

1976

The Law of War and Personnel Infrastructure: A Proposed Inquiry into Maximizing the Contributions of Nonlawyer Officers and of Military Instruction in Support of the Law of War

Walter L. Williams Jr.

Repository Citation

Williams, Walter L. Jr., "The Law of War and Personnel Infrastructure: A Proposed Inquiry into Maximizing the Contributions of Nonlawyer Officers and of Military Instruction in Support of the Law of War" (1976). *Faculty Publications*. 757.
<https://scholarship.law.wm.edu/facpubs/757>

**THE LAW OF WAR
AND "PERSONNEL INFRASTRUCTURE" :**

**A Proposed Inquiry into Maximizing
the Contributions of Nonlawyer Officers
and of Military Instruction
In Support of the Law of War**

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)*

* B.A., M.A., LL.B., University of Southern California; LL.M., J.S.D., Yale University. Associate Professor of Law, College of William and Mary. Major, Judge Advocate General's Corps, U.S. Army Reserve.

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

I. — INTRODUCTION

The crucial importance to the world community of establishing and maintaining security through legal regulation of armed coercion requires no emphasis to the readers of this Revue. They are acutely aware that achieving international peace and security is the continuing, primary challenge for humanity. Until in international society there exists minimum order — defined as freedom both from severe deprivations by unauthorized coercion and from the fear thereof — mankind's yearnings for an optimum public order promoting human dignity through the greatest production and widest sharing of all human values can never be satisfied. Unfortunately, although recent developments appear to evidence an increasingly widespread desire among Governments to reduce tensions that can lead to war, we may expect a continuing series of armed conflicts for the foreseeable future; armed conflicts to which the law of war will be applicable. Thus, national military establishments must continue their responsible, effective participation in the development of international law — in that process of decision by which authoritative, controlling standards of conduct pertaining to armed conflict are prescribed, applied, appraised and terminated in light of the policies sought to be achieved by the law of war.

This article concerns two subjects intimately related to the participation of military establishments in the development and maintenance of the law of war; subjects sadly neglected until recently. They are : (a) the role of the nonlawyer officer in the development of the law of war, and (b) the methods by which that law can most effectively be taught in the Military Services. In 1973, this Revue (1) provided a signal service in drawing attention to these subjects by publishing the papers delivered at the Seminar on the Teaching of Humanitarian Law in Military Institutions, at San Remo, Italy, 5-18 November 1972, which was organized by the International Institute of Humanitarian Law. Here, the writer seeks in a very modest way to advance the dialogue, first, by proposing and tentatively applying a framework for inquiry into the multifaceted role of the nonlawyer military officer in the development and maintenance of the law of war. Secondly, the writer proposes a policy-oriented, contextual system for appraisal and improvement of methods of teaching the law of war within national military establishments, drawing upon illustrative observations of activities within United States Military Services. At the outset, one emphasizes that this article is offered as prelude to intensive transnational discussion, as invitation to comparative inquiry. As such, the views expressed here are most tentative and impressionistic; reflections upon potentialities, upon maximizing outcomes in support of the law of war. As regards these subjects, others will, one hopes, contribute to a continuing dialogue in this Revue concerning both theory and practice in various national military establishments and the improvements that are possible under the circumstances.

II. — THE ROLE OF THE NONLAWYER OFFICER IN THE DEVELOPMENT OF THE LAW OF WAR

The world community is, and for the foreseeable future will continue to be, based on a decentralized system of States. In this situation, States shall continue to play the dominant role in the development of the law of war. In turn, if not conclusively determinative of national posture, surely the conduct and demands of the military establishment greatly affect the State's role in the development of the law of war. In turn, within the military establishment, the nonlawyer officers control major bases of power : a high degree of authoritative control over military personnel and weaponry, and a high level of expertise in military skills. Thus, after this successive "piercing of corporate veils", one may say quite realistically that nonlawyer officers, as individuals and as a class, ultimately exercise significant impact upon the development of the law of war (Hereafter, for convenience, nonlawyer officers generally will be referred to simply as "officers").

In discussing more specifically the roles of officers in the development of the law of war, we might first consider their roles in performing various functions in the decision process by which the law of war is established and applied (2) :

a. *Intelligence gathering.*

This functions deals with gathering information about the past and present and making estimates of the future for the guidance of decisions about the law of war.

The officer has had the battlefield experience. He can best recite the past and present military practices in various combat situations.

He can best provide information regarding significant battlefield environmental factors, and also, personnel attitudes existing under various combat conditions. Such information provides an important basis for prescription of new standards in the law of war and for the most appropriate application of current law. Further, the officer can provide valuable feedback on the present adherence to, and efficacy of, the law of war, which can aid in the tasks of reinforcing or terminating current rules.

b. *Recommendation.*

The officer who combines expertise in military skills, experience in combat situations, and a working knowledge of the law of war is in an excellent position to prepare and advocate specific recommendations regarding both the prescription of new provisions of law and the application of present standards. As those who have major responsibility for achieving assigned military missions within the ambit of that which is permitted by the law of war, recommendations about the development of the law are very much the business of officers.

c. *Prescription.*

Today, civilian officials generally act for the State in the formal agreement process of prescribing new standards regulating conduct during armed conflict, with military officials actively engaging in the aforementioned intelligence gathering and recommending functions that are so vital to appropriate prescription of law. However, we should not overlook the role of officers in the development of customary practices — the day-to-day organized actions in implementation of the law of war that fill the interstices of formal prescription. Those practices, embodied in such documents as regulations, directives and unit history reports (3), may form the basis for official national doctrine and, in turn, contribute to the development of customary international law supplementing conventional law.

d. *Invocation.*

This function deals with calling the law of war into play; initiating the application of law in particular instances. The officer is immediately present on the battlefield scene of suspected violations of the law of war. He frequently is the one who decides whether to make an official report of a suspected or alleged offense, or who prefers charges against alleged violators. Officers have the principal investigatory responsibilities and decide whether to convene courts-martial, or to initiate various administrative actions concerning alleged violators. Quite clearly, without responsible performance of this function by officers there would be grave risk of ineffective application of the law of war.

e. *Application.*

This function concerns the characterization of particular conduct in terms of conformity or nonconformity with prescriptions of the law of war; the determination of whether an individual has violated the law. Here, officers play many vital roles. In the operation of the military judicial system, officers may act as court members who render decision, or as convening authorities who decide whether court convictions or sentences stand as rendered by the courts-martial. Officers perform similar decision-making roles in various personnel administrative actions arising out of claims of violation of the law of war. Also, and perhaps more importantly, in a very real sense the officer on the battlefield is the immediate decision-maker about the lawfulness of his own conduct; that which he orders, and that of his subordinates.

Instruction on the Law of War

In the confusion of battle, and with often limited ability of superior authorities to receive complete after-action information from other sources, the battlefield commander may in many instances be subject to at most a cursory review of his decisions regarding application of the law of war.

f. *Appraisal.*

This function concerns the consideration of the efficacy of the law of war as applied and is closely linked with the intelligence gathering and recommendation functions. Officers, in reviewing outcomes of combat operations in which they participated or of which they have complete reports, can best assess consequences of adherence or nonadherence to the law of war under particular circumstances. They are in the best position to provide "feedback" on the efficacy of the law of war.

g. *Termination.*

The civilian officials who act in the formal process of prescription normally also act for the State in formal termination of obsolete prescriptions, in whole or in part, with military officials actively engaged in the functions of appraisal, intelligence gathering and recommendation that bear heavily on termination decisions. However, one should note that under the pressures of combat situations general recognition by officers that prescriptions are indeed obsolete or unworkable in particular contexts may result in customary practices that, operationally, effect termination well before there is termination by formal agreement.

Turning from this brief commentary on the roles of officers in the functions of the process of decision concerning the law of war, we might consider their roles in the development of the law of war from a different, yet related viewpoint. Here, we consider the roles played by officers in the various phases of the sanctioning process (4) by which military personnel are induced to adhere to the standards of the law of war.

a. *Prevention phase.*

The phase concerns long-term measures and activities seeking to establish perspectives in military personnel favoring adherence to the law of war and, thus, to reduce the probability of violations at the time of combat. Officers, by their formal instruction and daily training of other officer and enlisted personnel, can play a vital role in developing "law-abiding" habits in military personnel. The officer's positions of authority and respect in the military society are powerful supports to indoctrination in the value of adhering to the law of war.

b. *Deterrence phase.*

This phase concerns short-run actions to deter violations of the law of war. Officers play major roles, here. As battlefield commanders, they can provide warnings and guidance prior to combat, e.g., as part of mission orders. During combat, officers' close control over personnel (e.g., orders concerning such matters as when to open fire, the types of weaponry to use, where to direct fire, the selection of targets, the intensity of fire, when to halt fire, and the treatment and processing of prisoners of war or detained civilians), and their opportunity for battlefield surveillance, can be used to deter violations of the law of war. The knowledge of military personnel that those same officers exercise substantial authority in the invoking and application of the law of war also may act as a deterrent to such violations.

c. *Restoration phase.*

This phase concerns action taken to terminate violations of the law of war. When a violation occurs, despite best efforts at prevention and deterrence, an important goal is the rapid termination of the course of unlawful conduct, both to limit the harmful effects of the particular violation and to avoid possible inducement to commit future violations. For much the same reasons that enable officers to perform significant deterrent roles, they are able to act rapidly to terminate unlawful conduct and to insure continued combat operations by individuals and units in accord with the law of war.

d. *Rehabilitation and Reconstruction phases.*

Officers are empowered to decide what appropriate rehabilitative action is to be taken with regard to those determined administratively or judicially to have violated the law of war. Officers supervise rehabilitative action seeking the correction of attitudes of military personnel in confinement facilities and hospitals, and in continuing counseling sessions after specialized treatment. Similarly, in cases of major personality disorders leading to violations of the law of war, skilled officer personnel (doctors, chaplains, etc.) may engage in reconstruction action — efforts to effect fundamental alterations of personality that will enable the military member to perform properly in combat. In similar vein, group rehabilitative or reconstructive actions may be taken by officers with regard to an entire military unit (e.g., a platoon or company) that has displayed past proclivity for group departure from the requirements of the law of war.

Instruction on the Law of War

In summary, officers can, and should, play crucial roles in the development of the law of war. Quite obviously, to the extent that officers lack a working knowledge of that law, or to the extent that they do not recognize their vital roles, or to the extent that they do not greatly value adherence to the law of war, to that same extent shall the interests of their military establishment, their State, and the world community suffer. Indeed, one does not overreach in asserting that it is the Officer Corps that determine for the State whether the law of war effectively regulates the conduct of its military personnel. Thus, based upon the performance of the officers, outcomes for the development of the law of war may be either most beneficial, or most unfavorable.

