

Beyond the Call of Duty: why shouldn't video game players face the same dilemmas as real soldiers?

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Abstract

Video games are influencing users' perceptions about what soldiers are permitted to do during war. They may also be influencing the way combatants actually behave during today's armed conflicts. While highly entertaining escapism for millions of players, some video games create the impression that prohibited acts, such as torture and extrajudicial killing are standard behaviour. The authors argue that further integration of international humanitarian law (IHL) can improve knowledge of the rules of war among millions of players, including aspiring recruits and deployed soldiers. This, in turn, offers the promise of greater respect for IHL on tomorrow's battlefields.

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As I scan the horizon for targets, a river of flames cuts through the night sky; dancing streams of red and white light up the city. I see white phosphorous all around us. This stuff is death to all it touches. Our 155 mm artillery shells, alternating between white phosphorous and high explosive, soften up enemy positions in advance of the assault. In a split second, we will leave the safety of our armoured vehicle and start the bloody work of grunts: searching houses and killing villains. We must push forward. We can't let the terrorists fall back and regroup. We've grabbed a foothold in the city and must exploit it by driving as deep as possible into enemy territory. Our instructions are to take out the likely enemy headquarters, a big house down the street. The success of the whole campaign rests upon our shoulders.

Our squad leader turns to us, gives a few quick orders, and moves to the back gate. I throw a grenade toward the municipal building. When it explodes, smoke and dirt swirl around the street. We fire a few 40 mm M203 rounds for good measure. The explosion leaves a makeshift smoke screen. As we progress, one team member is taken down by sniper fire from a building on our left. It looks like a hotel. I call in a drone strike. Almost immediately its lethal load hits the multistorey building, reducing it to rubble. No need to bother about potential occupants or collateral damage; the entire city, manned only by treacherous terrorists, can be destroyed. Any human our team encounters is a target. Anti-personnel land mines are a good way to secure streets and buildings we have cleared. For four hours in a row, we repeatedly enter houses, killing anyone in our line of sight and grabbing their dog tags as trophies. Enemy wounded, as a rule, try to fight back. Those who don't get a double tap anyway, just like all the rest. After all, there is no surrender option. Only enemy leaders are taken alive: you can't beat intelligence out of dead people. Afterwards, headshots from my M4 Bushmaster – with the silencer I got for reaching 100 kills – are good for my game ranking.¹

Video games² offer players the possibility to 'use' the latest weapons against enemy combatants on contemporary battlefields. Yet as realistic as they may look and sound, these games often portray lawless armed conflicts in which actions are without consequences. This sends negative messages to players about the existence of, and need to respect, humanitarian norms during real armed conflicts. Why can't

1 Fictional account inspired by the authors' experience of video games and an account of the battle of Fallujah in David Bellavia, *House to House – an Epic Memoir of War*, Free Press, New York, 2007.

2 In this article, the term 'video games' is used to describe electronic first person shooter games depicting combat situations – including contemporary battlefields, such as Iraq, Afghanistan, Lebanon, Somalia, and the Levant – where players fire at enemy targets. 'First person shooter games' is the industry's term for electronic games where players fire at enemy targets. As this article is aimed at a broader readership, the term 'video games' is used instead.

players enjoy video games that truly reflect the dilemmas of modern combatants? Can video games be a positive medium of influence to reinforce understanding and respect for the law? Why can't players be rewarded for compliance with the rules governing the use of force as well as the treatment of persons in the hands of the enemy and sanctioned for violating the same?

With hundreds of millions of active players (or 'gamers') around the world,³ the video games industry has become a global phenomenon that transcends social, cultural, geographical, age, and income brackets. While the vast majority of video games do not depict combat situations or indeed any form of violence, those that do represent a highly lucrative, if narrow, segment of the video game market.⁴ From Rio de Janeiro to Ramallah, children and adults – including enlisted soldiers and budding recruits – are enthralled by this form of 'militainment' (see figures throughout article).⁵

'Video games and international humanitarian law (IHL)' is a relatively new and fragmented field of enquiry, spanning a range of discourses. There is little in the way of IHL-focused literature on the subject. This article is very much an exploratory piece. Its purpose is to highlight the potential impact of these games on players' perceptions of the normative framework governing the use of force. Our focus is upon first person shooter games depicting combat situations, that is, those games where players fire at enemy targets on contemporary battlefields, such as Iraq, Afghanistan, Lebanon, Somalia, and other contexts in the Levant.⁶ As depiction of violence per se is not the issue being addressed in this contribution, video games that portray more fictional scenarios including medieval fantasy or futuristic wars in outer space are beyond the scope of this article. In the first section, we begin by highlighting the potential influence of video games on players' perception about applicable rules in real battlefields. The second section examines the applicability of IHL and international human rights law (IHRL) to contemporary situations portrayed in video games. In the third section, attention turns to challenges posed to

3 One company, Spil Games, claims to have 130 million active monthly users of its online games. It estimates that 510 million people were playing online games in 2010: *SPIL GAMES, 2010 State of Gaming Report*. According to one estimate this is multi-billion dollar industry generated at least \$70 billion in 2011. See IDATE, *World Video Game Market Data & Forecasts, 2011–2015*, 17 January 2012.

