

# This is who we are: The role of military ethics, culture, and religion in disseminating international humanitarian law to the armed forces

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## Abstract

*Although there is one law, there are many motivations for complying with it. This was one of the key findings of the Roots of Restraint in War study published in 2018 by the*

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*International Committee of the Red Cross (ICRC). Building on this insight, this article examines a few recent accounts of international humanitarian law (IHL) violations and two general categories of psychological states which may have given rise to them. It then explores the modern-day value of warrior codes and martial notions of honour, and reviews the ICRC's recent work to find convergences between IHL and various religious or traditional value systems. The article offers some important caveats which should be kept in mind when undertaking work which compares morality, ethics and the law, before finally presenting some implications of this work for IHL integration and dissemination activities. Civilian IHL practitioners do not need to embed themselves into military life in order to understand military perspectives on IHL, but it would be helpful for them to consider the many ways in which troops internalize norms and how to incorporate extra-legal concepts into IHL integration and dissemination activities in an appropriate way.*

**Keywords:** military ethics, code, culture, discipline, international humanitarian law, law of armed conflict, dissemination, training, chaplains, IHL, LOAC.

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## Introduction

In civilian legal circles and in introductory texts on international humanitarian law (IHL, also known as the law of armed conflict or LOAC), improving IHL compliance is often presented primarily as a matter of refining its implementation, dissemination and enforcement.<sup>1</sup> This is neither a surprising nor inappropriate position given that many IHL practitioners – especially civilian practitioners – are lawyers who may regard the topic of IHL compliance as primarily a legal or policy exercise. Moreover, within the International Red Cross and Red Crescent Movement (the Movement), this perspective has developed at least in part because the adoption of the original Geneva Convention of 1864 is such an important event in the origin story of the Movement.

Indeed, such legal and policy measures are necessary and vital, but they are likely insufficient to effect long-term behavioural change within State armed forces if the right culture is not already in place (or if it has not been properly maintained).<sup>2</sup> There may be one law, but the reasons for adhering to it are multifaceted. They can include legal sanctions and instrumental strategic reasons, but also ethical and moral considerations. Therefore, it is also important to relate the law to the special ethics

1 For instance, in an otherwise very good introductory textbook on IHL by the International Committee of the Red Cross (ICRC), there is only one paragraph devoted to the influence of religions and military codes on IHL (p. 34) and no mention of military ethics, but there is an entire chapter devoted to IHL implementation and enforcement and another on the role of the ICRC. Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2022.

2 Elizabeth Stubbins Bates, "Towards Effective Military Training in International Humanitarian Law", *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014, p. 803.

of the profession of arms and to cultural, ideological or religious touchstones which exist in the wider society from which troops are drawn. This point was expressed succinctly in one of the key findings of the groundbreaking 2018 report on *The Roots of Restraint in War* carried out by the International Committee of the Red Cross (ICRC): “Norms of restraint are more likely to hold if they are internalized as part of a soldier’s identity – beyond ‘it is against the law’ to ‘it is not who we are.’”<sup>3</sup>

Prior to the *Roots of Restraint* study, the ICRC’s 2004 study on *The Roots of Behaviour in War* provided the empirical underpinning to the organization’s approach to the implementation, integration and dissemination of IHL for the following decade. Although the *Roots of Behaviour* study helpfully viewed the topic of IHL compliance through the psychological and sociological lenses, one of its findings has since come under particular scrutiny:

We [the ICRC] need to treat IHL as a legal and political matter rather than as a moral one, and to focus communication activities more on the norms than on their underlying values because the idea that the bearer of weapons is morally autonomous is inappropriate.<sup>4</sup>

This recommendation, intended to ward against relativistic applications of IHL, diverged from the earlier writings of scholars, such as Françoise Hampson, who had emphasized the importance of the individual conscience in inhibiting unlawful conduct on the battlefield.<sup>5</sup> In his 2014 review of the *Roots of Behaviour* study, Dale Stephens critiqued the implication that the ICRC should promote a clinical application of the law, devoid of reference to ethics or morality, especially as so many provisions of IHL are legally indeterminate and therefore reliant on the personal ethical orientation of decision-makers:

Normative law can create an unlimited vocabulary of meaning that can generate its own kind of internal rationality, one that acts to anesthetize authentic experience. Hence, despite the recommendations made by the authors of the [*Roots of Behaviour in War*] Study, the resort to values and deeper registers of meaning can and should be applied to condition the application of force under the law.<sup>6</sup>

Consequently, when *Roots of Restraint* was released, Stephens welcomed its inconsistency with the findings of the earlier *Roots of Behaviour* study as they related to combatants’ moral autonomy and internalized values.<sup>7</sup>

3 Fiona Terry and Brian McQuinn, *The Roots of Restraint in War*, ICRC, Geneva, 2018, p. 68.

4 Daniel Muñoz-Rojas and Jean-Jacques Frésard, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations*, ICRC, Geneva, 2004, p. 15.

5 Françoise J. Hampson, “Fighting by the Rules: Instructing the Armed Forces in Humanitarian Law”, *International Review of the Red Cross*, Vol. 29, No. 269, 1989, pp. 115–117. See also W. Hays Parks, “Teaching the Laws of War”, *The Army Lawyer*, No. 6, 1987, p. 9; Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War*, Transaction, New Brunswick, NJ, 1999, pp. 31–40.

6 Dale Stephens, “Behaviour in War: The Place of Law, Moral Inquiry and Self-Identity”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014, pp. 772–773.

7 See, for example, Dale Stephens, “Roots of Restraint in War: The Capacities and Limits of Law and the Critical Role of Social Agency in Ameliorating Violence in Armed Conflict”, *Journal of International Humanitarian Legal Studies*, Vol. 10, No. 1, 2019.

The ICRC and other humanitarian organizations have since put the *Roots of Restraint* study to practical use, incorporating its findings into updated trainings and ways of working during operations.<sup>8</sup> Moreover, in its public positioning, the ICRC now appears to have embraced the need to promote humanitarian values alongside the law as a way to discourage battlefield conduct that is “awful but lawful”.<sup>9</sup> In addition to the *Roots of Restraint* study, there has been a slew of research in the last decade within the social sciences on how service personnel come to internalize IHL norms<sup>10</sup> and some of the barriers to the uptake of those norms.<sup>11</sup> There seems to be a growing consensus that more should be done to connect the principles and rules of IHL with other deeply held beliefs, traditions and sources of identity. In this regard, Jody Prescott’s 2021 *Empirical Assessment of IHL Education and Training* presents a useful meta-study of the state of the art in this field. In particular, Prescott welcomes the emphasis that the *Roots of Restraint* study places on social factors of compliance, and argues that IHL education should

promote meaningful engagement with soldiers on positive military values rather than just legal norms. The goal should be the building of moral reasoning skills in all officers and soldiers from a systemic perspective of resilience, so that regardless of how tired, how hungry, or how angry soldiers might be over injuries or deaths sustained by their comrades, there is always a base setting of moral reasoning that will help keep them compliant with IHL.<sup>12</sup>

These recommendations accord with the academic literature on military ethics. For example, in his thesis on the erosion of ethics in special operations forces (SOF), Seth Buckley notes a possible disconnect between IHL and the moral reality that many SOF personnel inhabit, and asserts that this disconnect needs to be bridged in order to internalize the norms which underpin the law:

SOF operate in the potential grey zone of ethical dilemmas. The moral high ground may change dramatically depending on the situation operators find themselves in. In part to help mitigate these uncertainties, we have international laws and rules of engagement to better define what is and what is not acceptable in war. These laws establish the acceptable norms of war for society but

8 Gemma Davies and SORCHA O’Callaghan, *Protection of Civilians: Learning from ICRC’s Roots of Restraint in War Study*, Overseas Development Institute, London, 2022.

9 Cordula Droegge, “War and What We Make of the Law”, *Humanitarian Law and Policy Blog*, 18 July 2024, available at: <https://blogs.icrc.org/law-and-policy/2024/07/18/war-and-what-we-make-of-the-law/> (all internet references were accessed in February 2025).

10 For a review of this literature, see Brian McQuinn, Oliver Kaplan and Francisco Gutiérrez-Sanín, “Introduction: Promoting Restraint in War”, *International Interactions*, Vol. 47, No. 5, 2021. Also, for prior research leading up to 2014, see E. Stubbins Bates, above note 2.

11 For example, Deborah Manekin has identified competing values, pressing material concerns and personality factors as possible barriers which could prevent the adoption of norms through formal socialization processes such as military training. Deborah Manekin, “The Limits of Socialization and the Underproduction of Military Violence: Evidence from the IDF”, *Journal of Peace Research*, Vol. 54, No. 5, 2017, p. 610.

12 Jody Prescott, *Empirical Assessment of IHL Education and Training: Better Protection for Civilians and Detainees in Armed Conflict*, Anthem Press, London, 2021.

do little in developing moral judgment of individuals at the root level. Simply telling people what they can or cannot do may make them obedient, but not virtuous. Individuals gain virtue when they not only understand why they cannot or should not do certain acts, but place value in those reasons and act on those right reasons – that is, they have the moral motivation to do what they determine is right through moral deliberation.<sup>13</sup>

In trying to understand such moral motivations, Buckley notes that culture and ethics are intrinsically linked to them.<sup>14</sup>

Moreover, for practitioners within Red Cross or Red Crescent organizations, the preamble of the resolution on “Bringing IHL Home” from the 33rd International Conference of the Red Cross and Red Crescent (International Conference) provides an important statutory touchstone for explaining why it is useful for the Movement to consider the cultural and ethical roots of restraint during armed conflict – i.e., “to connect the law with the lore”.<sup>15</sup> In the resolution, the International Conference emphasizes

the basic value of respect for human dignity in times of armed conflict, which is not only enshrined in IHL but also in the rules and principles of different faiths and traditions, as well as military ethics, and recogniz[es] the importance of dialogue among relevant actors and ongoing efforts in this respect.<sup>16</sup>

Consequently, it seems that the overarching findings of the *Roots of Restraint* study are beginning to affect the approach not just of the ICRC, but of the Movement more widely.

To be sure, there are debates within both civilian and military circles on the value of invoking extra-legal concepts to reinforce IHL – and I aim to engage with these below. Nevertheless, members of the armed forces cannot be expected to uphold IHL “in the same way a business executive follows the tax code”.<sup>17</sup> In armed conflict, the stakes for failure are much higher,<sup>18</sup> there is often less time to collect information and make decisions,<sup>19</sup> and despite many advances, enforcement *ex post*

13 Seth A. Buckley, “Undermined, Overused, and Mission Obsessed: An Analysis of the Erosion of Ethics and the Proliferation of Combat Culture in Special Operations Forces”, masters thesis, Naval Postgraduate School, Monterey, CA, 2021, pp. 5–6.