General questions suggested by the above discussion, and that might be answered in contributions to this Revue, and at a future International Congress of the "Société Internationale de Droit pénal Militaire et de Droit de la Guerre", include :

- a. To what extent, and how well, are officers in the various national military establishments now performing the roles discussed above ?
- b. What actions have the various national military establishments taken to encourage, assist, or require, as appropriate, performance by officers of the roles discussed above ?
- c. How institutionalized are these actions, e.g., what is the status of formal training, of regulations, of structures of consultation among lawyers and nonlawyer officers, and of officer postings that integrate lawyer officers in the performance of functions detailed above ?
- d. What actions could be reasonably advocated under the circumstances to improve the present status of performance by officers of the roles discussed above ?

III. — HOW THE LAW OF WAR CAN MOST EFFECTIVELY BE TAUGHT WITHIN THE MILITARY ESTABLISHMENT

Provisions of the principal multilateral agreements on the law of war require the parties to those agreements to provide instruction thereof to military personnel (5). At the outset, we should note that the ultimate goal of education about the law of war is not merely to insure that each military member has attained a requisite technical level of knowledge of the law. The ultimate goal is *adherence to the law of war under combat conditions*. Adequate knowledge of the law is, of course, an important precondition of

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

adherence. Equally important, however, is emphasis on establishing individual perspectives favoring adherence to the law; perspectives that will hold up under the stress of combat conditions.

The goal, then, as concerns the law of war, is to construct an effective "law-abiding" habit. We must recognize that the circumstances of armed conflict may make most difficult the favorable operation of this "law-abiding" habit. One seeks to secure lawful conduct of one's military personnel vis-a-vis enemy military personnel, and against civilians who in many instances are either overtly or covertly hostile. Military personnel function in crisis situations greatly threatening to their lives. Various means of effective external or internal control over conduct existing in non-crisis situations are lacking, or are severely hindered in their operation during combat. Additionally, severe ideological, racial or cultural antipathy may exist in a particular conflict, despite official efforts to play down those factors (And are they not sometimes indeed emphasized?). All of these adverse factors, combined with the normal frustrations and miserable conditions of war, can create grave risks of violations of the law of war, and require major emphasis on thorough indoctrination in the necessity of adherence to the law (6).

Adequate knowledge and motivation; that is the two-fold challenge for the process by which military personnel are to be educated in the law of war. What, then, might one desire in that process :

a. *The Teachers and the Students.*

National military establishments should provide instruction by lawyers, non-lawyer officers, and where appropriate, by other skilled military personnel and by civilian experts. Lawyer instruction is indispensable. The United States Army asserts that vital role by requiring that lawyer officers or other legally qualified personnel provide formal instruction whenever such personnel are available (7). Article 71 of *The Draft Additional Protocols to the Geneva Conventions of August 12, 1949* provides that, "The High Contracting Parties shall employ in their armed forces, in time of peace as in time of armed conflict, qualified legal advisers who shall advise military commanders on the application of the Conventions and the present Protocol and *who shall ensure that appropriate instruction be given to the armed forces*" (8). However, this emphasis on lawyers does not mean that they should bear sole instructional responsibility. Instruction by officers, not only by those of the combat branches, but by doctors, military police, chaplains, etc., would provide valuable inputs of battlefield experience and specialized skills. The United States Army has recognized the value of officer instruction by requiring that officers with command experience, preferably in combat, participate with lawyers in presenting formal instruction on the law of war (9). Further, under appropriate circumstances, such as in practical training in day-to-day operations, instruction by Noncommissioned

Instruction on the Law of War

Officers and Specialist enlisted personnel might be warranted. Also, instruction by civilian experts provides valuable supplementation to military instruction.

As regards the students, both officer and enlisted personnel, one cannot overemphasize the importance of beginning with well-trained, disciplined personnel. In referring to the goal of adherence to the law of war we are, in a sense, referring only to an aspect of a more comprehensive concern with the individual and group discipline of military personnel. Consider the applicability to the subject at hand of this comment on discipline in general :

“Discipline is an internal attitude that motivates men to conform to the informal and formal requirements of their leaders and the service. It is a state of mind that produces a readiness for willing and intelligent obedience and for proper conduct. Discipline insures stability under stress; it is prerequisite for predictable performance... Self-discipline is a voluntary compliance with directives and regulations of leaders whose requirements are established in the interests of the organization. Thus, self-discipline is a condition that exists when a man accepts organizational control over his behavior... The requirement for self-discipline is not peculiar to any member of the Army or to any level. Each soldier, regardless of rank or position, must be a “self-regulating” person who shares a common concept of proper conduct” (10).

To the extent that military establishments begin with personnel that have been properly screened for personality stability and intelligence as part of their entry into service, and to the extent that the officers have been well schooled in and effectively exercise military leadership in the training and motivation of their subordinates, to that same extent we may expect to have competent, confident, well-disciplined military personnel who will be receptive to instruction of the law of war. One might well say of adherence to the law of war that which has been said generally of the performance of subordinates in battle, “The ultimate measurement of effective leadership is the quality of performance demonstrated by the men, singly and as a unit” (11). This relationship of military leadership to the problem of adherence to the law of war no doubt underlies the decision of the United States Army to declare that the achievement of a practical working knowledge of the Hague and Geneva Conventions by each member of a command is a matter of command responsibility (12).

b. *The Educational Objectives.*

Earlier in this article, we touched on the educational objectives of instruction on the law of war, but it would be well to be more specific. The ultimate goal of the instruction is the adherence by military

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

personnel to the law of war. To achieve that goal, the outcome of the educational process must be that military personnel have both an adequate knowledge of the law of war and an adequate motivation to adhere to that law under combat conditions. By adequate knowledge of the law, we mean instruction in the text of the provisions of law; instruction and training in their application to commonly recurring battlefield situations, and instruction and training in the principal analytical and policy guidelines concerning the application of the law of war, to enable military personnel to determine proper courses of conduct in the multitude of battlefield situations that can not be anticipated in the classroom or in field exercises. Further, as more broadly conceived, instruction on the law of war also should cover such related subjects as the interrelationship of national military law and the law of war, and the nature of service regulations and other doctrine concerning implementation of various aspects of the law of war (13). As a matter of official policy, the United States Army has stated that instruction that is limited to informing military personnel of the wording of the provisions of the law of war is insufficient instruction. What is required is that each individual has "a practical working knowledge" of the law and of its impact on his future responsibilities (14).

As regards motivation (15), military establishments should provide instruction that causes the individual to recognize the value of adhering to the law of war; to appreciate, on the one hand, the beneficial consequences resulting for his country, the military, his unit, and himself, due to his adherence to the law and, on the other hand, the detrimental consequences resulting from his violation of that law. This instruction should identify adherence to the law of war as an important part of the individual's performance of military duties and as a significant indicator of his rectitude. We are speaking of nothing less than thorough indoctrination, the establishment of a strong "law-abiding" habit in the individual.

c. *Resources Committed to Support Education.*

National military establishments should commit resources in support of education on the law of war to the extent sufficient to accomplish the aforementioned educational objectives. For example, one cannot over-emphasize the necessity that the military establishments draw heavily upon their positions of authority and respect vis-a-vis their personnel by issuing explicit, strong statements concerning the importance of instruction in, and the adherence to, the law of war. The necessity of a working knowledge of the law and of adherence to the law needs to be reiterated in regulations, directives, training publications and instruction. Comments on this by officers, especially by more senior officers in their addresses to officer and enlisted students, will carry great weight. The

Instruction on the Law of War

United States Army's policy of making instruction on the law of war a matter of command responsibility (16) is a good example of the expression of significant official interest in proper instruction of personnel.

The necessary skilled personnel, including lawyers and nonlawyer officers, must be committed to the formal and informal programs of instruction on the law of war. Regulations that require the use of such personnel are a good beginning, but carrying out that requirement is what counts. There are many demands upon the time of lawyers and of nonlawyer officers, and the work and training schedule for personnel who are to receive instruction is demanding. Appropriate instruction in the law of war requires more than a one-time only two or three hour cursory survey of the law of war (17). Thus, only if commanders are persuaded of the value of sufficient instruction in the law of war can one hope for energetic response. This is, in part, a function of suitably enlightening commanders, but also, it is a matter of superior commanders informing their subordinate commanders in the course of inspections and other forms of observation or inquiry that they are concerned about the quantity and quality of instruction on the law of war (18).

Additionally, military establishments should arrange for the services of civilian experts as instructors or as advisors to military instructors, where appropriate. Examples of the latter might be experts in education techniques or in the behavioral sciences. Also, skilled personnel and funds are required for the preparation and publication of a variety of instructional material (19).

d. *Situations in Which Education Occurs.*

The education of the serviceman in the law of war should be seen as an on-going process continuing throughout his career. This view of education as a continuing process is related to the nature of the institutional features, the structures of situations in which education on the law of war has occurred. In the past, as with education in general, we have too often truncated instruction in the law of war, terminating it at some phase of formal classroom instruction. Formal instruction is essential, of course (20). However, official policy should require explicitly that formal instruction occur throughout military school systems and, also, that both formal instruction and informal, practical training occur throughout the military establishment in a continuing process of instruction on the law of war (21). This continuing education, this "bridging the gap" between the academic instruction in the classroom and the requirements for appropriate performance in combat, is essential. Future contributors to this *Revue* should be able to comment on the present status of practical instruction in the various national military establishments.

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

Adequate instruction in the law of war must be timely; it must contemplate not only the general, long-term needs of those instructed, but also, the immediate, more specific needs. Thus, if a crisis situation is imminent; if it is known or anticipated that a State's military forces will soon engage in a particular conflict situation, instruction in the law of war should be patterned upon that situation in order best to prepare personnel to perform their duties in accord with the law of war (22).

e. *Techniques of Education.*

Instructors in the law of war have at their command a wide variety of educational techniques. We should be eclectic in the use of these techniques, developing the appropriate "mix" best calculated to achieve educational goals for the particular individuals or group to be instructed. As regards formal instruction one may use lectures; discussion sessions; classroom simulations of battlefield problems, with role playing; reading assignments from military and civilian publications, and a broad range of audio-visual materials, such as movies, tapes and slides (23). Team teaching by lawyers and nonlawyer officers, now required by the United States Army (24), would appear to offer much instructional value. Instruction presented should be patterned upon the needs of those to be instructed (25). Use of correspondence courses and self-instructional texts on the law of war should be useful supplements to formal classroom instruction (26). These techniques conserve skilled instructor manpower and allow the student great flexibility in establishing a study schedule. However, as with formal instruction, there must be adequate appraisal of the rate and quality of the student's progress when these techniques are used. Merely placing materials in the student's hands gives no surety that he will perform the requisite study.

