Project Reveals Challenges and Recommendations for Teaching International Humanitarian Law in U.S. Law Schools

by Hadar Harris and Solomon Shinerock***

The level of popular and academic interest in the law governing armed conflict has spiked in the wake of events of the past eight years. Events over the past eight years have brought international humanitarian law (IHL) into clear focus in the United States. Whether sparked by the events of September 11, the subsequent wars in Afghanistan and Iraq, the high profile abuses at Abu Ghraib and detentions at Guantanamo, or the less reported abuses of military contractors, the definition, application and implementation of IHL has become a burning issue in the United States.

Yet despite the rising profile of IHL and its increasing importance in the international legal sector, a recent study conducted by the American University Washington College of Law Center for Human Rights and Humanitarian Law (WCL) and the International Committee for the Red Cross (ICRC) found that IHL is greatly underrepresented in U.S. law school curricula and that law professors interested in teaching the subject need more training and support. The study, entitled, "Teaching International Humanitarian Law in U.S. Law Schools" surveyed over 73 law schools around the United States about whether and how IHL is taught at the school and how it could be improved.[1] The general goals of the study were to gauge the level of student and faculty interest in the subject and to identify specific ways to enhance and support the teaching of IHL in U.S. law schools.

Study Methodology

The ICRC and WCL developed an informal survey that was mailed to over 1,000 professors and deans at accredited U.S. law schools and disseminated online through the interest groups of the American Society of International Law. One hundred one responses were received from over 73 law schools.

The survey focused on five main areas:

- Whether and how IHL is taught in the law school curriculum;
- The level of student exposure to IHL;
- IHL-related extracurricular offerings;
- Perceived student interest in IHL; and
- Whether and how IHL should be covered more thoroughly.

Following the compilation of the written data, twenty respondents who had indicated willingness to discuss the survey further were interviewed by telephone to elicit qualitative feedback and responses. During these phone conversations, respondents were asked to provide detailed information about the form IHL classes take when IHL is taught as a dedicated stand-alone course and what facets of IHL are covered when the subject is taught as a component of a broader course, such as public international law.

Photo courtesy of WCL Center for Human Rights and Humanitarian Law

Participants at joint International Committee of the Red Cross/ Washington College of Law conference discuss teaching the law of war in U.S. law schools.

Respondents were also asked about possible institutional considerations that may encourage or inhibit the teaching of IHL, and what kind of resources would be helpful to expand or improve the teaching of IHL in that school. The survey was used not only to capture what schools with minimal or non-existent IHL curricula wanted to improve, but also how schools with thriving IHL programs supported and encouraged coverage of the subject.[2]

Challenges to Teaching IHL and Recommendations for Improvement

The operational understanding of IHL used for this study and for the entire Teaching IHL initiative is that IHL is a set of rules which seek, for humanitarian reasons, *to limit the effects of armed conflict*. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. IHL is also known as the law of war or the law of armed conflict. Yet one of the first striking conclusions of the study was the extent to which there are misunderstandings about the definition, scope and application of IHL, as well as discrepancies in the terminology used to describe course offerings.

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Some respondents conflated human rights and humanitarian law. Some confused the law of armed conflict with principles of humanitarian relief. One academic dean, when asked about the coverage of "international humanitarian law" at his school, responded that there is a human rights professor on staff that addresses all student interest and teaches a course dedicated to the subject. When subsequently asked about whether a course is offered on the law of war or the Geneva Conventions, the same dean responded that such a course is not offered at the school.

The survey also showed that the administration may approve or deny a course based on its perception of student interest in relation to the title — for example, whether the course is titled "International Humanitarian Law," or "Law of War," or "Law of Armed Conflict." The course title may also affect students' decision to enroll in a particular course.

Despite the confusion in definitions, the survey indicated that students and faculty in U.S. law schools have a strong interest in IHL. Of 101 respondents, only five reported that IHL is not taught in any form at their school. Respondents reported that 92 percent of students are "interested" or "very interested" in legal issues related to the "global war on terror" and that 96 percent are "interested" or "very interested" in legal issues related to armed conflict. A majority of students (60 percent) are "interested" or "very interested" in relief assistance and humanitarian action.

In most law schools surveyed, IHL is not taught as a stand-alone, dedicated course. While 95 percent of respondents reported that IHL is taught in some form at their school, only 37 percent of those schools have stand-alone IHL courses. Three quarters of those dedicated courses reach fewer than 40 students each year. The topics covered are diverse: courses may focus only on war theory or on the application of law to particular instances of armed conflict. Other courses focus on U.S. practice, or take a global approach based on the United Nations Charter. Most courses, however, reflect themes of history, ethics, military practice, criminality, and prosecution. Most courses also cover interdisciplinary aspects of IHL, such as the intersection with human rights, criminal law, and or national security. Where IHL is taught as a module within other courses, it is overwhelmingly framed as an aspect of public international law. Courses most frequently containing an IHL module include international human rights (44 respondents), international criminal law (22 respondents), national security/terrorism (17 respondents), clinics (4 respondents), and international prosecution (3 respondents). The depth and scope of coverage varies, but a typical IHL module comprises one to two class sessions. Most textbooks do not include discussions of IHL as an interdisciplinary subject, and consequently professors wishing to expose students to IHL often must seek supplementary materials elsewhere.

While student interest is high, a professor with an interest in IHL is generally the driving force behind relevant course offerings. Every school that reported having an IHL "expert" on its faculty offered IHL, and half of such schools offered IHL as a stand-alone course. By contrast, of 27 schools reporting no IHL "expert" on staff, only two offered dedicated IHL courses.