14 *Ibid.*, pp. 10–11.

15 Yvette Zegenhagen and Dale Stephens, “Yvette Zegenhagen on Training in International Humanitarian Law”, Oxford Forum for International Humanitarian Law Compliance, 4 July 2021, available at: <https://tinyurl.com/4pcvxp2p>.

16 33rd International Conference, Res. 1, “Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law”, 2019, preambular para. 12. In addition, the ICRC’s associated checklist for this resolution refers to the need to consider socialization processes and general culture within the armed forces: ICRC, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*, Geneva, 2021, p. 35.

17 Mark Martins, quoted in D. Stephens, above note 7, p. 66.

18 That is, victory or defeat; life or death.

19 John Boyd, *A Discourse on Winning and Losing*, Air University Press, Maxwell Air Force Base, AL, 2018, p. 22.

remains a challenge.<sup>20</sup> Therefore, it is important to consider the ways in which military perspectives on IHL are formed or reinforced by factors that are outside the scope of the law. Civilian IHL practitioners (in particular, those who may have come to IHL from other areas of law) may come to have an appreciation for these perspectives by exploring the rich and rapidly growing literature in the social sciences on (military) culture, religion – and IHL. Moreover, though not without risk, by taking these other normative frameworks into account in their work, military and civilian practitioners may help to contribute to a culture that allows compliance with IHL to take root more successfully.

In this article, I examine a few recent well-publicized IHL violations, the general mental states which may have given rise to such violations, and the sort of pernicious cultural factors which could have been in play. I then consider the modern-day value of martial codes of conduct, military ethics and notions of honour within the armed forces. Afterwards, I explore the recent work that has been done to (re)connect the underlying norms of IHL with various religious and traditional value systems. I then discuss some important caveats which should be kept in mind when undertaking work which compares morality, ethics and law, before finally presenting some practical implications for those involved in IHL implementation, integration and dissemination activities.

## **The relationship between IHL violations and lapses in general ethical or professional standards in the armed forces**

Before exploring the ways in which certain extra-legal norms influence behaviour on the battlefield, it may be helpful to review two recent cases in order to illustrate a rough typology of states of mind with which combatants commit violations of IHL. Firstly, in what I refer to as “intent-type” violations, combatants choose to commit an IHL violation wilfully, with malice or out of expediency, and with the knowledge that the conduct is likely proscribed in some way. Secondly, in what I refer to as “negligence-type” violations, combatants do not intend to commit an IHL violation but nevertheless fail to take a reasonable amount of care in the course of their duties to prevent a violation from occurring.

In my descriptions of the case studies that follow, I should mention that these states of mind do not necessarily correspond to formal *mens rea* for any crimes – I use the words “intent” and “negligence” according to their ordinary meanings, rather than in any legal sense. My purpose here is to describe the social and psychological processes associated with each state of mind (and, by extension, to determine the sort of IHL integration/dissemination activities that might help to remedy them), not to offer judgement on the likely guilt or innocence of those involved. Moreover, while my two example cases are taken from relatively recent and well-documented events involving the armed forces of Australia and the United States, my choice of

20 Gentian Zyberi, “Enforcement of International Humanitarian Law”, in Gerd Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts*, Springer, Singapore, 2018.

cases and countries reflects my own familiarity with them and should not be read as suggesting that the armed forces of these States are more predisposed to battlefield misconduct than others (if anything, these States should be commended for their transparency in this regard). Although I have chosen to cover lapses in IHL compliance by State agents, my analysis may have some relevance for the behaviour of non-state armed groups (NSAGs), particularly centralized NSAGs. In addition, I have intentionally avoided covering “top-down” IHL violations (i.e., those ordered at the behest of State officials), and I have assumed that the State is seeking to comply with its IHL obligations in good faith. As W. Hays Parks has correctly noted, unit discipline and training in the law of war are unlikely to have much influence if a country’s leaders are bent on doing whatever it takes to win.<sup>21</sup>

## Intent-type violation: The Brereton Inquiry

Intent-type violations would include those that tend to take place on the ground in physically close interactions between combatants and persons who are on the opposing side or who are part of the civilian population – for example, the killing of an enemy who is already out of action (*hors de combat*). In such contexts, a combatant’s personality and character (informed by training), and the pressures of the situation, including unit culture, can all inform how one will act in the field.<sup>22</sup> As an example case, the *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report* (Brereton Report), which examined allegations of serious misconduct committed by Australia’s Special Operations Task Group in Afghanistan between 2005 and 2016, found credible evidence of

23 incidents in which one or more non-combatants or persons *hors-de-combat* were unlawfully killed by or at the direction of members of the Special Operations Task Group ... and a further two incidents in which a non-combatant or person *hors-de-combat* was mistreated.<sup>23</sup>

Of particular note, the Brereton Inquiry described how problems within a unit’s culture can increase the probability that there will be lapses in discipline, including the commission of IHL violations. As in similar investigations of other incidents in Iraq and Afghanistan,<sup>24</sup> the Brereton Report noted a general deterioration in unit discipline which preceded the more egregious offences. For example,

21 W. Hays Parks, “The United States Military and the Law of War: Inculcating an Ethos”, *Social Research*, Vol. 69, No. 4, 2002, p. 984.

22 For a primer on how both dispositional and situational factors influence combatant behaviour during armed conflict, see George R. Mastroianni, “The Person–Situation Debate: Implications for Military Leadership and Civilian–Military Relations”, *Journal of Military Ethics*, Vol. 10, No. 1, 2011. See also Peter Rowe, “Military Misconduct during International Armed Operations: ‘Bad Apples’ or Systemic Failure?”, *Journal of Conflict and Security Law*, Vol. 13, No. 2, 2008.

23 Paul Brereton, *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report*, Australian Defence Force, 10 November 2020 (Brereton Report), pp. 28–29.

24 A similar breakdown in unit discipline was noted as having contributed to the abuses at Abu Ghraib Prison which took place during the initial phases of the US invasion of Iraq in 2003: see Christopher Graveline and Michael Clemens, *The Secrets of Abu Ghraib Revealed: American Soldiers on Trial*, Potomac, Dulles,



after engaging those who they thought were the enemy, some members of the Task Group planted objects at the scene in order to manipulate after-action photography:

The Inquiry also found that there is credible information that some members of the Special Operations Task Group carried “throwdowns” – foreign weapons or equipment, typically though not invariably easily concealable such as pistols, small hand held radios . . . , weapon magazines and grenades – to be placed with the bodies of “enemy killed in action” for the purposes of site exploitation photography, in order to portray that the person killed had been carrying the weapon or other military equipment when engaged and was a legitimate target. *This practice probably originated for the less egregious though still dishonest purpose of avoiding scrutiny where a person who was legitimately engaged turned out not to be armed. But it evolved to be used for the purpose of concealing deliberate unlawful killings.*<sup>25</sup>

In the incidents covered in the Brereton Report, a lack of knowledge of the law was not considered to be a major contributing factor to the violations – in many cases, the alleged conduct could be considered *malum in se* and therefore should not require special training to prevent.<sup>26</sup> Indeed, the Inquiry found that “[t]here is no suggestion anywhere in the extant accounts that anyone, including the perpetrators, claimed that what they were doing was not clearly and unambiguously illegal”.<sup>27</sup> Rather, those involved expressly prioritized mission success and force protection over adherence to IHL. Notably, this view does not seem to have originated with one rogue commander, but instead pervaded the culture of the Task Group:

There were a series of rules applied to [SOF] personnel [that], in their view, made their missions more challenging and put their personal and collective safety at risk. Rules of engagement and rules regarding detainee handling and processing are both frequently mentioned as being either wrong in design, or wrong in application. The cultural responses to such “wrong rules” was [*sic*] to find ways to subvert and break them.<sup>28</sup>

Although a healthy unit culture or properly internalized norms do not provide complete protection against the states of mind which give rise to battlefield abuses, the reverse does seem to be the case – excessive relaxation of standards,<sup>29</sup> or indeed deviant cohesion, seems to increase the risk that such abuses will occur. Deviant

VA, 2010, pp. 185–186. See also, regarding the “Marine A” case, Steven Morris, “Alexander Blackman’s Company Was Out of Control, Claims Former Comrade”, *The Guardian*, 15 March 2017.

25 Brereton Report, above note 23, p. 29 (emphasis added).

26 This point was made clear in the Brereton Report: “Ultimately, there is an important difference between pulling a trigger and getting it wrong, and taking a prisoner and executing them in cold blood. Anyone who does not recognise this distinction, or is prepared to ignore it, does not deserve to belong in any professional military, let alone the ADF.” *Ibid.*, p. 529.

27 *Ibid.*, p. 509.

28 *Ibid.*

29 *Ibid.*, pp. 509–517.



cohesion describes a situation in which a smaller unit engages in what the larger armed forces would consider to be misconduct because it believes that such misconduct is necessary to achieve the unit's objectives.<sup>30</sup> Similarly, as David Lloyd Roberts has identified and Elizabeth Stubbins Bates has reaffirmed, elements of informal "barracks culture" can sometimes work counter to any formal programmes to improve acceptance of IHL norms.<sup>31</sup> For example, Stubbins Bates notes:

The IHL training literature emphasizes attitudinal change and the internalization of norms, while considering that a barracks culture which is antagonistic to IHL compliance is a risk for that norm internalization. If military ethics training is improvised, or if the command chain is opposed to the independent thought that military ethics training might encourage, . . . the barracks culture is less likely to support the internalization of IHL norms. Those researching IHL training would benefit from a thorough synthesis of the literature on military ethics, while recognizing that flexible principles can never replace norm internalization in IHL.<sup>32</sup>

To be sure, it has been observed that some amount of flexibility in enforcing military rules can help (particularly lower-ranking) leaders to maintain control of a unit.<sup>33</sup> However, it is important not to sacrifice core values (such as following IHL) for the sake of unit cohesion. Rather, core values should be regarded as essential in both formal and informal norms and not subject to negotiation.