In addition to the foregoing techniques for formal instruction and self-instruction, military establishments should devise adequate techniques for practical, on-the-job training in the law of war that could be integrated into daily activities. One technique might be to devise and incorporate law of war problems in headquarters "paper exercises" and in actual field exercises (27). This technique not only will refresh the memory of military personnel concerning provisions of the law of war, but also, will help them to become skilled in applying the law, to learn by doing. Role playing in simulated battlefield situations should best prepare officers and enlisted personnel to make the right decisions in combat. As with formal instruction, practical training should be devised to meet the specialized needs of the particular group receiving the training. At the minimum, in any field training exercise in which the law of war would be pertinent in the actual combat setting, a reminder of pertinent provisions and their effect could be included in any operation order. One might best sum up this comprehensive, contextual approach to methodology in instruction

Instruction on the Law of War

on the law of war by quoting from the *Resolution* adopted by the abovementioned 1972 Seminar on the Teaching of Humanitarian Law in Military Institutions (28) :

"c. Methodology.

1. To a large extent, methodology must be determined by the level and content of the instruction, allowing for variations in different countries as to their system of training in the armed forces.
2. Methods of training in international humanitarian law include :
 - a) lectures;
 - b) discussion groups;
 - c) films;
 - d) videotapes;
 - e) slides;
 - f) posters;
 - g) illustrated booklets;
 - h) manuals;
 - i) tactical exercises without troops;
 - j) field exercises
 - k) examinations;
 - l) prize essays."

IV. — CONCLUSION

In bringing these brief observations to a close, we should again note that we play for large stakes in seeking maximum, responsible participation by nonlawyer officers in the development of the law of war, and in striving for the most effective instruction of military personnel in that law. If the military establishments cannot yet beat their swords into plowshares, they can, at least, exert reasonable effort to secure maximum adherence to the law of war. Thus, even in the fiery crucible of combat, we may hope to prevent unnecessary death, suffering, and destruction of other human values. That cause might well be advanced through inauguration in the *Revue* of a dialogue of information and opinion concerning the subjects of this article and; possibly, through intensive discussion at a future International Congress of the *Société*. If even a modicum of success in promoting the effectiveness of the law of war results from such efforts, the *Revue* and the *Société* will, indeed, have served "the interests of humanity and the ever progressive needs of civilization" (29).

FOOTNOTES

(1) XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, pp. 13-334 (1973).

(2) The analytical framework used here is borrowed from Lasswell, *The Decision Process : Seven Categories of Functional Analysis* (1956). For application to the decision process concerning the law of war, see McDougal and Feliciano, *Law and Minimum World Public Order : The Legal Regulation of International Coercion*, 50-56 (1961). European readers will find a discussion on this analytical framework in McDougal, "International Law, Power, and Policy : A Contemporary Conception", 82 *Recueil des Cours* 137 (1953).

(3) Other writers perceive the importance of using formal military regulations and directives as devices to instruct and guide military personnel to insure compliance with the established conventional and customary law of war. See, for example, Orecchio, "Instructions militaires : Conception générale, méthodes d'enseignement du droit humanitaire dans les institutions militaires et incorporation des règles humanitaires dans les instructions militaires", XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 241 (1973). However, in legal literature one finds little recognition of the dynamic impact on the continuing development of the law of war that may result from customary battlefield practices adopted by military establishments.

(4) For specification and discussion on the community sanctioning process, and its various stages, see McDougal and Feliciano, *supra* note 2, at 161-344.

(5) See, e.g., *Hague Convention No. IV Respecting the Laws and Customs of War on Land*, with *Annex of Regulations*, 18 October 1907; 36 Stat. 2277; T.S. No. 539, at Article 1 of the *Regulations*; *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949 (1955) 3 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 at Article 127. *The Draft Additional Protocols to the Geneva Conventions of August 12, 1949* (June, 1973) at Article 72, continues this requirement, but with the new provision requiring a report at intervals of four years on the instructional measures taken by the Parties to the Conventions. One should note that these Conventions and the Draft Protocols also require that the civilian population be instructed in the law of war. It would appear that very little is being done to satisfy the obligation of instruction of the citizenry. National military establishments might well consider offering at the local community level the services of military lawyers and of lawyer-non-lawyer officer teams to provide instruction to various community groups.

(6) Studies in the behavioral sciences, such as Maslow, *Motivation and Personality* (1964); Klausmeier and Ripple, *Learning and Human Abilities. Educational Psychology* (1971), and Bloom (ed.), *Taxonomy of Educational Objectives. The Classification of Educational Goals, Handbook I : Cognitive Domain and Handbook II : Affective Domain* (1956, 1964), might provide valuable assistance in devising techniques to establish perspectives strongly favoring adherence to the law of war.

(7) United States Army Regulation 350-216, *The Geneva Conventions of 1949 and Hague Convention No. IV of 1907*, par. 8a(2), (1973). Hereafter cited as AR 350-216. "Legally qualified" means a person who is a graduate of an accredited law school and admitted to practice before a Federal Court or the highest court of a State. *Id.* The *Resolution* of the 1972 Seminar on the Teaching of Humanitarian Law in Military Institutions states :

"a high degree of collaboration must be arranged between jurists (military magistrates, legal officers, lawyers of the appropriate departments, professors of universities and military colleges) and general and senior officers responsible for instruction in the armed forces. In officers schools, the theoretical part of the instruction must be given by a law graduate or a legal expert specialized in the subject, and the practical part by equally specialized senior officers"

See XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 327, 333 (1973).

Instruction on the Law of War

(8) International Committee of the Red Cross (ICRC), *The Draft Additional Protocols of the Geneva Conventions of August 12, 1949* (June, 1973). Emphasis added.

(9) AR 350-216, Par. 8(2). See also, United States Army Subject Schedule (ASubjScd) 27-1, "The Geneva Conventions of 1949 and Hague Convention No. IV of 1907", par. 4, (1970).

(10) U.S. Department of the Army Field Manual (FM) 22-100, *Military Leadership*, 4-2 (1973). Although perhaps stated implicitly in the quotation, one should add, explicitly, that the military establishment needs, at all levels, intelligent understanding of the requirements of loyalty and obedience, in order to avoid blind obedience to unlawful orders calling for violation of the law of war, and to avoid misguided loyalty that results in failure to take appropriate action regarding suspected violations. Military personnel must ever be reminded that their ultimate duty is to support and defend the basic laws of their State. No small part of that duty is to carry out national policies calling for adherence to the law of war.

(11) *Id.* at 13-2. Continuous efforts to maintain high levels of military leadership, particularly at the company-grade level, clearly are related to effective adherence to the law of war. Special care should be taken to insure that junior officers are sufficiently concerned with achieving a high state of morale and of competence in their units, and with informing their subordinates of what is expected of them. These aspects relate very much to the competence and confidence with which men enter combat. A much more detailed statement in this regard may be found in the US Army War College Leadership Monograph Series, Monograph No. 5., "Company Grade Officer leadership"

(12) AR 350-216, par. 6(a).

(13) AR 350-216, par. 7 and 8(c), conceives of law of war instruction in this broader sense, and provides that the scope of training will include such subjects as rules of engagement, illegal orders, the interrelationship of the law of war and the *Uniform Code of Military Justice* (The United States' code of Military Law), and war crimes reporting procedures. As to the importance of using service regulations and directives as devices to enhance adherence to the law of war, see Orecchio, *supra*, note 3.

(14) AR 350-216, par. 6(a).

(15) AR 350-216, par. 7(d), requires that training emphasize "the probable results of acts of violence against and inhumane treatment of personnel" Although instructional materials on the law of war used by the United States military generally contain some motivational material, the usually brief references hardly could be said to be sufficient for effective motivational training. Perhaps, one simply assumes adequate motivation to be present in one's military personnel. If so, that is an unsafe assumption in view of the stresses exerted on the individual during combat. In this regard, a three-hour seminar entitled "Behavioral Forces, Conformity and the Laws of Warfare", conducted at the United States Air Force Command and Staff College, is exceptionally noteworthy as a step in the right direction.

(16) AR 350-216, par. 6(a).

(17) AR 350-216 recognizes the need for substantial time for instruction and training, both in school curricula and in on-the-job training. See par. 4, 5 and 6.

(18) Of value to commanders in conducting inspections is a "Law of War Checklist" shown as an appendix to an excellent article by MAJ James J. McGowan, Jr., "Training in the Geneva and Hague Conventions : A Dead Issue ? " U.S. Department of the Army Pamphlet (DAPam) 27-50-13, *The Army Lawyer* 5,7 (January, 1974). A copy of the article can be ordered from The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, U.S.A.

(19) The U.S. Army has demonstrated a quite laudable effort in this regard. The Appendix to AR 350-216, lists a substantial number of doctrinal and training publications and training films. The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, has been especially active in the preparation of these training materials. See McGowan, *supra* note 18, at 6.

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

(20) The United States Military Services uniformly provide for at least some minimal amount of required academic instruction in their service academies and in service schools for middle range and senior officers. Although the extent of instruction may vary, the practice of providing some formal instruction to officers seems to be generally followed in many other countries. See Patrignic, "L'enseignement du Droit humanitaire dans les Institutions militaires", XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 251 (1973). See also, Ballhorn, "The Teaching of International Law of War in the Federal Armed Forces", *Id.*, at 300, discussing instruction of military personnel in the Federal Republic of Germany, and the *Resolution* calling for such formal instruction, which was passed by the 1972 Seminar on Instruction of Humanitarian Law in Military Institutions, *Id.*, at. 327.

(21) AR 350-216, par. 4-6, 8, calls for a continuing process of instruction on the law of war. This policy is explicitly advocated in the *Resolution* passed by the 1972 Seminar on Instruction of Humanitarian Law in Military Institutions. See XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 327 (1973).

(22) In this regard, AR 350-216, par. 6(c), provides that in a theater of operations, orientation in the Geneva and Hague Conventions and the rules of engagement will be given within two weeks after arrival in the theater and prior to entry into combat operations. Instruction to be given at this time must be tailored to the particular environment and the type of conflict being experienced.

(23) The U.S. Army has produced a substantial number of training materials, ranging from copies of the texts of the Hague and Geneva Conventions in U.S. Department of the Army Pamphlet (DA Pam) 27-1, *Treaties Governing Land Warfare* (1956), to doctrinal texts such as U.S. Department of the Army Field Manual (FM) 27-10, *The Law of Land Warfare* (1958) and DA Pam 27-161-2, *International Law*, Volume II (1962), to prepared lecture materials such as DA Pam 20-151, *Lectures on the Geneva Conventions of 1949* and U.S. Army Subjects Schedule 27-1, "The Geneva Conventions of 1949 and Hague Convention No. IV of 1907" (1970), and films, such as DA TF 21-4228, "The Geneva Conventions and the Soldier" and DA TF 21-4229, "When the Enemy is My Prisoner", to copies of basic rights and obligations under the law of war that are distributed to the individual serviceman, such as U.S. Army Training and Doctrine Comment Pamphlet (TRADOC Pam) 27-1, *Your Conduct in Combat Under the Law of War* (1974).

(24) AR 350-216, par. 8(2).

