwise wasted when the rules are not respected;
(b) one should discourage behaviour leading to the strengthening of the enemy's spirit of resistance, which is what happens almost inevitably when atrocities are committed;
(c) when soldiers and other combatants are allowed to go astray, discipline breaks down and military efficiency is weakened; and
(d) those who are allowed, by lack of training or otherwise, to commit grave breaches of humanitarian law suffer themselves from severe psychological after-effects, which make their returns to civilian life all the more difficult.

I would also like to add here other points which, I think, are well worth pondering upon:

(a) The less violations committed during a conflict, the easier it will be to heal the wounds and facilitate a return to peaceful relations. Examples

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5. Ibid, 1024.

from the past have shown that it can otherwise take generations and centuries to forget and forgive.

(b) Violating the rules of humanitarian law is highly counter-productive, not only for the violator's own immediate fate, but also because it leads both to sympathy, and thus maybe support, for the enemy from third parties, and to condemnation by world public opinion in our age of wide media-coverage.

(c) Finally, I would suggest that, as far as I am aware, little attention has been given to the sheer political consequences, often in the long-term, that almost always ensue as a result of violations. Today, no country can really afford to become a black sheep in the world community. This, I would venture to state, could be one of the strongest arguments for governments to pay more attention to the problem of dissemination in the future, and, subsequently, of enforcement of International Humanitarian Law.

A final word in the form of a plea. It has been made clear enough, I think, that the overall task of dissemination is a huge and difficult one. The Red Cross cannot take it all on its frail shoulders — it needs the support and co-operation of the communities interested, it needs all the help each one of you can give, in your respective countries. For this support, we thank you.