## Negligence-type violation: The 2014 Kunduz hospital air strike

Negligence can give rise to violations in situations where it is important for troops to maintain situational awareness or to follow complex procedures in order to decide whether or how to apply lethal force. The part of IHL which deals with the conduct of hostilities forbids the direct targeting of civilians and other protected persons.<sup>34</sup> However, it also accounts for the proverbial fog of war: combatants are not omniscient and therefore are susceptible to making errors in decision-making even when trying to apply the law in good faith. Consequently, the law requires them to take certain precautions in setting up and carrying out attacks in order to spare non-combatants from the effects of hostilities to the greatest extent feasible.<sup>35</sup>

30 For a primer on deviant cohesion and its effect on IHL compliance, see Aaron Fellmeth and Emily Crawford, "Reason to Know" in the International Law of Command Responsibility", *International Review of the Red Cross*, Vol. 104, No. 919, 2022, pp. 1251–1254.

31 E. Stubbins Bates, above note 2, p. 803.

32 *Ibid.*, pp. 807–809.

33 See, for example, Olli Harinen, *Some Empirical Research Results on Finnish Soldiers' Behaviour, Group Cohesion and Informal Norms: Three Military Sociological Articles*, Finnish National Defence University, Helsinki, 2011.

34 See, for example, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rules 1 ("The Principle of Distinction between Civilians and Combatants"), 47 ("Attacks against Persons Hors de Combat"), available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

35 See, for example, *ibid.*, Rule 15 ("Principle of Precautions in Attack").

That said, in a recent study by Oona Hathaway and Azmat Khan, it is made clear that in many cases, targeting “mistakes” can be understood as having arisen from a reckless attitude on the part of those selecting or attacking the target – or as institutional failures to learn from previous mistakes.<sup>36</sup> As an example of how a violation can take place when proper precautions are not taken, it may be useful to consider the 2014 Kunduz hospital air strike, in which a US aircrew fired upon a trauma centre in Kunduz, Afghanistan, run by Médecins Sans Frontières, under the mistaken view that they were targeting a different building which they were told had been taken over by insurgents (and consequently could be considered a lawful military objective). By the time US forces had realized the error, the aircrew had destroyed the main hospital building and killed thirty non-combatants.<sup>37</sup> Those tasked with investigating the incident for the US Department of Defense (DoD) found that, among other things, “[t]he aircrew’s failure to exercise judgement when their observations did not correspond with the GFC’s [Ground Force Commander’s] description, intent, and ROE [rules of engagement] led to a LOAC violation”.<sup>38</sup> Although there does not seem to have been any wilful intent involved in this incident, it nevertheless involved a series of departures from standards on the part of multiple individuals in the targeting process which the DoD found to be unreasonable, even after taking into account the stresses of the operating environment.<sup>39</sup> Given the high stakes involved with the application of air power in a populated area, the DoD report suggests that the aircrew and the troops on the ground should have taken greater care when setting up the attack and should have noticed the warning signs that their target was incorrect.

Although the DoD report did show that US troops in the area were sometimes confused about the specific application of the law to the environment in which they were working,<sup>40</sup> greater knowledge of the law would not necessarily have helped to prevent the Kunduz strike. Rather, the report’s most significant finding with regard to training was that the aircrew’s headquarters allowed them to take on a mission which was seemingly beyond their competence, given their lack of experience and known difficulties during general training.<sup>41</sup> In this case, equipment malfunction and a lack of adherence to standards seemed to be the main contributing factors – not malice. Consequently, when considering training interventions aimed at preventing similar precautionary failures, it may be useful to reinforce the duty for members of the armed forces to show attention to detail in their work as part of a general professional ethos.

36 Oona Hathaway and Azmat Khan, “‘Mistakes’ in War”, *University of Pennsylvania Law Review*, Vol. 173, No. 1, 2024.

37 US Department of Defense (DoD), *Investigation Report of the Airstrike on the Médecins Sans Frontières/Doctors without Borders Trauma Center in Kunduz, Afghanistan on 3 October 2015*, 21 November 2015, p. 27.

38 *Ibid.*, p. 62.

39 *Ibid.*, pp. 61–63.

40 *Ibid.*, p. 37.

41 *Ibid.*, p. 83.

## Implications for designing effective interventions to improve adherence to IHL

The armed forces are not a monolith, and in some countries the active and reserve components could total over a million people. Some troops may be receptive to a briefing which stresses the legal dimensions of IHL compliance, or they may be deferent to orders that are based on IHL. Others may be motivated to comply with the law's underlying norms because they are part of the professional ethics of the military or of a particular service (e.g. "Good sailors/soldiers/aviators/marines/gendarmes, etc., do not commit atrocities, and we do not apply our craft in a sloppy manner"). Still further, others may be swayed by appeals to an underlying cultural or religious ethos – shared with wider society – that values upholding IHL norms (e.g. "My religion/culture expects combatants to behave a certain way, and has done so for a very long time"). Consequently, when considering ways to encourage the armed forces to internalize IHL norms, it is important to offer military audiences a variety of possible sources of legitimacy with which they can engage to undergird their personal motivation for upholding the law.

## Military ethics, martial codes of conduct and the principle of honour

The need for certain professions to uphold special ethics is not a new phenomenon. Those working in the liberal professions, such as medicine and law, have long held to their own codes of ethics in order that they may be trusted by wider society.<sup>42</sup> As a separate community within society (and one with a capacity for great violence), it is particularly important for society to have faith in the military's ability to uphold its professional ethics. It is an immense responsibility to be able to take a life without facing legal or (within one's in-group) social repercussions for doing so, and it is therefore understandable why combatants worldwide and throughout history have developed similar professional ethics or codes – so that wider society can trust that when they resort to violence, it is justified and constrained to what is necessary. A combatant's honour is inexorably tied to their ability to follow their code.

### Martial codes of conduct

To be sure, martial codes of conduct can be flawed, but it may be helpful to first examine their utility before considering their darker aspects. Shannon French, a leading scholar on "warrior codes", claims that they may be written or unwritten, proclaimed or embedded in tales of great heroes. Further, while not always mapping onto modern IHL completely, the content of such codes seems to have consistently covered similar rules for behaviour in armed conflict:

42 Ramon Mullerat, "Professional Ethics, What For. . .?", *Ramon Llull Journal of Applied Ethics*, No. 4, 2013, pp. 180–182.

The code restrains the warrior. It sets boundaries on his behavior. It distinguishes honorable acts from shameful acts. Achilles must seek vengeance for the death of his friend Patroclus, yet when his rage drives him to desecrate the corpse of his arch nemesis, he angers the gods. Under the codes of chivalry, a medieval knight has to offer mercy to any knight who yields to him in battle. In feudal Japan, samurai are not permitted to approach their opponents using stealth, but rather are required to declare themselves openly before engaging [in] combat. Muslim warriors engaged in offensive jihad cannot employ certain weapons, such as fire, unless and until their enemies use them first.<sup>43</sup>

French argues that warrior codes provide the profession of arms with vital protection against moral injury and the associated psychological ills that come from being asked to do things that the individual service member or wider society would otherwise believe to be unjust or immoral.<sup>44</sup> Moreover, as Christopher Coker has argued, following a long-standing code gives members of the armed forces a sense of connection both horizontally, with others in one's own generation who also keep to the code, and vertically, with earlier generations of service personnel<sup>45</sup> (or indeed, sometimes even with ancient warriors from one's own culture).

Historically, warrior codes not only provided injunctions against committing atrocious behaviour but also set standards for discipline and the level of attention or care that ought to be given to military tasks. For example, French notes that

[i]n many cases this code of honor seems to hold the warrior to a higher ethical standard than that required for an ordinary citizen within the general population of the society the warrior serves. The code is not imposed from the outside. The warriors themselves police strict adherence to these standards; with violators being shamed, ostracized, or even killed by their peers. One historical example comes from the Roman legions, where if a man fell asleep while he was supposed to be on watch in time of war he could expect to be stoned to death by the members of his own cohort.<sup>46</sup>

Indeed, carelessness can have serious consequences for the protection of civilians, for completing a mission, or for force protection. As the Kunduz hospital air strike illustrated, mishaps in setting up or carrying out an attack can cause civilians to be wrongly targeted. They can also lead to incidents of fratricide (friendly fire).<sup>47</sup>

43 Shannon French, "Why Warriors Need a Code", in Asa Kasher (ed.), *Ethics of War and Conflict*, Critical Concepts in Philosophy, Vol. 4, Routledge, New York, 2014, p. 325. Recent empirical research suggests that in addition to traditional IHL and military ethics training, it is important to expose members of the armed forces to "ethically insoluble dilemmas" as a way to help guard against moral injury. See, for example, Andrea J. Phelps *et al.*, "Addressing Moral Injury in the Military", *BMJ Military Health*, Vol. 170, No. 1, 2024.

44 S. French, above note 43, p. 329.

45 Christopher Coker, *The Warrior Ethos: Military Culture and the War on Terror*, Routledge, London, 2007, p. 134.

46 S. French, above note 43, p. 325.

47 "The Long, Unfortunate History of Friendly Fire Accidents in U.S. Conflicts", *PBS NewsHour*, 11 June 2014, available at: [www.pbs.org/newshour/nation/long-unfortunate-history-friendly-fire-accidents-u-s-conflicts](http://www.pbs.org/newshour/nation/long-unfortunate-history-friendly-fire-accidents-u-s-conflicts).

Definitions of martial prowess that emphasize the importance of attention to detail can have a protective effect, so armed forces from antiquity to today have needed to demand competence from their troops. Consequently, martial prowess has been associated with traits such as having strength, speed, cunning and bravery – but also with self-control.<sup>48</sup> As the character of warfare has evolved, I would argue that this facet of martial codes of conduct would today also include paying attention during briefings, following standard operating procedures, remaining alert throughout the mission, and scrutinizing the situation more carefully if one becomes aware of equipment malfunctions or other deviations from standard ways of working.

The fear of shame that comes with breaking martial codes can sometimes be even more motivating than legal sanctions. Moreover, as Mark Osiel argues, shame can help to encourage restraint in situations where the perpetrator's battlefield behaviour is awful but not manifestly illegal.<sup>49</sup> When an internalized code has been broken, the offender brings shame not only to themselves but to their unit, their service or the armed forces as a whole. This shame is difficult to shed and, in many cases, can lead the offender to be ostracized (even in the absence of formal indictment or punishment). To illustrate this point, French recalls the following account:

This man, whom I will call “Dan,” told me that he had been a fighter pilot in World War II in the Pacific Theater. Near the end of the war, he was commanding a squadron over Tokyo. They flew a mission near a crowded train station, where hundreds of people were desperately pushing to climb aboard trains that could take them away from the besieged city. Acting against direct orders, one member of the squadron broke formation, flew down and strafed some of the helpless Japanese civilians. When they returned from this mission, no one in the squadron would speak to the pilot who had murdered the noncombatants. Tears filled Dan's eyes as he told me the conclusion of this sixty-year-old story: “We were all so ashamed of what he had done. He had shamed the entire squadron. He was killed in an engagement two days later. And, God help us, we were glad.”<sup>50</sup>

Such sentiment is not simply an artefact of a bygone era. After returning from a deployment to fight the so-called Islamic State group in 2017, members of a US SEAL team were so ashamed and horrified by the battlefield atrocities alleged to have been committed by their chief, Edward Gallagher, that they risked their careers and reputations to turn him in to Naval investigators.<sup>51</sup>

48 For some examples of traits from European martial traditions and their possible influence on just war theory in the West (including what today is referred to as the *jus in bello*), see Maciej Talaga, “Have the Highest Righteous Fencer in Your Mind's Eye: Medieval Martial Ethic as a Conceptual Repository for Just War Theory”, *Martial Arts Studies*, No. 12, 2022.