(25) The *Resolution* of the 1972 Seminar on the Teaching of Humanitarian Law in Military Institutions stated as a guideline :

"9. It was generally agreed that special services in the armed forces stand in need of detailed instruction in this subject. Examples of such services are :

- (1) medical personnel;
- (2) military police;
- (3) intelligence services;
- (4) service personnel engaged in civil affairs;
- (5) military government personnel;
- (6) special services, commandos, etc.;
- (7) aircrew;
- (8) personnel of units earmarked for service in United Nations peace — keeping force."

The policy of providing instruction based upon the need of those to be instructed is adopted implicitly in AR 350-216. See, also, similar advocacy by McGowan, *supra* note 18, at 6 and 8 n. 14, suggesting that the Geneva Conventions may require that such personnel as military police, medical personnel and chaplains receive specialized instruction. In this regard, the *Draft Additional Protocols to the Geneva Conventions of August 12, 1949*, at Article 72, par. 2, provides that, "Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the

Instruction on the Law of War

application of the Conventions and the present Protocol must be fully acquainted with the texts thereof” Some examples of training materials specialized as to those to be instructed are : the training film, DA TF 21-4249, “The Geneva Conventions and the Military Policeman”, and Appendix II, “Refresher Course for Battalion and Brigade Commanders”, Army Subjects Schedule 27-1, *supra* note 23, at 15. An example of training material that departs from traditional emphasis on interstate conflicts is the training film, DA TF 3616, “Geneva Conventions and Counterinsurgency”.

(26) See, for example, the U.S. Army's DA Pam 27-200, *The Law of Land Warfare : A Self-Instructional Text* (1972).

(27) “This teaching of the theory should be completed by practical examples in the field, during exercises and manoeuvres, of actual situations which the soldier is likely to meet in military operations.” *Resolution* of 1972 Seminar on the Teaching of Humanitarian Law in Military Institutions, published in XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 327, 330 (1973).

(28) XII-2, *Revue de Droit pénal militaire et de Droit de la Guerre*, p. 329 (1973).

(29) *Hague Convention No. IV Respecting the Laws and Customs of War on Land*, with Annex of Regulations, 18 October, 1907; 36 *Stat.* 2277; T.S. No. 539, at Preamble.

RESUME.

**Le droit de la guerre
et le rôle des officiers non-juristes dans son enseignement.**

Etablir la paix et la sécurité internationales a été l'ambition constante et essentielle de l'humanité. Malheureusement, nous devons nous attendre à des formes nouvelles et diverses de conflits armés dans un avenir prévisible, conflits auxquels le droit de la guerre sera applicable. C'est pourquoi les autorités des forces armées nationales doivent poursuivre leur participation sérieuse et effective au développement du droit de la guerre.

Le présent article a pour but d'encourager la recherche et la discussion au-delà des frontières nationales au sujet de deux éléments de base étroitement liés à la participation des forces armées au développement et au respect du droit de la guerre :

- I. le rôle des officiers non-juristes;
- II. les méthodes par lesquelles ce droit peut être enseigné de la manière la plus efficace aux divers groupes des forces armées.

I

A. — L'auteur propose d'abord un cadre dans lequel il faut examiner le rôle très diversifié que peuvent jouer les officiers non-juristes dans le domaine du droit de la guerre. Il examine en premier lieu leur rôle dans l'exercice des diverses *fonctions dans l'élaboration de la décision* par laquelle le droit de la guerre est établi et mis en oeuvre :

a) **La somme des renseignements.**

L'expérience, la connaissance du champ de bataille par les officiers non-juristes place ceux-ci dans les meilleures conditions pour fournir des renseignements au sujet des circonstances locales et l'état d'esprit du personnel humain, qui constituent des éléments importants pour apprécier l'efficacité du droit de la guerre tel qu'il existe actuellement et pour élaborer éventuellement de nouvelles normes.

b) **Recommandation.**

Les officiers non-juristes peuvent trouver dans leur formation militaire et leur expérience du combat des éléments pour faire des suggestions en vue de l'amélioration du droit de la guerre.

c) **Législation.**

Les officiers non-juristes n'exercent pas seulement une grande influence sur le gouvernement de leur état en vue de l'adoption des lois de la guerre, mais contribuent également par leur propre action au combat au développement des usages de la guerre.

d) **Recours au droit de la guerre.**

Les officiers non-juristes se trouvent habituellement dans une situation où il y a lieu d'invoquer sur-le-champ et à bon escient, le droit de la guerre soit par leurs rapports au sujet de prétendues violations, soit par l'initiative d'enquêtes et de dénonciations d'infractions.

e) **Mise en application.**

Avec des nuances résultant des diverses législations nationales, les officiers non-juristes jouent un rôle important dans l'application du droit de la guerre à des cas d'espèce aussi bien sur le plan judiciaire que sur le plan administratif. D'autre part, et cela est peut-être tout aussi important, au vrai sens du terme, l'officier se trouvant sur le

Instruction on the Law of War

champ de bataille est le premier juge de la légalité de sa propre conduite et de celle de ses subordonnés. En beaucoup de cas il ne peut se livrer qu'à un examen sommaire de la conformité de ses décisions avec le droit de la guerre.

f) **Fin de l'applicabilité du droit de la guerre.**

Bien que l'abrogation formelle de toute loi de la guerre soit habituellement de la compétence des autorités civiles, il y a lieu de noter que devant la nécessité imposée par la situation militaire, la généralité des officiers peut être amenée à constater que les règles traditionnelles sont devenues inadéquates et il peut en résulter un recours à des pratiques coutumières qui abrogent en fait les règles traditionnelles bien avant leur abrogation formelle.

B. — L'article examine ensuite le rôle des officiers non-juristes dans la *procédure d'exécution* par laquelle le personnel militaire est amené à appliquer le droit de la guerre.

a) **Phase préventive.**

Celle-ci comprend des mesures à long terme pour élaborer un état d'esprit favorable au respect du droit de la guerre. Les officiers peuvent bénéficier de l'autorité et du respect dont ils jouissent pour inculquer au personnel militaire une mentalité qui les incite au respect de la loi.

b) **Phase dissuasive.**

Dans cette phase se situent les mesures à court terme pour prévenir les violations du droit de la guerre.

Les ordres des officiers sur le champ de bataille, leurs directives et leur surveillance comptent parmi les moyens les plus sûrs pour empêcher les infractions.

c) **Phase d'intervention.**

Celle-ci concerne les mesures prises pour mettre fin à des violations du droit de la guerre. Grâce à leur présence sur le champ de bataille, les officiers non-juristes peuvent intervenir rapidement pour mettre fin à des agissements contraires à la loi.

d) **Phase de rééducation.**

Celle-ci concerne les mesures propres à modifier l'attitude et la mentalité du personnel militaire qui se serait rendu coupable de violation du droit de la guerre dans le but de l'amener à reconnaître cette loi dans l'avenir. Les officiers surveillent la mise en oeuvre de ces mesures et fréquemment, des spécialistes expérimentés (médecins, aumôniers, etc.) mettent en oeuvre les méthodes appropriées.

C. — CONCLUSIONS

Ainsi donc, la discussion ci-dessus du rôle vital assumé par des officiers non-juristes dans le développement du droit de la guerre tend à démontrer que, en fait, c'est le corps des officiers qui décidera pour l'Etat si le droit de la guerre inspire effectivement la conduite de son personnel militaire. Les questions d'ordre général proposées pour la recherche et la discussion futures sont :

1. Jusqu'à quel point les officiers jouent-ils ce rôle dans les diverses institutions militaires nationales ?
2. Quelles mesures ces institutions ont-elles prises pour exiger de leurs officiers qu'ils exercent ce rôle et pour les y aider ?
3. Jusqu'à quel point cette action a-t-elle été institutionnalisée. Par exemple : quel est l'état d'une élaboration officielle des règlements, des possibilités de consultation entre officiers juristes et non-juristes et d'autres moyens d'aider les officiers juristes et non-juristes dans l'accomplissement de leur tâche en cette matière ?
4. Quelles mesures pourraient être prises pour améliorer la situation actuelle pour les officiers non-juristes en cette matière ?

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

II

Dans la seconde partie de l'article, l'auteur examine *les méthodes* les plus efficaces pour l'enseignement du droit de la guerre au sein des forces armées. Les principaux accords multilatéraux sur le droit de la guerre stipulent que les parties sont tenues d'instruire leur personnel militaire dans cette discipline. Le but final d'une telle instruction est l'observation du droit de la guerre au combat; une attitude naturellement respectueuse de la loi dans les conditions extrêmement éprouvantes d'un conflit armé. Cela exige une connaissance suffisante de ce droit et une formation morale incitant à le respecter. L'auteur analyse la manière d'enseigner le droit de la guerre en recourant à la manière pratiquée à l'armée américaine et en se référant aux articles publiés dans la Revue de 1973 et aux communications faites devant l'Institut international de droit humanitaire au cours d'un séminaire tenu à San Remo (Italie) en 1972 ayant pour objet l'enseignement du droit humanitaire aux forces armées.

a) **Les enseignants et les élèves.** Il importe que des cours mixtes soient donnés par des juristes, des officiers non-juristes et d'autres spécialistes civils et militaires. En ce qui concerne ceux qui suivent ces cours, on ne saurait trop souligner l'importance de commencer par un personnel bien formé et discipliné.

b) **Objectif pédagogique.** Il importe d'inculquer une connaissance adéquate du droit de la guerre et les raisons pour lesquelles il convient de le respecter. Par connaissance adéquate, il faut entendre davantage qu'une simple connaissance de la phraséologie formelle; connaissance adéquate signifie une somme de connaissances pratiques permettant au personnel d'observer la loi dans les situations variées qui se présentent sur le champ de bataille. Quant à la motivation, il s'agit du développement chez l'intéressé d'une attitude positive, le développement d'un réflexe à se conformer à la loi de la guerre.

c) **Moyens à mettre en oeuvre à des fins pédagogiques.** Il s'agit d'obtenir de la part de l'autorité militaire l'expression du soutien réitéré de cette dernière au droit de la guerre aussi bien que la mise à la disposition du personnel spécialisé et des finances nécessaires de sorte que le niveau pédagogique soit tel que l'objectif voulu puisse être réalisé.

d) **Situation où la pédagogie intervient.** L'instruction dispensée aux forces armées dans le domaine du droit de la guerre devrait être considéré comme une formation permanente tout au long de la carrière, tant à l'intérieur qu'à l'extérieur des salles d'étude. Si une formation théorique est essentielle, une formation pratique est d'égale importance. Une telle formation doit être actuelle et doit englober non seulement des besoins généraux à long terme mais également des besoins qui découlent de telle ou telle crise particulière et immédiate.

e) **Techniques d'enseignement.** Devant la diversité actuelle de techniques d'enseignement, il convient de faire preuve de souplesse lorsqu'il s'agit de mettre au point la méthode pédagogique la plus apte à couvrir les besoins d'individus ou de groupes faisant l'objet de l'enseignement. Des cours par correspondance et des textes d'auto-instruction peuvent apporter un complément à un enseignement ex cathedra. Une formation pratique, *in situ* peut, au moyen de diverses techniques, s'intégrer à des activités journalières.