Many dedicated IHL courses rise and fall with the availability of a professor for whom IHL is a "pet" class. Where schools offer multiple dedicated IHL courses, the programming is driven by a community of professors who are able to effectively attract and focus student interest and negotiate administrative barriers. At the same time, respondents reported multiple situations in which persistent students lobbied successfully for IHL-related offerings or created student groups to engage related interests. One professor noted that for an IHL course to succeed in the long run, it must "develop a positive reputation among the students."

Professors struggle with administrative constraints and a lack of IHL-related resources. While 78 percent of respondents stated that IHL should be covered more thoroughly at their school, a number of factors impede institutional support for increased coverage. First, many administrations are simply unaware of the need for a course — a problem that may be related to confusion over terminology (IHL, law of war, law of armed conflict, etc.) or to the lack of a standard, comprehensive textbook and curriculum.

Summary of Key Findings from the Survey

There is a lack of consensus among academics over terminologies and definitions to describe IHL.

Students are very interested in legal issues related to the global war on terror and armed conflict.

Law journals and student activity groups provide an opportunity to explore or include IHL in public fora or activities, but inclusion of IHL is not ensured.

Few schools dedicate a course to IHL: professors often teach IHL as a component in the framework of a variety of courses on different subject matter — war theory, the application of law to particular instances of armed conflict, U.S. practice, or the UN Charter.

Individual professors' interest is the driving force for the teaching of IHL. Schools with multiple dedicated IHL offerings are driven by a community of professors who are able to channel student interest and negotiate administrative barriers.

Professors need more and better resources to foster the teaching of IHL. There is a dearth of issue-specific resources on IHL.

Despite strong student and faculty interest, many institutions are unaware of the need to cover IHL. Even within a school, faculty, students, and the administration may have radically divergent perceptions of the need for IHL offerings.

Misunderstanding over what IHL entails and the lack of consensus as to what should be included in an IHL course makes it difficult for professors to successfully promote IHL courses to their administrations.

Those who teach express strong interest in training opportunities, networks of others interested in the teaching of IHL, and greater institutional support.

In addition, human resource constraints adversely affect increased coverage of IHL. Even among schools with strong faculty and institutional support, professors can only teach a limited number of classes per semester. Standard bar courses take precedence over specialized courses with small enrollment. Some IHL classes, however, are over-enrolled, but schools lack sufficient faculty to address the demand. While smaller schools are disproportionately constrained by traditional offerings and limited faculty, even larger institutions face hurdles locating and funding qualified adjunct professors who can teach IHL.

Another impediment to increased IHL coverage is the lack of teaching materials. Respondents cited the lack of recognized, "concise basic materials"; the difficulty of wading through an abundance of material, cases, rules, and scholarship to compile an "ad-hoc syllabus"; and the absence of a good IHL textbook. Respondents also emphasized that the absence of a standard textbook also makes it difficult to promote an IHL course to school administrations.

In addition to teaching materials, professors desire greater training, networking, opportunities, and institutional support. Respondents suggested that an IHL syllabus pool, online and in-person networking opportunities to discuss best practices in teaching IHL, and training opportunities to increase familiarity with the subject would all be useful steps towards increasing IHL coverage in U.S. law schools.

Conclusions

In terms of practical steps to promote and enhance IHL instruction in U.S. law schools, three central conclusions can be drawn from the results of the survey. First, there is a need to make more IHL teaching resources available. Suggestions for needed resources include a standard IHL textbook with a teacher's guide, a compilation of modules for courses that concisely relate IHL to the diverse fields in the context of which IHL may be taught, and a syllabus bank that will enable faculty to draw on the structure and content of established, successful IHL courses when designing their own.

Second, there is a need for IHL-specific training opportunities. This includes comprehensive training for faculty who are teaching IHL for the first time, as well as advanced opportunities for experienced IHL faculty who wish to further their specialization in the field or increase their exposure to current developments in the law that established courses should reflect.

Third, there is a need to cultivate IHL-faculty networks. Whether online or through regularly scheduled meetings, building a community of IHL teachers would promote the exchange of resources and ideas, including substantive material to cover in courses, successful teaching methods to use, and strategies to gain institutional support from law school administrations to expand IHL coverage. It would also provide support for interested faculty members to deepen their knowledge and interest in IHL, thus expanding the pool of experts available to teach in schools wishing to extend their IHL course offerings.

In response to the study, WCL and the ICRC are working with a group of expert IHL teachers to develop strategies to address the needs identified and to create programming and materials. WCL and the ICRC are working with the American Society of International Law (ASIL) to create a Teaching IHL resource booklet and online syllabus bank. Recently, a pilot two-day Institute for teaching IHL took place. Professors Gary Solis, Douglass Cassel, Burrus Carnahan, and Jordan Paust, and the ICRC's Katie Sams and Phillip Sundel served as resource faculty. Participants came from eight law schools in the United States and also included teachers from Nigeria, Pakistan, and Canada. Veteran IHL professors shared successful strategies for developing curricula, responding to current events, integrating IHL as a module into broader courses, and gaining support from school administrations for expanding the teaching of IHL. Further activities are also planned.[3]

Both the ICRC and WCL are hopeful that these initiatives will catalyze further efforts to address the needs revealed by the survey, and that ultimately, the improved and expanded teaching of IHL will enhance the application and integration of international humanitarian law in the U.S. and beyond. ***HRB***

ENDNOTES: Project Reveals Challenges and Recommendations for Teaching International Humanitarian Law in U.S. Law Schools

[1] A copy of the survey is available for download at http://www.wclcenterforhr.org.

[2] It should be noted that the participants in the survey are a self-selected group. Consequently, some of the results are perception-driven. While the survey was sent out to all law professors self-identified as teaching international law, international humanitarian law, military law, human rights law, as well as to all law school deans, the responses came from a subset of those surveyed, most of whom already have some interest in IHL.

[3] Further information can be found at http://www.wclcenterforhr.org.