49 M. J. Osiel, above note 5, pp. 34–36.

50 Shannon French, “The Code of the Warrior: Ideals of Warrior Cultures throughout History”, *Journal of Character and Leadership Development*, Vol. 4, No. 1, 2017, p. 70.

51 Dave Philipps, “Anguish and Anger from the Navy SEALs Who Turned In Edward Gallagher”, *New York Times*, 27 December 2019. It should be noted, however, that in 2019, Gallagher and three other convicted or alleged war criminals were pardoned or had their administrative punishments removed by the US President. Jean Galbraith, “Issuing Several Pardons, President Trump Intervenes in Proceedings of U.S. Troops Charged or Convicted of Acts Amounting to War Crimes”, *American Journal of International Law*,

However, not every norm which makes its way into a martial code is entirely helpful for promoting humanitarian values. There are certainly elements from historic codes which today we would consider to be odious (such as stoning to death a soldier who falls asleep during guard duty). Moreover, warrior codes have not always contained norms that would prevent combatants from wielding the sword against non-combatants or enemies who are *hors de combat*. For instance, while some versions of the ancient Japanese code of bushido emphasized compassion towards those less powerful,<sup>52</sup> samurai often did not protect non-combatants who happened to be near a place of battle.<sup>53</sup> Rather, their treatment was contingent on the particular circumstances of the individual samurai and the exigencies of the situation (for example, if harming the non-combatants would give an enemy cause for retribution, then the samurai might exercise restraint; otherwise, the non-combatants would be at risk of being killed along with the combatants). Off the battlefield, samurai had the right to kill lower-ranking non-combatants in response to insults or sleights to their honour.<sup>54</sup> Moreover, during the Second World War, the proponents of Japanese militarism used bushido to justify atrocity, rather than restraint.<sup>55</sup>

In more recent times, the Brereton Report identified a tendency for personnel within the Special Air Service Regiment (SASR) to construct a combatant identity for themselves, based on qualities they associated with the ideal “warrior”. Leaders could have prioritized the development of a combatant identity for the SASR that includes adherence to standards and to the law, but in the absence of such direction, it appears a more toxic culture took root:

A substantial indirect responsibility falls upon those in [the] Special Air Service Regiment who embraced or fostered the “warrior culture” and the clique of non-commissioned officers who propagated it. Special Forces operators should pride themselves on being model professional soldiers, not on being “warrior heroes”. Some domestic commanders of [the] Special Air Service Regiment bear significant responsibility for contributing to the environment in which war crimes were committed, most notably those who embraced or fostered the “warrior culture” and empowered, or did not restrain, the clique of non-commissioned officers

Vol. 114, No. 2, 2020. Such second-guessing of the military justice system may have a chilling effect on the willingness of service personnel to come forward and turn in their own in future.

52 Gregory Lee, *Ideals of the Samurai: Writings of Japanese Warriors*, Black Belt Communications, Burbank, CA, 1982. pp. 37–43.

53 Anna Kretowicz, “Japanese Laws of War”, in Samuel C. Duckett White (ed.), *The Laws of Yesterday's Wars*, Vol. 2: *From Ancient India to East Africa*, Brill Nijhoff, Leiden, 2022, p. 208. It is important to keep in mind that bushido was not one unifying code of conduct, and that there were many forms of (mostly customary) practices observed by the samurai. The more strictly codified virtues and practices that are associated with bushido in the popular imagination today were largely an invention of writers in the late nineteenth and early twentieth centuries: *ibid.*

54 *Ibid.* Similarly, the treatment of non-combatants under European notions of chivalry was at times dependent on their class. Mark J. Osiel, “Obeying Orders: Atrocity, Military Discipline, and the Law of War”, *California Law Review*, Vol. 86, No. 5, 1998, pp. 1045–1046.

55 For a critique of Zen and bushido's contribution to Japanese militarism before and during the Second World War, see Brian Daizen Victoria, *Zen at War*, Rowman & Littlefield, Oxford, 2006, pp. 95–129.



who propagated it. That responsibility is to some extent shared by those who, in misconceived loyalty to their Regiment, or their mates, have not been prepared to “call out” criminal conduct or, even to this day, decline to accept that it occurred in the face of incontrovertible evidence, or seek to offer obscure and unconvincing justifications and mitigations for it.<sup>56</sup>

While the Brereton Report did not specify the content of this “warrior culture”, scholarship on the darker aspects of the warrior culture at the US Air Force Academy has identified several characteristics which might help to flesh out the concept.<sup>57</sup> As a matter of policy, the Academy includes in its definition of the warrior ethos traits such as “tough mindedness, tireless motivation, unceasing vigilance, willingness to sacrifice one’s life for the country, and commitment”.<sup>58</sup> On first impression, these are admirable qualities and indeed would seem to help to provide a bulwark against negligent-type IHL violations. However, in addition to this formal definition, scholars such as Jarrod Pendlebury, James Do and Steven Samuels suggest that, through training and informal enculturation, cadets at the Academy also learn to incorporate a hyper-masculine ideal into their image of the exemplar (usually male) hero-warrior.<sup>59</sup> Part of this warrior identity includes traits such as athleticism, competitiveness and manliness. On the one hand, such traits may be helpful for developing a mindset that pushes a service member to overcome the enemy under difficult circumstances; on the other hand, that same warrior mindset, if left unchecked, can provoke disdain for civilians (who are not able to live up to the rigours of military life)<sup>60</sup> or even serve to exclude the service member’s comrades (especially women service personnel) as being insufficient or deviant if they are bested in tests of physical strength or endurance.<sup>61</sup>

If such a mindset can so easily erase the worth and dignity of members of one’s own team for perceived insufficiencies, it is not a great conceptual leap to see how an unchecked warrior culture could encourage mistreatment of civilians

56 Brereton Report, above note 23, p. 325.

57 As other commentators have noted (and which my own experience would confirm), the US Air Force Academy places a particular emphasis on establishing a warrior identity: “Many events and locations incorporate the term [“warrior”], such as the Warrior Run, Warrior Ramp (also known as the Core Values Ramp), Warrior’s Code of the Cadet Wing, Operation Warrior, Polaris Warrior, Warrior March, and Warrior Luncheon.” James J. Do and Steven M. Samuels, “I Am a Warrior: An Analysis of the Military Masculine-Warrior Narrative among U.S. Air Force Officer Candidates”, *Armed Forces and Society*, Vol. 47, No. 1, 2021, p. 28. As a US Air Force veteran, it is not lost on me that there is a certain irony in the fact that the military service which least requires great feats of physical fortitude is one that seems to have pushed the warrior ideal so rigorously.

58 *Ibid.*

59 Jarrod Pendlebury, “‘This Is a Man’s Job’: Challenging the Masculine ‘Warrior Culture’ at the U.S. Air Force Academy”, *Armed Forces and Society*, Vol. 46, No. 1, 2020; J. J. Do and S. M. Samuels, above note 57. Since 2000, each Academy class has chosen a historic figure to hold up expressly as an “exemplar”. Of the twenty-six exemplars so far, all have been men. See also Hyunyoung Moon, “Constructing the Modern Warrior: The U.S. Army And Gender”, PhD thesis, William & Mary, Williamsburg, VA, 2021.

60 M. J. Osiel, above note 54, p. 957; Kyleanne Hunter, “Warrior Culture: Ancient Roots, New Meaning”, in Kate Hendricks Thomas and David L. Albright (eds), *Bulletproofing the Psyche: Preventing Mental Health Problems in Our Military and Veterans*, Bloomsbury, Santa Barbara, CA, 2018, p. 34.

61 J. J. Do and S. M. Samuels, above note 57, pp. 35–41.



encountered on operations and fighters who are *hors de combat*.<sup>62</sup> Moreover, the warrior-hero ideal can be highly individualistic and can encourage troops to resist challenge from institutional discipline or higher headquarters,<sup>63</sup> making it difficult to change from the top down.<sup>64</sup> Another unfortunate facet of some modern warrior codes is the unwritten norm that comrades should not turn in one of their own for battlefield excesses or alleged IHL violations. This code of silence was noted in the Brereton Inquiry<sup>65</sup> and in a *New York Times* report on the Gallagher investigation.<sup>66</sup>

Older martial codes of conduct and conceptions about the qualities of the ideal warrior continue to hold some sway over the way that combatants construct their identity in the modern age. For instance, despite its flaws, bushido remains an important cultural touchstone in Japan and scholars have attempted to rehabilitate the code for use in the modern era – both for pacifist and nationalist ends.<sup>67</sup> Indeed, it is important to understand which interests may try to co-opt a martial code, and to what ends. In some cases, it may be better to engage with and rehabilitate – or to categorically refute – a problematic code than to allow it to persist as a parallel normative framework that operates outside the formal structures of the armed forces.

Consequently, it may be helpful to recall French's argument that, when invoking older warrior codes, "the key is to select for preservation only what is consistent with the values cherished by contemporary warrior cultures".<sup>68</sup> In light of this, French suggests that the values and behaviours which become part of warrior codes adopted by US service personnel ought to be compatible with other (legal) frames of reference, such as the US Constitution. As an international standard, compatibility with IHL and applicable human rights norms certainly ought to be a benchmark as to what content makes its way into the codes for members of the armed forces worldwide and – importantly – what ought to be categorically excluded from such codes. Similarly, Osiel claims that "[w]hen the internal norms of soldiers give out, civilians will need to step in, imposing more universalistic and humanitarian ideals

62 Seth Stoughton has noted a similar pernicious effect with regard to the way in which police who are trained to adopt a warrior ethos tend to mistreat members of the public more often than those who adopt a more professional mindset. Seth Stoughton, "Law Enforcement's 'Warrior' Problem", *Harvard Law Review*, Vol. 128, No. 6, 2015.