L'auteur termine son article par un appel à ceux destinés à contribuer à la Revue dans l'avenir en leur demandant de lui faire part de leurs informations sur les matières qui font l'objet de son article, de sorte que ces mêmes matières puissent être examinées au cours d'un prochain congrès international de notre Société.

SAMENVATTING.

**Het oorlogsrecht en de taak
van de officieren niet-juristen in de verspreiding ervan.**

De internationale vrede en veiligheid vestigen is en blijft de bestendige en bijzonderste betrachting van de mensheid. Jammer genoeg kunnen we ons verwachten, in een voorzienbare toekomst, aan nieuwe en verschillende vormen van gewapende konflikten waarop het oorlogsrecht van toepassing is. Om deze redenen moeten de overheden van de nationale krijgsmachten hun ernstige en daadwerkelijke medewerking aan de uitbouw van het oorlogsrecht blijven verlenen.

Deze bijdrage heeft tot doel de opzoekingen en de discussies, over de nationale grenzen heen, uit te breiden en aan te moedigen omtrent twee pilaren waarop de medewerking van de strijdkrachten aan de ontwikkeling en het naleven van het oorlogsrecht steunt :

- I. de taak van de officieren niet-juristen;
- II. de methodes om dit recht op de meest doeltreffende wijze aan de verschillende onderdelen van de strijdkrachten te onderwijzen.

I

A. — Schrijver van het artikel bakt vooreerst het kader af waarin de rol dient onderzocht die de officieren niet-juristen op het vlak van het oorlogsrecht kunnen spelen. Hij gaat eerst na welke hun rol kan zijn, bij de uitoefening van de diverse *functies, in de elaboratie van de beslissing* die leidt tot het vestigen en het toepassen van het oorlogsrecht :

a) **Verzamelen van inlichtingen.**

De ervaring en de kennis van het slagveld plaatst de officieren niet-juristen in de beste voorwaarden om inlichtingen te verstrekken aangaande de plaatselijke omstandigheden en de geestesgesteldheid van het mensenpotentieel, die belangrijke bestanddelen zijn het beoordelen van het thans vigerende oorlogsrecht en om gebeurlijk nieuwe normen op te stellen.

b) **Amenderingsvoorstellen.**

Door hun militaire opleiding en hun gevechtservaringen zijn de officieren niet-juristen geschikt om voorstellen te doen tot verbetering van het oorlogsrecht.

c) **Wetgeving.**

De officieren niet-juristen kunnen in grote mate invloed uitoefenen op het formele aanvaarden van het oorlogsrecht door hun eigen Staat maar kunnen veeleer bijdragen tot de ontwikkeling van het oorlogsgewoonterecht door hun gedraging bij gevechtssituaties.

d) **Aanwenden van het oorlogsrecht.**

De officieren niet-juristen zijn gewoonlijk best geplaatst om de bepalingen van het oorlogsrecht oordeelkundig in te roepen in de verslagen die zij opmaken betreffende beweerde schendingen van het oorlogsrecht, bij het instellen van onderzoeken en het aanklagen van misdrijven.

e) **Toepassing.**

Met afwijkingen, eigen aan elk land, voortvloeiend uit de uiteenlopende nationale wetgevingen, spelen de officieren niet-juristen een belangrijke rol bij de toepassing van het oorlogsrecht op bijzondere gevallen, zowel op gerechtelijk als op administratief vlak.

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

Anderzijds en dit is van even groot belang, is de officier op het slagveld de eerste rechter, in de echte betekenis van het woord, over de wettelijkheid van zijn eigen gedrag en dat van zijn ondergeschikten. In talrijke gevallen kan hij de beslissingen die hij op het slagveld zelf moet nemen slechts oppervlakkig aan het oorlogsrecht toetsen.

f) Opheffing van het oorlogsrecht.

Alhoewel de formele opheffing van elke bepaling van het oorlogsrecht gewoonlijk tot de bevoegdheid van de burgerlijke overheden behoort, dient er toch aangemerkt dat, onder druk van militaire noodwendigheden de officieren tot de algemene vaststelling kunnen komen dat de traditionele regels voorbijgestreefd zijn en men zijn toevlucht moet nemen tot gewoonteregels, wat er op neerkomt in de praktijk, de traditionele regels af te schaffen voor dat zij formeel ingetrokken worden.

B. — Dan gaat het artikel na welke de rol behoort te zijn van de officieren niet-juristen om de *militairen ertoe te brengen* zich naar het oorlogsrecht te schikken.

a) Preventieve fase.

In deze fase vindt men de maatregelen op lange termijn die aangewend moeten worden om een gunstig klimaat te kweken ten opzichte van het oorlogsrecht. De officieren, om reden van het gezag en de eerbied waarover zij beschikken, kunnen door-slaggevend tussenkomen om bij het militair personeel een mentaliteit in te prenten dat hen aanzet tot het eerbiedigen van de wet.

b) Waarschuwingfase.

Deze fase heeft betrekking op de maatregelen met onmiddellijke inslag, die ertoe strekken de inbreuken op het oorlogsrecht te voorkomen.

De bevelen van de officieren tijdens operaties zelf, de richtlijnen die ze geven en het toezicht dat zij uitoefenen, zijn de bijzonderste middelen om dit doel te bereiken.

c) Interventiefase.

Deze fase omvat de maatregelen die genomen worden om een einde te stellen aan schendingen van het oorlogsrecht. Dank zij hun aanwezigheid op het slagveld kunnen de officieren niet-juristen snel ingrijpen om handelingen die strijdig zijn met de wet te doen ophouden.

d) Heropvoedingsfase.

Hieronder worden verstaan de maatregelen die van aard zijn om een wijziging te brengen in de houding en de geestesgesteldheid van het militair personeel dat zich reeds zou schuldig gemaakt hebben aan schending van het oorlogsrecht, met het inzicht te bekomen dat het in de toekomst het zou eerbiedigen. De officieren houden de hand aan de toepassing van deze maatregelen en regelmatig zullen ervaren specialisten (dokters, aalmoezeniers, enz. ...), instaan voor de gepaste bijscholing.

C. — BESLUITEN.

Uit deze uiteenzetting over de uitzonderlijke rol van de officieren niet-juristen in de ontwikkeling van het oorlogsrecht, mag men afleiden dat het feitelijk het officierenkorps is dat namens de Staat, zal beslissen of het oorlogsrecht werkelijk het gedrag van zijn militair personeel regelt.

De problemen van algemene aard die het voorwerp kunnen uitmaken van navorsingen en discussies in de toekomst zijn de volgende :

1. In hoeverre spelen de officieren de hun aldus toegewezen rol in de verschillende militaire nationale instellingen ?

2. Welke maatregelen werden door deze instellingen getroffen om van officieren te eisen dat zij deze rol zouden vervullen en om ze in deze taak bij te staan ?

Instruction on the Law of War

3. In hoeverre is deze taak geïnstitutionaliseerd? Bijvoorbeeld: Bestaat er een regeling van de formele opleiding, zijn er reglementen, bestaan er structuren van raadgevingen tussen officieren juristen en niet-juristen, of andere middelen van medewerking tussen officieren juristen en niet-juristen in het raam van hun taak?

4. Welke maatregelen zouden kunnen getroffen worden om de huidige toestand terzake voor de officieren niet-juristen te verbeteren?

II

In het tweede deel van zijn artikel onderzoekt schrijver de meest geschikte *methodes om het onderricht* in het oorlogsrecht bij de strijdkrachten te bevorderen. De bijzonderste multilaterale akkoorden nopens het oorlogsrecht bepalen dat partijen er toe gehouden zijn militair personeel in deze materie voor te lichten. Het uiteindelijk doel van een dergelijk onderricht moet leiden tot het naleven van de regels van het oorlogsrecht in het gevecht: de gewoonte kweken van de instinctieve eerbiediging van de wet in de meest moeilijke omstandigheden van het gevecht. Dit vereist een gepaste kennis van dit recht en een doelmatige motivatie. Schrijver ontleedt de manier om het oorlogsrecht te onderwijzen door te verwijzen naar de gevolgde praktijk in het Amerikaanse leger en met refereert naar de in het Tijdschrift in 1973 verschenen artikels en naar de tussenkomsten gedaan op de zittingen van het Internationaal Instituut voor de rechten van de mens ter gelegenheid van een Seminarie in Sanremo (Italië) in 1972 dat tot doel had het onderricht van de rechten van de mens te stimuleren.

a) **De onderrichters en de leerlingen.** Gemengde cursussen dienen gegeven door juristen, officieren niet-juristen en andere burgerlijke en militaire specialisten. Wat de leerlingen betreft, dient de klemtoon gelegd op het belang over degelijk gevormd en tuchtvol personeel.

b) **Doelstelling van het onderricht.** De degelijke kennis van het oorlogsrecht is even belangrijk als een gepaste motivatie om dat recht te eerbiedigen. Degelijke kennis betekent meer dan formele tekstkennis, het betekent een daadwerkelijke kennis dat het personeel moet aanzetten de wet na te leven in alle mogelijke voorkomende gevechtssituaties. Een gepaste motivatie onderstelt het aankweken van een positieve houding ten overstaan van het oorlogsrecht, een reflex om de wet te eerbiedigen.

c) **Aan te wenden middelen om dit doel te bereiken.** Het vereist vanwege de militaire overheden een uitdrukkelijke en herhaalde inspanning om het oorlogsrecht te bevorderen, een gepaste aanwending van degelijk gevormd personeel en de nodige financiering indien men de militaire opleiding nopens het oorlogsrecht op het niveau wil brengen dat men zich heeft vooropgesteld.

d) **Hoe moet de opleiding gebeuren?** De opleiding van de strijdkrachten in het oorlogsrecht moet beschouwd worden als een permanente vorming gedurende de ganse loopbaan van het militair personeel, zowel binnen als buiten de studielokalen. Een theoretische opleiding is hoofdzakelijk doch even belangrijk als de praktische vorming op het terrein. Een degelijke vorming moet actueel zijn en niet alleen gericht zijn op algemene behoeften op lange termijn maar eveneens in behoeften kunnen voorzien die uit plotse en particuliere crisissen ontstaan.

e) **Onderwijstechnieken.** De bestaande onderwijstechnieken zijn veelvuldig. Er dient oordeelkundig te werk gegaan bij het bepalen van de meest geschikte methode om tegemoet te komen aan de behoeften van individuen of groepen die moeten opgeleid worden. Briefwisselingscursussen en teksten voor zelf-opleiding kunnen een aanvulling

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

zijn van het klasonderricht. Een praktische vorming in het oorlogsrecht op het terrein kan aan de hand van verschillende technieken in de dagelijkse werkzaamheden ingelast worden.