63 In addition to the recent examples of this phenomenon within the Australian Defence Force, Ryan Noordally has written on the way in which a similar warrior culture led certain units within the French Armed Forces to commit mutiny against their political leaders in Algeria in 1961. Ryan Noordally, "On the Toxicity of the 'Warrior' Ethos", *Wavell Room*, 28 April 2020, available at: <https://wavellroom.com/2020/04/28/on-the-toxicity-of-the-warrior-ethos/>.

64 Indeed, as Andrew Bell's research has shown, formal training is necessary for introducing norms of restraint into military culture, but it is not sufficient – informal peer socialization mechanisms are also likely needed. Andrew M. Bell, "Military Culture and Restraint toward Civilians in War: Examining the Ugandan Civil Wars", *Security Studies*, Vol. 25, No. 3, 2016.

65 Brereton Report, above note 23, p. 333.

66 D. Philipps, above note 51.

67 Oleg Benesch, "Bushidō in Post-War Japan", in Oleg Benesch, *Inventing the Way of the Samurai: Nationalism, Internationalism, and Bushidō in Modern Japan*, Oxford University Press, Oxford, 2014.

68 Shannon French, "When Teaching the Ethics of War Is Not Academic", *Chronicle of Higher Education*, 21 March 2003.

of justice”.<sup>69</sup> This has also been raised by IHL scholar and practitioner Michael Bothe in his observations on the concept of a “reasonable military commander”:

In democratic systems, the values pursued by the military and those by society at large cannot be far apart. The value system on the basis of which the military is operating has to conform to that of the civil society, not vice versa. What is necessary in this respect is the dialogue between civil society and the military, which then has to be reflected in military decision-making.<sup>70</sup>

The norms of an institution such as the armed forces are notoriously difficult to influence,<sup>71</sup> and reasonable minds may disagree as to whether change is best effected by reference to troops’ identity as warfighters or to their identity as professionals – or indeed by trying to bridge these two concepts.<sup>72</sup> Regardless of which approach is taken, if civil society is to have an effect on norms within the armed forces, it is worthwhile to engage with the ways in which members of armed forces construct their individual identities as moral agents and how they connect with previous generations of troops – in the modern era, throughout the history of the nation, and even in (mythologized) ages past.

To that end, IHL practitioners may find it helpful to learn more about the ethics and martial codes of the cultural context in which they are working. For example, the Western just war tradition is featured in ethics training for the military in NATO’s Partnership for Peace Consortium.<sup>73</sup> There is also a growing body of literature on historic codes of conduct and military ethics from cultures worldwide – the recent *Laws of Yesterday’s Wars* series, edited by Samuel White, is particularly noteworthy in this regard.<sup>74</sup> In addition, traditions of restraint can be found in ancient writings on military strategy which are still popular today, such as those of Sun Tsu<sup>75</sup>

69 M. J. Osiel, above note 54, p. 958.

70 Michael Bothe, “The Protection of the Civilian Population and NATO Bombing on Yugoslavia: Comments on a Report to the Prosecutor of the ICTY”, *European Journal of International Law*, Vol. 12, No. 3, 2001, p. 535.

71 See, for example, Jason M. Pape, “How the Army Resists Change”, master’s thesis, School of Advanced Military Studies, Leavenworth, KS, 2009; Michelle E. Deng, Adelheid A. M. Nicol and Cindy Suurd Ralph, “Masculine Conformity and Social Dominance’s Relation with Organizational Culture Change”, *Armed Forces and Society*, June 2023.

72 Hanne A. Kraugerud, “Shields of Humanity: The Ethical Constraints of Professional Combatants”, *Journal of Military Ethics*, Vol. 10, No. 4, 2011.

73 NATO, *Leadership and Ethics Reference Curriculum*, July 2024, pp. 22–31. This curriculum helpfully goes further, including a lesson on comparative warfare ethics to expose students to perspectives outside the Western just war tradition.

74 Samuel C. Duckett White (ed.), *The Laws of Yesterday’s Wars*, Vol. 1: *From Indigenous Australians to the American Civil War*, Brill Nijhoff, Leiden, 2022; S. C. Duckett White (ed.), above note 53; Samuel C. Duckett White (ed.), *The Laws of Yesterday’s Wars*, Vol. 3: *From the Highlands of Papua New Guinea to the Island of Malta*, Brill Nijhoff, Leiden, 2024.

75 Suzannah Linton, “Deciphering the Landscape of International Humanitarian Law in the Asia-Pacific”, *International Review of the Red Cross*, Vol. 101, No. 911, 2019, pp. 745–747; Sahil Verma, “Sun Tzu’s Art of War and the First Principles of International Humanitarian Law”, *Cambridge International Law Journal Blog*, 30 August 2020, available at: <https://cilj.co.uk/2020/08/30/sun-tzus-art-of-war-and-the-first-principles-of-international-humanitarian-law/>.

and even Thucydides.<sup>76</sup> Although there is value in identifying the correspondences between traditional codes and modern IHL, however, it is also important to consider the points of difference, as such codes often are (or were) complete normative frameworks in their own right, with their own historical development and logic.

In response to the recommendations found in the *Roots of Restraint* study, ethicist George R. Wilkes and psychologist Magnus Lindén conducted a pilot survey of twenty-five IHL instructors and thirty-two military ethics instructors across ten countries to gauge their attitudes towards teaching IHL and military ethics together, and they indeed found substantial support from both camps for integrating the teaching of their respective subjects in a deliberate way.<sup>77</sup> It is important to note that this initial research also showed that, compared with ethics instructors, IHL instructors were significantly more likely to regard the content of the two disciplines as conceptually different.<sup>78</sup> This suggests that it would be helpful for ethicists who become involved in joint training sessions with lawyers to familiarize themselves with the ways in which the law diverges from their philosophical tradition in order to avoid conflating similar – but distinct – concepts from each discipline. To be sure, Wilkes and Lindén stress that the sample size for this pilot study was small, and it is therefore difficult to determine how well the cohort represents the wider IHL and military ethics communities.<sup>79</sup> Nevertheless, the study provides empirical support to show that some IHL instructors are already open to including extra-legal considerations into IHL training – so long as it is done in a careful and deliberate way.

## The contemporary relevance of military conceptions of honour

In addition to the codes themselves, it can be useful for civilian IHL practitioners to engage with the way that militaries understand honour. Ideals of honour have long been used to maintain martial codes of conduct.<sup>80</sup> Consequently, it is unsurprising that honour and the related European notion of “chivalry” have featured heavily in the codification of IHL, particularly early on, through express mention or as a general organizing principle. As Terry Gill writes:

Clearly, not all of what is (or perhaps more accurately was) regarded as chivalry or martial honour has been codified into law, but there is no doubt that significant elements have found their way into treaty and customary law and as such represent binding legal obligations. Other elements remain more a question of

76 Stephen M. Sheppard, “The Laws of War in the Pre-Dawn Light: Institutions and Obligations in Thucydides’ Peloponnesian War”, *Columbia Journal of Transnational Law*, Vol. 43, 2005.

77 George R. Wilkes and Magnus Lindén, “Should Militaries Teach International Humanitarian Law and Ethics Together? Comparing the Attitudes of Educators Internationally”, in Jean-Pierre Gauci and Barrie Sander, *Teaching International Law: Reflections on Pedagogical Practice in Context*, Routledge, London, 2024, pp. 371–376.

78 *Ibid.*, p. 371.

79 *Ibid.*, p. 375.

80 S. French, above note 50.

military tradition or ethics than positive legal obligations, but nevertheless exert some degree of influence.<sup>81</sup>

Although honour has traditionally been considered a principle of IHL,<sup>82</sup> its status today is more unsettled. In the ICRC publication *International Humanitarian Law: A Comprehensive Introduction*, a section on the history of IHL mentions briefly that codes of honour were important sources of restraint in past times, but the concept does not feature in the text as a principle in its own right.<sup>83</sup>

Until recently, references to honour as a principle had largely fallen out of use in military manuals.<sup>84</sup> In 2015, the principle was revived in the DoD's *Law of War Manual*:

Honor demands a certain amount of fairness in offense and defense and a certain mutual respect between opposing military forces. . . . Honor has been vital to the development of the law of war, which was preceded by warriors' codes of ethical behavior. U.S. military canons of personal conduct continue to emphasize the importance of honor as a core value. Honor as a core value and other ethical norms continue to be vital as a medium for the implementation of the law of war.<sup>85</sup>

This addition has been met with surprise and some critique amongst practitioners and scholars. Some commentators, such as William Boothby, Wolff Heintschel von Heinegg and Sean Watts, regard the resurrection of the principle as lacking in parsimony since the rules which are purportedly covered by the principle are few and there is no need to invoke honour for them to function as good law.<sup>86</sup> While it may be debatable whether honour constitutes a formal legal principle under IHL any more, Jody Prescott argues that (particularly in the US context) honour does form part of the military's general conceptualization of leadership and professionalism – and it can be invoked with good effect to encourage troops to uphold IHL.<sup>87</sup>

81 Terry Gill, "Chivalry: A Principle of the Law of Armed Conflict?", in Mariëlle Matthee, Brigit Toebes and Marcel Brus (eds), *Armed Conflict and International Law: In Search of the Human Face: Liber Amicorum in Memory of Avril McDonald*, T. M. C. Asser Press, The Hague, 2013, p. 41.

82 J. Prescott, above note 12, p. 69. See also UK War Office, *Manual of Military Law*, London, 1914, p. 234; US War Department, *Rules of Land Warfare*, Washington, DC, 1940, p. 2; Gustave Rolin-Jaequemyns, *La guerre actuelle dans ses rapports avec le droit international*, Van Doosselaere, Ghent, 1870, p. 41.

83 N. Melzer, above note 1, p. 38.

84 J. Prescott, above note 12, p. 69. Moreover, a search for the terms "honor", "honour" and "chivalry" in the practice volume of the ICRC's Customary Law Study yields few results relevant to chivalric or military honour. Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 2: *Practice*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), available at: <https://ihl-databases.icrc.org/en/customary-ihl/practice>.

85 DoD, *Law of War Manual*, Washington, DC, 2023, pp. 66–67.

86 William H. Boothby and Wolff Heintschel von Heinegg, *The Law of War: A Detailed Assessment of the US Department of Defense Law of War Manual*, Cambridge University Press, Cambridge, 2018; Sean Watts, "The DOD Law of War Manual's Return to Principles", *Just Security*, 30 June 2015, available at: [www.justsecurity.org/24270/dod-law-war-manuals-return-principles/](http://www.justsecurity.org/24270/dod-law-war-manuals-return-principles/).