Schrijver eindigt met een oproep tot de toekomstige medewerkers aan het Tijdschrift om hen te vragen commentaar te leveren op de ideeën in dit artikel uiteengezet; hij vraagt eveneens dat deze materie in aanmerking zou komen voor een aanstaand Kongres van de Vereniging.

ZUSAMMENFASSUNG.

Das Kriegsvölkerrecht und seine Lehre durch Offiziere ohne juristische Vorbildung

Für Frieden und Sicherheit in der Welt zu sorgen, war stets das wesentliche Ziel der Menschheit. Leider müssen wir auf verschiedene neue Formen bewaffneter Konflikte in absehbarer Zukunft gefaßt sein, Konflikte, in denen das Kriegerrecht anzuwenden ist. Aus diesem Grund müssen die Organe der nationalen Streitkräfte weiterhin effektiv an der Weiterentwicklung des Kriegsvölkerrechts mitwirken.

Dieser Artikel soll dazu dienen, auf überstaatlicher Ebene die Forschung und Diskussion in Bezug auf zwei grundsätzliche Elemente voranzutreiben, die eng mit der Beteiligung der Streitkräfte an der Weiterentwicklung und Einhaltung des Kriegsvölkerrechts zusammenhängen :

- I. Die Aufgabe der Offiziere ohne juristische Vorbildung;
- II. die Methoden, wie dieses Recht in den verschiedenen Gruppen innerhalb der Streitkräfte am wirkungsvollsten gelehrt werden kann.

I

A. — Der Autor schlägt zunächst einen Rahmen vor, in dem die vielfältigen Aufgaben zu untersuchen sind, die Offiziere ohne juristische Vorbildung auf dem Gebiet des Kriegsvölkerrechts erfüllen können. Er untersucht in erster Linie ihre Rolle bei der Ausübung der verschiedenen *Funktionen bei der Ausarbeitung der Entscheidung*, durch die das Kriegsvölkerrecht eingeführt und angewendet wird :

a) **Die Summe der Informationen.**

Aufgrund ihrer Erfahrung und ihrer Kenntnis des Gefechtsfeldes sind die Offiziere ohne juristische Vorbildung am besten dazu geeignet, Angaben über die lokalen Gegebenheiten und die Einstellung des Personals zu machen; dies sind wichtige Elemente zur Bewertung der Wirksamkeit des Kriegsvölkerrechts in seiner derzeitigen Form und zur etwaigen Ausarbeitung neuer Normen.

b) **Empfehlung.**

Die Offiziere ohne juristische Vorbildung können in ihrer militärischen Ausbildung und Kampferfahrung Ansätze finden, um Anregungen für eine Verbesserung des Kriegsvölkerrechts zu geben.

Instruction on the Law of War

c) Gesetzgebung.

Die Offiziere ohne juristische Vorbildung üben nicht nur im Hinblick auf die Einführung der Kriegsgesetze großen Einfluß auf die Regierung ihres Staates aus, sondern tragen auch durch ihre eigene Beteiligung am Kampfgeschehen zur Entwicklung von Kriegsbräuchen bei.

d) Rückgriff auf das Kriegsvölkerrecht.

Die Offiziere ohne juristische Vorbildung befinden sich normalerweise in einer Lage, wo das Kriegsvölkerrecht sofort und wohlüberlegt anzuwenden ist - sei es aufgrund ihrer Meldungen über vermeintliche Gesetzesverletzungen, sei es aufgrund von Untersuchungen und Anzeigen von Verstößen.

e) Anwendung.

Unter Berücksichtigung der Nuancen, die sich aus den Unterschieden in den nationalen Gesetzen ergeben, spielen die Offiziere ohne juristische Vorbildung sowohl in rechtlicher als auch administrativer Hinsicht eine wichtige Rolle bei der Anwendung des Kriegsvölkerrechts auf Sonderfälle.

Außerdem, und das ist vielleicht im eigentlichen Sinne ebenso wichtig, ist der Offizier auf dem Gefechtsfeld der erste Richter, der über die Legalität seines eigenen und des Verhaltens seiner Untergebenen befinden muß. In vielen Fällen kann er nur global prüfen, ob seine Entscheidungen mit dem Kriegsvölkerrecht in Einklang stehen.

f) Ende der Anwendbarkeit des Kriegsvölkerrechts.

Obwohl die förmliche Aufhebung eines jeden Kriegsgesetzes Sache der Zivilorgane ist, muß darauf verwiesen werden, daß angesichts der durch die militärische Lage bedingten Notwendigkeit die Mehrzahl der Offiziere in die Lage kommen kann festzustellen, daß die traditionellen Grundsätze nicht mehr angemessen sind; daraus können sich Bräuche entwickeln, die die traditionellen Vorschriften de facto lange vor ihrer förmlichen Aufhebung außer Kraft setzen.

B. — In dem Artikel wird anschließend die Rolle der Offiziere ohne juristische Vorbildung in dem *Verfahren* untersucht, das für militärisches Personal bei der Anwendung des Kriegsvölkerrechts *maßgebend* ist.

a) Präventive Phase.

Diese Phase umfaßt langfristige Maßnahmen, die auf eine positive Einstellung gegenüber der Einhaltung des Kriegsvölkerrechts abzielen. Die Offiziere können sich ihre Autorität und den Respekt, den sie genießen, zunutze machen, um die Soldaten zu einer Geisteshaltung zu erziehen, die sie zur Befolgung der Gesetze veranlaßt.

b) Abschreckungsphase.

Diese Phase umfaßt kurzfristige Maßnahmen, die den Zweck verfolgen, Verletzungen des Kriegsvölkerrechts vorzubeugen.

Die Befehle der Offiziere auf dem Gefechtsfeld, ihre Weisungen und Kontrollen gehören zu den sichersten Mitteln, um Verstöße zu verhindern.

c) Interventionsphase.

Diese Phase betrifft Maßnahmen, die Verletzungen des Kriegsvölkerrechts beenden sollen. Aufgrund ihrer Präsenz auf dem Gefechtsfeld können die Offiziere ohne juristische Vorbildung rasch intervenieren, damit gesetzwidrige Handlungen eingestellt werden.

d) Umerziehung.

In diesem Fall geht es um die geeigneten Maßnahmen, die dazu dienen sollen, das Verhalten und die Einstellung der Soldaten zu ändern, die sich einer Verletzung des

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

Kriegsvölkerrechts schuldig gemacht haben, und daraufhinzuwirken, daß sie dieses Gesetz künftig beachten. Die Offiziere überwachen die Durchführung dieser Maßnahmen, und häufig wenden erfahrene Fachleute (Ärzte, Seelsorger usw.) die geeigneten Methoden an.

C. – BESCHLÜß.

Somit dürfte die hier dargelegte Erörterung der lebenswichtigen Aufgabe, die Offiziere ohne juristische Vorbildung bei der Weiterentwicklung des Kriegsvölkerrechts wahrnehmen, erkennen lassen, daß faktisch das Offizierskorps für den Staat entscheidet, ob das Kriegsvölkerrecht das Verhalten der Soldaten effektiv beeinflußt. Die für die Forschung und Erörterung vorgeschlagenen allgemeinen Fragen betreffen folgende Punkte :

1. Inwieweit erfüllen die Offiziere diese Funktion in den verschiedenen nationalen militärischen Einrichtungen ?
2. Welche Maßnahmen haben diese Institutionen ergriffen, damit ihre Offiziere diese Funktion ausüben und um sie dabei zu unterstützen ?
3. Wie weit wurde diese Aktion institutionalisiert ? Zum Beispiel : Wie stellen sich die offizielle Ausarbeitung der Vorschriften, die Möglichkeiten der Konsultation zwischen Offizieren mit bzw. ohne juristische Vorbildung und die anderen Mittel dar, die den Offizieren mit oder ohne juristische Vorbildung die Erfüllung ihrer Aufgabe auf diesem Gebiet erleichtern können ?
4. Welche Maßnahmen könnten getroffen werden, um die derzeitige Lage der Offiziere ohne juristische Vorbildung auf diesem Gebiet zu verbessern ?

II

Im zweiten Teil des Artikels untersucht der Autor die wirkungsvollsten *Methoden zur Lehre* des Kriegsvölkerrechts im Rahmen der Streitkräfte. Den wichtigsten multilateralen Übereinkommen über die Kriegsgesetze entsprechend sind die Parteien gehalten, ihr militärisches Personal in diesem Bereich zu unterweisen. Das Ziel einer derartigen Unterweisung besteht in der Einhaltung des Kriegsvölkerrechts im Verlauf der Kampfhandlungen; d.h. daß die Befolgung des Gesetzes unter den extrem harten Bedingungen eines bewaffneten Konflikts als Selbstverständlichkeit angesehen wird. Voraussetzung dafür ist die ausreichende Kenntnis dieses Rechts und eine moralische Einstellung, die zu seiner Befolgung führt. Der Autor analysiert die Lehrmethoden auf diesem Gebiet, wobei er auf die entsprechenden Methoden der amerikanischen Streitkräfte verweist und auf die in der Revue 1973 veröffentlichten Artikel ebenso Bezug nimmt wie auf die Referate, die anlässlich eines Seminars, das 1972 in San Remo (Italien) stattfand und die Lehre des Humanitätsrechts in den Streitkräften behandelte, im Rahmen des Internationalen Instituts für humanitäres Recht gehalten wurden.

a) **Lehrer und Schüler.** Wichtig ist, daß gemischte Kurse von Juristen, Offizieren ohne juristische Vorbildung und anderen Fachleuten aus dem zivilen und militärischen Bereich abgehalten werden. Hinsichtlich der Teilnehmer kann nicht nachdrücklich genug darauf hingewiesen werden, daß für die Kurse anfangs diszipliniertes Personal mit guter Ausbildung ausgewählt werden sollte.

b) **Pädagogisches Ziel.** Es müssen angemessene Kenntnisse auf dem Gebiet des Kriegsvölkerrechts vermittelt und die Gründe für seine Befolgung nachdrücklich erläutert werden. Unter angemessenen Kenntnissen ist mehr als die bloße Kenntnis der offiziellen Formulierung zu verstehen; angemessene Kenntnisse ist eine Summe praktischer Kenntnisse, die es dem Personal ermöglichen, das Gesetz in den unterschiedlichen Situationen auf dem Gefechtsfeld zu befolgen. In bezug auf die Motivation geht es darum, daß die Beteiligten eine positive Einstellung gewinnen und sich reflexartig dem Kriegsvölkerrecht anpassen.

Instruction on the Law of War

c) *Zu pädagogischen Zwecken einzusetzende Mittel.* Es handelt sich darum, daß sich die militärischen Organe wiederholt für die Einhaltung des Kriegsvölkerrechts aussprechen und daß andererseits das entsprechende Fachpersonal und die erforderlichen finanziellen Mittel bereitgestellt werden, damit das pädagogische Niveau die Voraussetzungen dafür schafft, daß das angestrebte Ziel auch erreicht werden kann.

d) *Situationen, in denen die Pädagogik hineinspielt.* Die Unterweisung der Streitkräfte auf dem Gebiet des Kriegsvölkerrechts müßte als permanente Ausbildung während der gesamten Laufbahn, und zwar innerhalb und außerhalb der Lehrsäle angesehen werden. Wenn die theoretische Ausbildung auch das entscheidende Element darstellt, kommt der praktischen Ausbildung eine nicht minder große Bedeutung zu. Eine derartige Ausbildung muß immer gegenwartsbezogen sein und sich nicht nur auf allgemeine langfristige Bedürfnisse erstrecken, sondern auch auf Bedürfnisse, die sich aus der einen oder anderen besonderen und unmittelbar zu bewältigenden Krise ergeben.

e) *Unterrichtsmethoden.* Angesichts der Vielfalt der heutigen Unterrichtsmethoden ist Flexibilität geboten bei der Entwicklung der pädagogischen Methode, die den Bedürfnissen des Einzelnen oder der Gruppe, für die der Unterricht vorgesehen ist, am besten angepaßt ist. Fernkurse und Texte zum Selbststudium können den Unterricht *ex cathedra* ergänzen. Eine praktische Ausbildung mit Hilfe verschiedener Verfahren kann *in situ* in den normalen Arbeitsablauf eingegliedert werden.

Der Autor schließt mit einem Appell an jene, die künftig an der Revue mitarbeiten sollen, indem er sie bittet, ihm ihre Informationen zu der in seinem Artikel behandelten Thematik zur Verfügung zu stellen, so daß diese Thematik auf einem der nächsten internationalen Kongresse unserer Gesellschaft untersucht werden kann.

RIASSUNTO.

Il diritto della guerra ed il ruolo degli ufficiali non giuristi nel suo insegnamento

Stabilire la pace e la sicurezza internazionale è stata l'ambizione costante ed essenziale dell'umanità. Malauguratamente, dobbiamo attenderci, in un avvenire prevedibile, nuove e diverse forme di conflitti armati, ai quali il diritto della guerra sarà applicabile. E' per questo che le autorità delle forze armate nazionali debbono proseguire la loro partecipazione seria ed effettiva allo sviluppo del diritto della guerra.

Il presente articolo ha come scopo di incoraggiare la ricerca e la discussione al di là delle frontiere nazionali intorno ai due elementi di base legati alla partecipazione delle forze armate allo sviluppo ed al rispetto del diritto della guerra :

- I. il ruolo degli ufficiali non giuristi;
- II. i metodi attraverso i quali questo diritto può essere insegnato nel modo più efficace ai diversi gruppi delle forze armate.

I

A. — L'autore propone dapprima un quadro nel quale bisogna esaminare il ruolo molto differenziato che possono svolgere gli ufficiali non giuristi nel dominio del diritto

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

della guerra. Egli esamina in primo luogo il loro ruolo nell'esercizio delle diverse *funzioni per elaborare la decisione* con la quale il diritto della guerra è stabilito e messo in opera :

a) **La somma delle informazioni.**

L'esperienza, la conoscenza del campo di battaglia da parte degli ufficiali non giuristi pone questi nelle migliori condizioni per fornire informazioni intorno alle circostanze locali ed allo stato di spirito del personale, che costituiscono elementi importanti per apprezzare l'efficacia del diritto della guerra quale esiste attualmente e per elaborare eventualmente nuove norme.

b) **Raccomandazioni.**

Gli ufficiali non giuristi possono trovare nella loro formazione militare e nella loro esperienza del combattimento elementi per fare proposte per il miglioramento del diritto della guerra.

c) **Legislazione.**

Gli ufficiali non giuristi non esercitano solamente una grande influenza sul governo del loro Stato per l'adozione delle leggi della guerra, ma contribuiscono egualmente con la loro azione in combattimento allo sviluppo degli usi della guerra.

d) **Ricorso al diritto della guerra.**

Gli ufficiali non giuristi si trovano abitualmente in una situazione in cui accade di dover invocare, senza indugio e con piena conoscenza, il diritto della guerra sia per le loro relazioni su pretese violazioni, sia per l'iniziativa di inchieste e di denuncia di reati.

e) **Messa in applicazione.**

Con sfumature risultanti dalle diverse legislazioni nazionali, gli ufficiali non giuristi svolgono un ruolo importante nell'applicazione del diritto della guerra in casi concreti, sia sul piano giudiziario sia sull piano amministrativo. D'altra parte, e questo può essere egualmente importante, l'ufficiale che si trova sul campo di battaglia è il primo giudice della legalità della propria condotta e di quella dei suoi subordinati. In molti casi egli non può fare che un esame sommario della conformità delle sue decisioni al diritto della guerra.

f) **Fine dell'applicabilità del diritto della guerra.**

Per quanto l'abrogazione formale di ogni legge di guerra sia abitualmente di competenza delle autorità civili, si può rilevare che, di fronte alla necessità imposta dalla situazione militare, la generalità degli ufficiali può essere portata a constatare che le regole tradizionali sono divenute inadeguate e può risultarne un ricorso a pratiche consuetudinarie che abrogano in fatto le regole tradizionali, assai prima della loro abrogazione formale.

B. — L'articolo esamina in seguito il ruolo degli ufficiali non giuristi nella *procedura di esecuzione*, con la quale il personale militare è portato ad applicare il diritto della guerra :

a) **Fase preventiva.**

Questa comprende misure a lungo termine per creare uno stato d'animo favorevole al rispetto del diritto della guerra. Gli ufficiali possono servirsi dell'autorità e del rispetto di cui godono per inculcare al personale militare una mentalità che lo inciti al rispetto della legge.

b) **Fase dissuasiva.**

In questa fase si pongono le misure a breve termine per prevenire le violazioni. Gli ordini degli ufficiali sul campo di battaglia, le loro direttive e la loro sorveglianza contano tra i mezzi più sicuri per impedire i reati.

Instruction on the Law of War

c) Fase d'intervento.

Grazie alla loro presenza sul campo di battaglia, gli ufficiali non giuristi possono intervenire rapidamente con misure idonee per por fine alle violazioni del diritto della guerra.

d) Fase di rieducazione.

Questa concerne le misure idonee a modificare l'atteggiamento e la mentalità del personale militare che si fosse reso colpevole di violazioni, per indurlo a riconoscere il diritto della guerra, nell'avvenire. Gli ufficiali sorvegliano la messa in opera di queste misure e spesso specialisti sperimentati (medici, cappellani, ecc.) mettono in opera i metodi appropriati.

C. – CONCLUSIONI.

La discussione di cui sopra sul ruolo vitale assunto dagli ufficiali non giuristi nello sviluppo del diritto della guerra tende dunque a dimostrare che, in fatto, è il corpo degli ufficiali che deciderà per lo Stato se il diritto della guerra ispira effettivamente la condotta del suo personale militare. Le questioni di ordine generale proposte per la ricerca e la discussione future sono :

1. Fino a che punto gli ufficiali svolgono questo ruolo nelle diverse istituzioni militari nazionali ?
2. Quali misure queste istituzioni hanno preso per esigere dai loro ufficiali che essi svolgano questo ruolo e per aiutarli ?
3. Fino a che punto quest'azione è stata istituzionalizzata ? Per esempio : quale è lo stadio di elaborazione ufficiale dei regolamenti, delle possibilità di consultazione tra ufficiali giuristi e non giuristi e di altri mezzi per aiutare gli uni e gli altri a svolgere il loro compito in questa materia ?
4. Quali misure potrebbero essere adottate per migliorare la situazione attuale per gli ufficiali non giuristi in questa materia ?

II

Nella seconda parte dell'articolo, l'autore esamina *i metodi* più efficaci per l'*insegnamento* del diritto della guerra in seno alle forze armate. I principali accordi multilaterali sui diritti della guerra stipulano che le parti sono tenute ad istruire il loro personale militare in questa disciplina. Lo scopo finale di una tale istruzione è l'osservanza del diritto della guerra nel combattimento; un atteggiamento naturalmente rispettoso della legge nelle condizioni estremamente probanti di un conflitto armato. Questo esige una conoscenza sufficiente di questo diritto ed una formazione morale incitante al rispetto di esso. L'autore analizza la maniera d'insegnare il diritto della guerra ricorrendo ai metodi praticati nell'esercito americano (v. gli articoli pubblicati nella Rivista del 1973 e, inoltre, le comunicazioni fatte nel seminario tenuto a San Remo-Italia nel 1972, a cura dell'Istituto internazionale di diritto umanitario, avente come oggetto appunto l'insegnamento del diritto umanitario alle forze armate).

a) **L'insegnamento e gli allievi.** I corsi debbono essere misti, nel senso che siano chiamati ad insegnare giuristi, ufficiali non giuristi ed altri specialisti civili o militari. Per quanto riguarda coloro che seguono questi corsi, va sottolineata l'importanza di cominciare con un personale ben formato e disciplinato.

b) **Obiettivo pedagogico.** Bisogna inculcare una conoscenza adeguata del diritto della guerra e le ragioni per le quali conviene rispettarlo. Per conoscenza adeguata bisogna intendere più che una semplice conoscenza della terminologia formale : piuttosto una somma di conoscenze pratiche che permetta al personale d'osservare la legge nelle

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

situazioni variate che si presentano sul campo di battaglia. Quanto alla motivazione, si tratta di sviluppare nell'interessato un atteggiamento positivo, come un riflesso a conformarsi alle leggi della guerra.

c) **Mezzi da porre in opera a fini pedagogici.** Si tratta di ottenere dall'autorità militare, come manifestazione di un sostegno reiterato al diritto della guerra, il personale specializzato ed i mezzi finanziari necessari perché il livello pedagogico sia tale che possa realizzarsi l'obiettivo voluto.

d) **Situazione in cui interviene la pedagogia.** L'istruzione dispensata alle forze armate nel dominio del diritto della guerra dovrebbe essere considerata come una formazione permanente nel corso della carriera, all'interno come all'esterno delle aule di studio. Se una formazione teorica è essenziale, non minore importanza ha una formazione pratica, che deve essere attuale e tale da inglobare non solo bisogni generali a lungo termine, ma anche bisogni derivanti da tale o tal'altra crisi particolare ed immediata.

e) **Tecniche d'insegnamento.** Data l'attuale diversità nelle tecniche di insegnamento, conviene usare molta elasticità per mettere a punto il metodo pedagogico più idoneo a soddisfare le esigenze di individui o gruppi sottoposti all'insegnamento. Corsi per corrispondenza e testi di auto-istruzione possono apportare un sussidio ad un insegnamento ex catedra. Una formazione pratica, *in situ*, può, con l'ausilio di tecniche diverse, integrarsi ad attività giornaliere.