87 J. Prescott, above note 12, p. 69.

Regardless of whether it is conceived of as a formal legal principle of IHL or as a general professional ethic which can inspire adherence to the law, it is important to acknowledge and respond to criticisms relating to the use of honour in the modern age. For instance, by over-emphasizing the degree to which IHL is based on chivalric notions of reciprocity and fair play, service personnel might (rightly) become cynical and lose faith in IHL when faced with enemies who do not uphold their own honour. Though he is a (qualified) proponent of honour as a formal legal principle, Terry Gill acknowledges this challenge succinctly:

Put simply, many would question why one should fight in accordance with notions of chivalry and honour, or even in accordance with the laws of war[,] against a foe which has no regard for them and routinely violates the law of war, [and] indeed sometimes uses it as a means of gaining a military or propaganda advantage.<sup>88</sup>

While chivalric notions of reciprocity or fair play may have influenced the development of the norms that later became part of IHL, if they no longer motivate troops today, then perhaps it is time to embrace a broader concept of martial honour that does not rely on the enemy's behaviour, and which can therefore resonate with militaries in the twenty-first century. For instance, Aaron Jackson and Kristine Kuenzli argue that martial honour could be reframed as a virtue that is tied to troops' willingness to continue to respect the human rights and dignity of others even in the face of the inhumanity of the enemy, rather than a concept that is based on a sense of fair play between equals.<sup>89</sup> Prescott is also sanguine about the effectiveness of appealing to martial honour today as a way to encourage the internalization of IHL among members of the armed forces, even when the enemy fail to comply with their own obligations.<sup>90</sup>

Is it even possible invoke chivalric honour in the modern day without inadvertently endorsing its more toxic elements? Rachel VanLandingham argues that chivalry is an outdated concept which even during its heyday had an inconsistent track record of promoting humanitarian outcomes and includes values and behavioural norms which are out of step with modern professional armed forces:

Chivalry, per an honest reading of the history books, connotes chauvinism, elitism, and the inhumanity of the Crusades. Feudal knights used the chivalric code to maintain their control of arms, keeping the peasants in their place. Bows and arrows, for example, were banned under the chivalric code not because they

<sup>88</sup> T. Gill, above note 81, p. 48.

<sup>89</sup> Aaron L. Jackson and Kristine D. Kuenzli, "Something to Believe In: Aligning the Principle of Honor with the Modern Battlefield", *National Security Law Journal*, Vol. 6, No. 1, 2018, pp. 52–56. Jackson and Kuenzli propose two further ways of conceptualizing the principle of honour in order to help it to resonate with service personnel today; however, I focus on the one above as it seems to function regardless of whether one conceives of honour as a formal principle of IHL or as an important professional ethic that helps troops to support the law in an informal way.

<sup>90</sup> J. Prescott, above note 12, p. 109.

caused greater pain, but because they allowed commoners to threaten the privileged knights. Furthermore, such one-sided “codes of honor” only applied when the knights were fighting non-Christians, thereby signaling the assumed white, western, Christian superiority of the day – a far cry from the essential humanity that today’s *jus in bello* is built on.<sup>91</sup>

Indeed, the word “chivalry” may be too conceptually tainted at this point to be successfully rehabilitated. However, recalling French’s recommendation only to select for preservation those parts of historic codes which resonate with contemporary norms, it may nevertheless be possible to promote a modern form of martial honour that pays homage to its forerunners without simultaneously promoting the toxic elements that are better consigned to the dustbin of history. Indeed, in the United States, “Honor” appears as one part of a set of core values for the DoD and some of the individual services.<sup>92</sup> Other values, such as the Army’s value of “Respect”, could help to inform how one is meant to interpret honour for the modern age. When understood as part of a service member’s general ethics and professional identity and when expressly linked to upholding more universal concepts such as respect for human dignity, appeals to honour may yet provide a way to motivate adherence to IHL in situations where the threat of legal consequences proves to be an insufficient check on combatant behaviour.

Having reviewed some of the ways in which the military creates and reinforces an identity and ethics for itself, it may be useful next to consider some of the ways in which cultural forces in larger society influence combatants’ attitudes towards IHL.

## Religion and other world-views

In addition to martial codes of conduct and military honour, morality based on religion has historically been an important source of cultural norms which encourage combatants to exercise restraint in times of armed conflict. In the modern age, some elements of ideology may perform a similar function.

### Religion

Some IHL practitioners are understandably hesitant to suggest that the law has religious roots since the formal ratification of IHL’s secularized rules was hard-won; moreover, practitioners within the Red Cross and Red Crescent Movement may be particularly wary of running afoul of the Fundamental Principle of neutrality, which

91 Rachel VanLandingham, “The Law of War is Not About ‘Chivalry’”, *Just Security*, 20 July 2015, available at: <https://www.justsecurity.org/24773/laws-war-chivalry/>. Moreover, Parks has likewise expressed scepticism about the relevance of chivalry to the modern law of war beyond the prohibition against perfidy, referring to more expansive attempts to link the two as “bad history”: W. Hays Parks, “Teaching the Law of War: A Reprise”, *Israel Defence Forces Law Review*, Vol. 3, 2007, p. 14.

92 Military Leadership Diversity Commission, *Department of Defense Core Values*, Issue Paper No. 6, DoD, December 2009.

(among other things) requires the Movement not to engage in religious controversies. Indeed, in some cases, religious teachings might not line up with IHL, or they may be otherwise problematic.<sup>93</sup>

Of course, there are risks in undertaking comparative studies of IHL and different religions – and in engaging with religious actors to promote adherence to IHL norms. For example, humanitarians may fear inadvertently legitimizing actors within communities who have, at one point or another, used religion to undermine IHL norms (e.g. by condoning violations committed by adherents to one's own faith or by excluding certain people from IHL protections).<sup>94</sup> A recent socio-legal study by Ioana Cismas *et al.* provides a nuanced view of when it might be appropriate for humanitarian actors to engage with faith actors and, crucially, how to do so in a manner that is likely to successfully promote compliance with IHL norms without inadvertently legitimizing exclusionary views (e.g. against people of different faiths, women, LGBTIQ+ individuals, and ethnic minorities).<sup>95</sup> In particular, the study provides a useful mapping template to help humanitarian actors – to the extent that their mandates, priorities and capacities allow – to carefully analyze which religious leaders might hold sway in a particular conflict situation and their level of interest in humanitarian matters in order to determine what type and level of engagement might be most appropriate in that context.<sup>96</sup>

Having engaged religious leaders and scholars to explore the convergences between religion and IHL, the ICRC's former lead for its Religion and Humanitarian Principles project,<sup>97</sup> Andrew Bartles-Smith, convincingly argues that religion plays an important role in shaping the identity and moral reasoning of many combatants and that it can be harnessed to promote IHL more effectively.<sup>98</sup> Religious institutions are often still functioning even in parts of a country where the power of the State is weak or lacks reach,<sup>99</sup> thereby providing an important possible source of regulation even in the absence of formal power. Religions often encourage adherents to internalize norms into their personal morality which are, in turn, enforced by omniscient divinity – or earthly disapproval or punishment from co-believers (or all of the above). This internalized morality can provide an important check against the malicious-type violations mentioned earlier, independent of the law or legal enforcement mechanisms.<sup>100</sup> Religions can also help their adherents to prevent negligent-type violations by helping them to build up their psychological resources

93 Andrew Bartles-Smith, "Religion and International Humanitarian Law", *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, p. 1731.

94 Ioana Cismas *et al.*, *Considerations and Guidance on the Humanitarian Engagement with Religious Leaders*, University of York, 2023, pp. 47–48.

95 *Ibid.*

96 *Ibid.*, pp. 54–59.

97 ICRC, "Introduction", *Religion and Humanitarian Principles Blog*, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/about/>.

98 A. Bartles-Smith, above note 93.

99 *Ibid.*, p. 1742.

100 *Ibid.*, pp. 1743–1744.



with tools such as meditation, which have been shown to focus the mind, allowing for greater discernment in times of stress.<sup>101</sup>

On balance, given the scepticism that many around the world may have towards norms perceived to have been developed in the global North, expressly linking the law to religion and similar cultural practices in this way can help IHL to become accepted on the basis that the norms which underpin it are, in many cases, home-grown and not foreign imports.<sup>102</sup> Although there are important differences between religions, when it comes to the norms of restraint in the conduct of armed conflict, there are many convergences between different religions and IHL – both in terms of general principles and sometimes even with regard to specific rules.<sup>103</sup> As for the substance of these connections, much has been written on the influence of the Christian just war tradition on international law which I shall not repeat here.<sup>104</sup> In addition, there has been a great deal of work done over nearly three decades on the subject of Islam and IHL.<sup>105</sup> Of particular note are the contributions of ICRC legal adviser Ahmed Al-Dawoody, whose writings compare historic and modern interpretations of the *jus in bello* in Islamic law and jurisprudence with IHL<sup>106</sup> – and who has convened meetings of expert scholars on the subject.<sup>107</sup> Moreover, since 2020, the ICRC has begun collecting and publishing contributions from scholars and practitioners on its *Religion and Humanitarian Principles Blog*, which has uncovered a great deal of overlap between IHL and norms found within religions such as Christianity, Islam, Hinduism, Buddhism and Judaism, along with other traditional practices worldwide.<sup>108</sup>

## Ideology, politics and similar world-views

Like more traditional sources of regulation, such as religion and martial codes of conduct, some facets of ideology can also support restraint in armed conflict. For example, Francisco Sanín and Elisabeth Wood suggest that NSAGs whose ideological commitments require them to show that they can govern better than the State will socialize their fighters to behave with restraint towards civilians.<sup>109</sup> Later work

101 *Ibid.*, p. 1739.

102 *Ibid.*, p. 1760.

103 *Ibid.*, p. 1733.

104 For an annotated bibliography of sources in the Christian just war tradition, see Michael Farrell, *Modern Just War Theory: A Guide to Research*, Scarecrow Press, Lanham, MD, 2013.

105 Ahmed Al-Dawoody, “International Humanitarian Law and Islamic Law: A Principled and Inclusive Dialogue”, *Humanitarian Law and Policy Blog*, 25 July 2024, available at: <https://blogs.icrc.org/law-and-policy/2024/07/25/international-humanitarian-law-and-islamic-law-a-principled-and-inclusive-dialogue/>.

106 Ahmed Al-Dawoody, “Islamic Law and International Humanitarian Law: An Introduction to the Main Principles”, *International Review of the Red Cross*, Vol. 99, No. 906, 2017; Ahmed Al-Dawoody, “Islamic Laws of War”, in S. C. Duckett White (ed.), above note 53.

107 ICRC, *IHL and Islamic Law in Contemporary Armed Conflicts: Experts’ Workshop*, November 2019.

108 ICRC, above note 97.

109 Francisco Gutiérrez-Sanín and Elisabeth Jean Wood, “Ideology in Civil War: Instrumental Adoption and Beyond”, *Journal of Peace Research*, Vol. 51, No. 2, 2014.

by Amelia Hoover Green provides convincing empirical support for the claim that political education plays an important role in the effective socialization of norms of restraint, particularly for NSAGs.<sup>110</sup> Moreover, in a 2022 study, Andrew Bell and colleagues found political affiliation to be a good predictor of whether US officer cadets would support measures to improve the protection of civilians in armed conflict – even when controlling for the moderating effects of their training.<sup>111</sup> Also, Parks, despite his viewing with scepticism the use of appeals to religion, chivalry or universality as a basis for explaining the value of the law of war to troops, has nevertheless couched IHL compliance in terms of support for an ideological position:

In lectures, I do not “lead with my chin” by rationalizing the law of war through such statements [about religion, chivalry or universality]. If asked, I argue that we follow the law of war because (a) we are a nation that believes in the rule of law, (b) . . . adherence to the rule of law is what our respective nations and our citizens expect of us, even if our enemies engage in flagrant violations, and (c) the law of war when properly understood is consistent with military efficiency and professionalism.<sup>112</sup>

Ideologies which place stock in respect for the rule of law, such as liberalism<sup>113</sup> and constitutionalism,<sup>114</sup> historically have formed a core part of the United States’ political and rhetorical traditions shared by the major political parties<sup>115</sup> (and, I would suggest, other liberal democracies as well). Consequently, by invoking the rule of law in such contexts, practitioners can rally support for IHL, even by members of the armed forces who otherwise might hold different political affiliations or views. It should be noted, however, that liberalism and constitutionalism are not the only ideologies which rely on the rule of law to construct regime legitimacy<sup>116</sup> – indeed, it is possible that the concept can be used with good effect to promote adherence to IHL in other ideological contexts as well.

However, as with religion, IHL practitioners – particularly those within the Movement – should take great care before expressly tying ideological concepts (even commonly held ones) to IHL, in order to avoid inadvertently placing IHL at the centre of a political or ideological controversy or allowing one political faction to claim ownership over this body of law. In this vein, the Commonwealth Parliamentary Association’s IHL handbook helpfully encourages parliamentarians to

110 Amelia Hoover Green, “Armed Group Institutions and Combatant Socialization: Evidence from El Salvador”, *Journal of Peace Research*, Vol. 54, No. 5, 2017.

111 Andrew M. Bell, Thomas Gift and Jonathan Montan, “The Moral Foundations of Restraint: Partisanship, Military Training, and Norms of Civilian Protection”, *Journal of Peace Research*, Vol. 59, No. 5, 2022.

112 W. Hays Parks, above note 91, pp. 14–15.

113 Albert Venn Dicey, *The Law of the Constitution*, ed. J.W.F. Allison, The Oxford Edition of Dicey, Vol. 1, Oxford University Press, Oxford, 2013.

114 T. R. S. Allan, *Constitutional Justice*, Oxford University Press, Oxford, 2003.

115 Richard H. Fallon Jr., “‘The Rule of Law’ as a Concept in Constitutional Discourse”, *Columbia Law Review*, Vol. 97, No. 1, 1997, p. 3.

116 See, for example, Susan H. Whiting, “Authoritarian ‘Rule of Law’ and Regime Legitimacy”, *Comparative Political Studies*, Vol. 50, No. 14, 2017.

contribute to more informed and less-politicised discourse on IHL issues, thereby upholding and reinforcing the neutral character of IHL as a body of law. By working across parties and approaching IHL issues on an all-party basis, Parliamentarians can support a united approach to IHL.<sup>117</sup>

As with religion, the norms of IHL may indeed appear in political and ideological traditions worldwide, but it would be unwise to suggest that they only appear in one particular ideology or that one ideology has a greater claim to be aligned with IHL than another.

## Limitations and important points to keep in mind

While it is indeed a worthwhile endeavour to find correspondences between IHL and similar norms in ethics and codes for the armed forces, cultural practices, religion and certain world-views – and then to incorporate them into IHL dissemination activities, as appropriate, according to the local context – it is vital that practitioners are honest and effectively communicate the limitations of such work. This includes engaging with Park's critique, shared by other military legal advisers such as R. Scott Adams, that such extra-legal reasons for following the law are best left out of lessons on IHL.<sup>118</sup> In this regard, there are several related points which practitioners should heed if they do wish to widen IHL dissemination to include these norms.

Firstly, it should be recalled that there is no one motivation for following the law that will resonate with everyone. The point of raising martial codes of conduct, ethics, religion or ideology is not necessarily to say that such factors should be *the main reason* for following the law. Rather, it is to help answer the question: where does the law come from, and how does it align with the audience's existing values? In any given local context, what might work in an IHL dissemination programme for the general public (e.g. an appeal to religion) might not be as appropriate or effective for the armed forces (compared to, say, an appeal to a martial code of conduct) or vice versa – it is important know your audience and what is relevant to them.<sup>119</sup> Moreover, ideally, the practitioner would emphasize the universality of the main IHL principles before raising any analogues found in codes for the armed forces, cultural practices, religion, etc.

Secondly, IHL practitioners should consider whether they are the best messengers when it comes to relaying IHL norms in extra-legal terms. For example, without a deep understanding of a particular religion or culture, an instructor may soon find themselves out of their depth if trainees wish to have a lengthy discussion about such matters. Moreover, IHL practitioners in the Movement may risk breaching the Fundamental Principles if they do not take care in their approach.

117 Sarah Williams, *International Humanitarian Law: A Handbook for Commonwealth Parliamentarians*, Commonwealth Parliamentary Association, London, 2022, p. 5.

118 R. Scott Adams, "W. Hays Parks and the Law of War", *JAG Reporter*, 26 March 2020, available at: [www.jagreporter.af.mil/Post/Article-View-Post/Article/2536400/w-hays-parks-and-the-law-of-war/](http://www.jagreporter.af.mil/Post/Article-View-Post/Article/2536400/w-hays-parks-and-the-law-of-war/).

119 W. Hays Parks, above note 5, p. 9; W. Hays Parks, above note 91, pp. 22–23.

Consequently, in some cases it may be to better engage with others who do have such expertise, such as religious leaders, influential veterans or ethics instructors, to determine whether *they* are able to contribute their knowledge and authority in order to encourage greater adherence to IHL norms.

Thirdly, it is important to be honest about historical accounts (or as honest as one is able to be given the available evidence). Mythologized accounts of historical events can provide very engaging case studies for how members of the armed forces ought to fight, but it is important to be upfront with audiences (especially military audiences) about what was actually practiced in the past. This is not to say that mythologies<sup>120</sup> or mythologized histories should not be used to help teach IHL – indeed, they can widen the appeal of IHL lessons and make otherwise controversial topics easier to explore than case studies based on recent events. Rather, I mean to say that, unless it is obvious, the practitioner should clarify when an account is – or is not – historically accurate. To do otherwise could invite cynical rebuke. Real humans should not be held to superhuman standards. Moreover, as VanLandingham has rightly pointed out, historic ways of warfare were not always very restrained. Therefore, one must not let nostalgia cloud one's judgement in such matters.

Fourthly, there can be a tendency when engaging in this sort of interdisciplinary work to conflate norms which are rooted in religion, culture or ethics with IHL. This should be resisted since IHL is a functioning body of law with its own history, logic, sources of legitimacy, legislative processes and means of adjudication. Cultural and other concepts may help to *inform* the reasons why a person may be inclined to follow the law, but one should never confuse such concepts for what the law *actually* says.<sup>121</sup> Consequently, it is particularly important for professionals – whether soldiers, lawyers, ethicists or religious figures – to be clear about when they are referring to religion, culture, ethics, etc. versus when they are referring to the law. Doing so should allow for more pluralistic understandings of the value of IHL's underlying norms without undermining the legal-positivist approach that allows the law to be effectively adjudicated in international and domestic legal systems. A combatant may be denounced for breaking a martial code of conduct, but they are imprisoned based on a positivist/doctrinal understanding of a well-defined war crime.

Fifthly, while they may be similar, it is important to keep in mind that certain norms of restraint may vary from one culture to another. For example, imagine that there are two nations – each has cultural practices which require captured fighters to be treated humanely, and both cultures agree that torture is prohibited. However, one nation has an ancient code that allowed for prisoners of war to be forced to serve in

120 I would be remiss if I did not mention the American Red Cross's growing body of videos which connect IHL to modern "mythologies": American Red Cross, "Pop Culture and IHL," *YouTube*, available at: <https://tinyurl.com/2bj3tf3v>.

121 As an example, the "doctrine of double effect" is a term that is widely used in the just war tradition which indeed may have influenced the development of proportionality in IHL, but – crucially – it is not formally part of the law, and using it as part of an argument in a trial would be ill-advised. For more on this doctrine, see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Examples*, Basic Books, New York, 2000, pp. 151–154.

the captor's army, and the other does not. Relying solely on cultural practices without reference back to IHL could lead to a conceptual slide towards moral relativism – in this case, absent a fixed frame of reference, it becomes more difficult to articulate why it is wrong to make detainees serve in the captor's army. *Only by referring back to IHL can a common standard be re-established.* Consequently, in practice, it is important to promote only those norms which meet or exceed the standard of IHL.<sup>122</sup>

Sixthly, it is also important to try as far as possible to maintain a common vocabulary within the community of LOAC/IHL practitioners (both military and civilian). This is to encourage dialogue and a common understanding of standards across militaries and across disciplines. It is a challenge at the best of times to limit ambiguity in IHL texts, especially those which have multiple authoritative languages. On the one hand, IHL could benefit from basing its claim to universality on pluralistic understandings of its underlying norms, allowing for some variations in interpretation.<sup>123</sup> However, such pluralism must not provide fertile soil for relativism or nihilism to take root.