L'autore conclude con un appello ai futuri collaboratori della Rivista, chiedendo loro di comunicargli le informazioni sulla materia di questo articolo, per delineare e preparare un prossimo congresso della nostra Società.

RESUMEN.

El Derecho de Guerra y el papel que en su enseñanza corresponde a los Oficiales no juristas

Consolidar la paz y la seguridad internacionales ha sido ambición constante y esencial de la Humanidad. Desgraciadamente, hemos de esperar que en un futuro previsible los conflictos armados, a los que ha de ser aplicable el Derecho de Guerra, han de adoptar formas nuevas y diversas. Esta es la razón de que las autoridades de las fuerzas armadas nacionales deban fomentar y proseguir su seria y eficaz participación en el desarrollo del Derecho de la Guerra.

El presente artículo tiene por objeto el promover, más allá de las fronteras nacionales, la investigación y la discusión con respecto a dos elementos básicos íntimamente relacionados con la participación de las mismas fuerzas armadas en el desarrollo y respeto de las normas del Derecho de Guerra :

- I. El papel que corresponde a los Oficiales no juristas; y
- II. Los métodos a través de los cuales ese Derecho puede enseñarse de la manera más eficaz a los diversos grupos que integran las fuerzas armadas.

Instruction on the Law of War

I

A. — El autor, en primer lugar, propone un cuadro dentro del cual es preciso examinar el papel —muy diversificado— que pueden desempeñar los Oficiales no letrados en este campo del Derecho internacional de guerra. Examina, en primer término, el papel que les corresponde, en el ejercicio de sus diversas *funciones, en la elaboración de la decisión* a través de la cual el Derecho de Guerra se establece y se pone en práctica

a) **El conjunto de las informaciones.**

La experiencia, el conocimiento del campo de batalla que poseen los Oficiales no juristas les sitúan en las mejores condiciones para proporcionar informaciones concretas acerca de las circunstancias locales y del estado de ánimo del elemento humano, de su personal militar, que constituyen factores importantes para poder apreciar la eficacia del Derecho de Guerra, tal y como se manifiesta actualmente, así como para una eventual elaboración de normas nuevas.

b) **Recomendaciones.**

Los Oficiales de Arma pueden encontrar en su experiencia de combate y en su formación militar los elementos precisos para formular sugerencias con vistas a mejorar el Derecho de Guerra.

c) **Legislación.**

Estos Oficiales, no solamente ejercen una gran influencia sobre el Gobierno de su Estado respectivo con respecto a la adopción de las leyes de guerra, sino que contribuyen también, a través de su propia actuación en combate, al desarrollo y evolución de los usos de guerra.

d) **Utilización del Derecho de la Guerra.**

Los Oficiales de Arma se suelen encontrar habitualmente en situaciones en que procede invocar sobre el terreno y en el momento oportuno las normas del Derecho de la Guerra, sea con relación a pretendidas violaciones de las mismas, sea con respecto a la iniciación de investigaciones con motivo de denuncias de supuestas infracciones.

e) **Aplicación de las normas.**

Con la diversidad de matices que pueden resultar de las distintas legislaciones internas nacionales, lo cierto es que los Oficiales no letrados juegan un papel importante en la aplicación del Derecho de Guerra en los casos concretos, tanto en el plano judicial como en el administrativo. Por otra parte —y quizás sea igualmente importante—, al encontrarse el Oficial en el mismo campo de batalla, no cabe duda que se convierte en el primer juez de la legalidad de su propia conducta y de la de sus subordinados. En muchos casos tan sólo puede formular un juicio sumario de la conformidad de sus decisiones con respecto a las normas del Derecho bélico.

f) **Cesación de la aplicabilidad del Derecho de Guerra.**

Por más que la derogación formal de cualquier ley de guerra quede habitualmente dentro de la esfera de competencias de las autoridades civiles, conviene observar que, ante la necesidad impuesta por la situación militar, la generalidad de los Oficiales pueden verse forzados a constatar que las reglas tradicionales se han hecho inadecuadas, de donde puede resultar la necesidad de recurrir a prácticas consuetudinarias que abroguen de hecho aquellas reglas tradicionales, incluso mucho antes de que sean derogadas formalmente.

B. — El artículo que consideramos examina a continuación el papel que incumbe a los Oficiales no juristas en cuanto al *procedimiento de ejecución* por medio del cual el personal militar aplica el Derecho de Guerra :

a) **Fase preventiva.**

Comprende las medidas a largo plazo tendentes a configurar un estado de ánimo favorable al respeto de las normas del Derecho bélico. Los Oficiales pueden aprovechar la

Dr. Walter L. WILLIAMS, Jr. (U.S.A.)

autoridad y el respeto de que gozan para inculcar al personal militar a sus órdenes una mentalidad que induzca al respeto de la ley.

b) Fase disuasoria.

En esta fase se sitúan las medidas a corto plazo tendentes a prevenir la perpetración de violaciones del Derecho de Guerra.

Las órdenes de los Oficiales en el campo de batalla, sus instrucciones y su acción de vigilancia, se cuentan sin duda entre los medios más seguros capaces de impedir la comisión de infracciones.

c) Fase de intervención.

Se refiere a las medidas adoptadas para poner fin a la comisión de infracciones del Derecho de Guerra. Gracias a su inmediata presencia en el campo de batalla, los Oficiales de Arma pueden intervenir rápidamente para poner fin a los comportamientos que sean contrarios a la ley.

d) Fase de reeducación.

Comprende las medidas tendentes a modificar la actitud y la mentalidad del personal militar que hubiere sido declarado culpable de infracciones del Derecho de Guerra, con la finalidad de lograr que en el futuro preste el debido reconocimiento y acatamiento a esta ley. Los Oficiales vigilan la puesta en práctica de estas medidas y, con frecuencia, especialistas experimentados (médicos, capellanes, etc.) ponen a punto los métodos adecuados para conseguir estos fines.

C. — CONCLUSIONES

Así pues, la discusión que antecede acerca del papel vital que asumen los Oficiales no juristas en el desarrollo del Derecho de Guerra tiende a demostrar que, de hecho, es el Cuerpo de Oficiales el que decidirá, por el Estado, si el Derecho de la Guerra inspira efectivamente la conducta del personal militar a sus órdenes. Las cuestiones de carácter general que se proponen como tema de investigación y discusión futuras son las siguientes :

1. ¿Hasta qué punto desempeñan los Oficiales este papel en las diversas instituciones militares nacionales ?
2. ¿Qué medidas han adoptado estas instituciones para exigir a sus Oficiales que desempeñen este papel, así como para ayudarles en tal cometido ?
3. ¿Hasta qué punto ha sido institucionalizada esta actuación ? Por ejemplo : ¿cuál es el estado actual de elaboración oficial de disposiciones reglamentarias, de posibilidades de consulta entre Oficiales letrados y no letrados y de otros medios tendentes a ayudar a unos y otros en el cumplimiento de su respectiva tarea en este campo ?
4. ¿Qué medidas podrían tomarse para mejorar la situación actual de los Oficiales no juristas en esta materia ?

En la segunda parte de su artículo el autor examina *los métodos* más eficaces de enseñanza del Derecho de la Guerra en el seno de las fuerzas armadas. Los principales Convenios internacionales multilaterales sobre las leyes de la guerra establecen que las partes vienen obligadas a instruir a su personal militar en esta disciplina. El objetivo final a que responde tal instrucción no es otro que la observancia en combate del Derecho de la Guerra; el fomento de una actitud naturalmente respetuosa de la ley en las condiciones extremadamente tensas que son propias de cualquier conflicto bélico. Ello exige un conocimiento suficiente de ese Derecho y una formación moral que induzca a respetarlo. El autor analiza la manera de enseñar el Derecho de Guerra, exponiendo el modo en que esta enseñanza se practica en el Ejército americano y refiriéndose a los artículos publicados en la Revista en 1973 y a las comunicaciones presentadas al Instituto Inter-

Instruction on the Law of War

nacional de Derecho Humanitario en el curso del seminario celebrado en San Remo (Italia) en 1972, sobre el tema de la enseñanza del Derecho humanitario bélico en el seno de las fuerzas armadas.

a) **Los profesores y los alumnos.** Interesa que se impartan cursos mixtos por parte de juristas, Oficiales de Armas y otros especialistas, civiles y militares. En lo que concierne a quienes siguen tales cursos como alumnos, no está de más señalar la importancia que tiene el comenzar por instruir a un personal que esté ya bien formado y disciplinado.

b) **Objetivo pedagógico.** Interesa inculcar un conocimiento adecuado del Derecho de la Guerra y las razones por virtud de las cuales conviene respetarlo. Por "conocimiento adecuado" hay que entender algo más que una simple información de la fraseología formal; conocimiento adecuado quiere decir una suma de conocimientos prácticos que permitan al personal observar la ley en situaciones variadas, tal y como se presentan en el campo de batalla. En cuanto a la motivación, se trata de desarrollar en el interesado una actitud positiva, creando una especie de reflejo que tienda a ajustar su conducta a las leyes de la guerra.

c) **Medidas a poner en práctica con fines pedagógicos.** Se trata de obtener de la autoridad militar la expresión reiterada de su apoyo al Derecho de Guerra, así como la facilitación del personal especializado y de los medios económicos necesarios, de modo que el nivel pedagógico que se alcance sea el adecuado para la realización efectiva del objetivo deseado.

d) **Situación en que interviene la pedagogía.** La instrucción impartida a las fuerzas armadas en el campo del Derecho de Guerra debería considerarse siempre como una especie de formación permanente a lo largo de toda la carrera profesional, tanto dentro como fuera de las aulas de enseñanza. Si la formación teórica es esencial, no menos importancia tiene la formación práctica. Tal formación debe ser actual, puesta al día, y debe comprender no solamente el estudio de las necesidades generales a largo plazo, sino también de las necesidades concretas que puedan derivar de tal o cual crisis particular e inmediata.

e) **Técnicas de enseñanza.** Ante la actual diversidad de las técnicas de enseñanza, conviene dar pruebas de flexibilidad cuando se trata de poner a punto el método pedagógico que se estime más apto para satisfacer las necesidades de los individuos o grupos que sean destinatarios de la enseñanza en cuestión. Pueden servir de medios complementarios los cursos por correspondencia y los textos destinados a la autoinstrucción. Puede formar parte integrante de las actividades docentes diarias una formación eminentemente práctica, *in situ*, mediante el empleo de técnicas diversas.

El autor concluye su trabajo haciendo un llamamiento a quienes hayan de colaborar en la Revista en el futuro, pidiéndoles que expongan sus propias informaciones sobre las materias que constituyen el tema central de su artículo, de manera que esas mismas materias puedan ser estudiadas en el seno y con ocasión de un próximo Congreso internacional de nuestra Sociedad.