Finally, as Prescott has astutely pointed out, if service personnel do successfully internalize IHL norms and behave accordingly, but the chain of command fails to support them, the negative psychological impact (and resulting cynicism) could be very pronounced indeed.<sup>124</sup> In some national contexts, having support from senior commanders may be sufficient to inculcate a receptiveness to IHL instruction down the entire chain. However, as Bell and Terry reveal, in other contexts, buy-in by non-commissioned officers (or a lack thereof) may prove to be more influential in determining support for IHL among the rank and file.<sup>125</sup> Consequently, it is important to understand where in the command structure there might be resistance to IHL and to consider interventions that might appeal to the unique characteristics of that part of the hierarchy.

## Implications for IHL integration and dissemination

With the above points in mind, there are several ways that IHL practitioners can usefully incorporate other normative frameworks into their integration and dissemination programmes. Civilian lawyers who are new to the field of IHL do not necessarily need to spend time with the armed forces in order to appreciate military perspectives on IHL. However, at a minimum, it can be useful for such professionals to dedicate some time as part of their continuing education to study or engage with

122 In addition, particularly when speaking to military audiences, it is important to be clear when a norm exceeds what is required by the law.

123 See J. Prescott, above note 12, p. 30. For an exploration on the interaction between universalism and pluralism, see Henry Richardson and Melissa Williams (eds), *Moral Universalism and Pluralism*, NYU Press, New York, 2009.

124 J. Prescott, above note 12, p. 111. If higher echelons of command show a lack of interest in IHL norms or actively undermine them, it can reinforce a negative “barracks culture” as described in the text above at notes 31–32.

125 Andrew M. Bell and Fiona Terry, “Combatant Rank and Socialization to Norms of Restraint: Examining the Australian and Philippine Armies”, *International Interactions*, Vol. 47, No. 5, 2021.

the literature on norms of restraint rooted in military ethics, culture, religion and ideology.<sup>126</sup> Indeed, in a similar way, civilian mental health professionals are finding it useful to understand the ways in which members of the armed forces create meaning and a shared sense of identity – *not necessarily to refute or reinforce those ideas*, but to better understand where their clients are coming from.<sup>127</sup> Similarly, IHL professionals may choose to steer clear of religion, “warrior” codes, military ethics or ideology, but it is nevertheless important to understand the logic of such frameworks in order to better engage those for whom they are the main motivation for upholding IHL.

For those who would find it useful and worthwhile to engage with such subjects in the spirit of “bringing IHL home”,<sup>128</sup> one can seek out the different normative frameworks which support IHL from within one’s own cultural, religious and martial traditions and then incorporate them in an appropriate way into relevant IHL documents at the national level. This can include military manuals,<sup>129</sup> voluntary reports on IHL implementation<sup>130</sup> and doctrine, among others. The foreword can often provide an appropriate place within the text to show how such norms support IHL without incurring the risk that readers may conflate specific IHL rules with concepts they might come across in ethics or morality.

Prescott rightly cautions that “[m]erely linking IHL principles with official military values in doctrinal documents is not sufficient to create the education and training products and programs necessary to effectively instruct soldiers in either”.<sup>131</sup> Nevertheless, updating doctrine can provide a useful first step, as such documentation often provides a touchstone for the further development of educational materials for the armed forces. For instance, in order to prevent recurrences of the abuses detailed within its pages, the Brereton Report recommends that “[e]ducating personnel about the causes of war crimes, so that they understand how such crimes can come to be seen as almost required and therefore justified, is vital, as is

126 This exercise could be broad or more narrowly tailored to a specific deployment. For example, Prescott describes the experience of an IHL expert from Beyond Peace who conducted some research on cultural and military norms of restraint within the Malian armed forces before designing an IHL training programme for them which garnered some positive results. J. Prescott, above note 12, p. 88.

127 K. Hunter, above note 60.

128 Despite the otherwise difficult geopolitical climate, there is growing support for work that helps to bed down IHL in domestic contexts. Adopted in October 2024, Resolution 1 of the 34th International Conference of the Red Cross and Red Crescent expressly acknowledges “that the law of armed conflict has deep historical roots in different religions and cultural traditions worldwide” (preamble para. 4) and encourages National Red Cross and Red Crescent Societies and States “to intensify their efforts to implement Resolution 1 of the 33rd International Conference” (op. para 3, referring to 33rd International Conference, above note 16). 34th International Conference, Res. 1, “Building a Universal Culture of Compliance with International Humanitarian Law”, 2024.

129 For example, the UK LOAC manual includes a short section on historical codes of conduct: UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, 2004, pp. 6–7.

130 For example, the second edition of the UK’s Voluntary Report contains a section in the introduction which expressly situates the roots of IHL in several historic codes found worldwide, including two that are particularly relevant for British and Irish audiences: the Irish-Pictish Law of Adomnán and the English Articles of War. UK Government, *Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level*, 2nd ed., October 2024, p. 14.

131 J. Prescott, above note 12, p. 13.



providing them with the moral and ethical framework to resist”.<sup>132</sup> To that end, the Australian Defence Force published a new doctrine on military ethics in 2021.<sup>133</sup> This doctrine is an accessible introduction to the field of military ethics for all ranks, and it helpfully distinguishes between ethical norms and legal requirements in order to avoid conflation of the two. However, while it understandably warns service members against subjectivism and relativism,<sup>134</sup> the new doctrine treats the Western just war tradition as axiomatic, and perhaps could benefit from a section that refers to the existence of other martial codes of conduct or ethical frameworks (such as Aboriginal customs or Islamic laws of war), if only to acknowledge how other cultures have wrestled with the subject. In addition to this overarching ethics doctrine, its associated doctrine on “character in the profession of arms” encourages the development of the sort of virtues that might guard against negligence-type violations: for example, “staying on task”, “focused attention” and “avoiding distractions” as elements of “self-control”.<sup>135</sup>

As another straightforward step – while bearing in mind the caveats mentioned above – IHL practitioners could seek out opportunities to connect IHL with its ethical and cultural roots in dissemination materials and lesson plans. For example, to mark the 75th anniversary of the 1949 Geneva Conventions, the ICRC collated some new and existing resources which highlight how IHL is reflected in different codes and practices worldwide for its online casebook, *How Does Law Protect in War?*<sup>136</sup> These may be readily incorporated into existing dissemination materials for National Red Cross and Red Crescent Societies and others outside the Movement, and doing so may not only help to engender an appreciation for IHL by the armed forces but may also help to improve understanding and acceptance of IHL by the public at large.

As an additional step, IHL practitioners, whether military or civilian, may find it helpful to establish contacts with relevant individuals and institutions to propose joint events, research projects or exchange days. These could include the ethics or “character and leadership” departments of military academies and staff colleges (in close consultation with their respective law departments or judge-advocates). During such joint events, projects or informal discussions, IHL practitioners can create space for ethicists to draw connections between warrior codes or military ethics and IHL while stepping in as needed to maintain the boundary between ethics and law in order to avoid conflation between the two normative frameworks. Moreover, joint briefing (or debriefing) of military exercises by both IHL and military ethics instructors could provide another avenue for further engagement.

Finally, an often overlooked but potentially helpful ally in promoting IHL within the armed forces is the chaplaincy (or other similar units for religious

132 Brereton Report, above note 23, p. 325.

133 Australian Defence Force, *Military Ethics*, 1st ed., ADF-P-0, 2021.

134 *Ibid.*, p. 19.

135 Australian Defence Force, *Character in the Profession of Arms*, 1st ed., ADF-P-0, 2023.

136 ICRC, “The Geneva Conventions at 75: A Common Heritage of Humanity”, *How Does Law Protect in War?*, available at: <https://casebook.icrc.org/highlight/geneva-conventions-75-common-heritage-humanity>.



personnel). Article 47 of Geneva Convention I and Article 48 of Geneva Convention II cover how States must disseminate the contents of these respective treaties. These articles expressly mention chaplains as a key audience for such instruction. Ostensibly, chaplains were singled out in this way so that they might understand their own protections and responsibilities under each convention;<sup>137</sup> consequently, chaplains should already have a baseline level of knowledge of IHL at least as it relates to wounded, sick and shipwrecked members of the armed forces and those who care for them. As Bartles-Smith raises in this issue of the *Review*, wider engagement between IHL practitioners and military chaplains (and similar spiritual leaders in NSAGs) could help to improve acceptance of IHL writ large. This is because, among other things, chaplains are embedded with the military (but crucially are not part of the chain of command), they are trusted and valued for the pastoral care they provide, and they are credible because they deploy with the armed forces, sometimes all the way to the front lines. Moreover, they are often knowledgeable about the way in which their religion understands and frames issues of morality and ethics in armed conflict.<sup>138</sup> For their part, IHL practitioners can engage with the chaplaincy to further chaplains' knowledge of the law through trainings and events. Another practical way that IHL practitioners can involve chaplains is by reviewing materials developed by the chaplaincy for members of the armed forces to see if there are any convergences with IHL that could be usefully highlighted (or inserted, where appropriate).<sup>139</sup>

In this way, while always being clear about what the law says, IHL practitioners can reinforce the law by working with other experts who may know more about how members of the armed forces see themselves and make sense of their moral universe.

## Conclusions

There may be one law, but the reasons for adhering to it are multifaceted. It is my hope that the present contribution, when read in conjunction with the ICRC's *Roots of Restraint in War* study,<sup>140</sup> helps to outline the contours of the ways in which certain extra-legal norms underpin the motivations for members of the armed forces to uphold IHL, and offers some modest but practical ways for IHL practitioners to incorporate these norms into their work. The law rightly establishes the floor for conduct that is acceptable in armed conflict, but by relying on existing sources

137 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, pp. 348–349.

138 Andrew Bartles-Smith, "Military Chaplains and Equivalent Religious Personnel under International Humanitarian Law", *International Review of the Red Cross*, Vol. 107, No. 928, 2025.

139 See, for example, Hyein Lee, "Between Common Humanity and Partiality: The Chogyé Buddhist Chaplaincy Manual of the South Korean Military and Its Relevance to International Humanitarian Law", *Contemporary Buddhism*, Vol. 22, No. 1–2, 2021.

140 F. Terry and B. McQuinn, above note 3.

and ways of making meaning, including in martial codes of conduct and modern notions of honour, military ethics, and other cultural, religious and ideological foundations of morality in war, IHL practitioners can ensure that the law resonates both with the armed forces as a whole and with troops at an individual level, in order to prevent both intent-type and negligent-type IHL violations. There are some important caveats which should be kept in mind when undertaking this work, however, and IHL training and integration activities that do take into account these other normative frameworks are not silver bullets which guarantee that one's audience will internalize IHL. Nevertheless, by finding and using such points of connection, IHL practitioners can make their dissemination and integration interventions more resilient and increase the likelihood that service personnel will view upholding IHL as being part of who they are.