4 At the time of publication, the most popular video games were *Call of Duty: Black Ops 2*, *Madden NFL '12*, *Halo 4*, *Assassin's Creed 3*, *Just Dance 4*, *NBA 2K13*, *Borderlands 2*, *Call of Duty: Modern Warfare 3*, *Lego Batman 2: DC Super Heroes*, and *FIFA '12*. For current sales figures for the various platforms (games), see '10 best selling videogames in 2012', in *Market Watch*, 10 January 2013, available at: <http://www.marketwatch.com/story/10-best-selling-videogames-in-2012-2013-01-10> (last visited January 2013).

5 'Militainment' has been defined as 'war packaged for pleasurable consumption' and 'entertainment with military themes in which the (US) Department of Defense is celebrated'. See Roger Stahl, *Militainment, Inc. – War, Media and Popular Culture*, Routledge, New York, 2009, p. 6, and view 'Militainment, Inc: militarism and pop culture', available at: <http://video.google.com/videoplay?docid=-2373519247173568764> (last visited 25 May 2012).

6 Electronic games can be played on different platforms the most common being PCs and consoles. Games played on PCs are commonly known as 'computer games' while those played on consoles are called 'video games'. This article uses the term video games to refer to both.

humanitarian norms by games that are marketed as providing a 'real-life' experience of combat, but actually portray battlefields that are essentially lawless. In the final section, the authors explain the International Committee of the Red Cross's (ICRC) joint initiative with various Red Cross National Societies to work together with the video game industry to encourage innovation for better integration of IHL and IHRL in these games. We note that through this initiative, video games – with their vast reach and capacity for the transfer of knowledge and skills – can become important vectors for the promotion of humanitarian norms.⁷

Influence of video games

Video games and violent behaviour

It is a truism that technology is transforming how wars are fought. In our view, technology is also transforming the way we imagine war. Traditionally, perceptions of war have been shaped by heroic and epic songs, stories, plays, and movies. Today, millions have ready access to increasingly realistic movies and video games crafted with input from ex-military personnel who served on contemporary battlefields.⁸ In some cases, the depiction of armed conflict in video games is so realistic that it is difficult to distinguish real war footage from fantasy (Figures 1 and 2).⁹ When compared to movies, video games have unprecedented novelty. Players are active participants in simulated warfare. Unlike passive spectators of traditional media such as movies, video game players make decisions to use or refrain from using force. In reaction to this development, 59 per cent of respondents to an Australian government survey stated that video games should be classified differently to other media forms, precisely because the player is invited to participate in video game violence, not just watch violence.¹⁰

In the same survey, 63 per cent of respondents believed that playing violent computer games results in real life violence. While this widespread belief is revealing, it is not conclusively supported by research. The scientific literature is divided on the influence of video games on human behaviour,

7 The same is true of military training simulators that depict contemporary battlefields. Increasingly, they are used by armed forces to operationalize the laws of armed conflict for military personnel. Given their function, military training simulators are more likely to integrate IHL than commercial video games. However, they also reach a far smaller audience. For these reasons the primary focus of this article is on video games.

8 The increasing realism of video games that depict modern battlefields has drawn attention to commercial-military collaboration in the development of games. See, for instance, 'Documentary – Official Call of Duty Black Ops 2', available at: http://www.youtube.com/watch?feature=player_embedded&v=Gm5PZGb3OyQ (last visited 24 May 2012).

9 What qualifies as a 'realistic video game that portrays armed conflict' is nuanced and somewhat subjective. Some games include realistic looking weapons and battlefield environments but have unrealistic features (e.g., players can come back to life).

10 Australian Government Attorney-General's Department, *Community Attitudes To R18+ Classification Of Computer Games*, Report, November 2010, available at: www.ag.gov.au (last visited 5 April 2012).



Figure 1. This is a real photo-image taken during combat in Fallujah. © Anja Niedringhaus/Keystone.



Figure 2. In *Arma II*, players fight in realistic looking environments. This and other scenes closely resemble footage recorded during real military operations. © Bohemia Interactive.

especially when the question is framed: 'Can playing video games lead to violent behaviour?'¹¹ While there is no compelling evidence to support that proposition, revelations that killers have actually used video games as training tools has kept these issues in the media spotlight.¹²

When it comes to defining the psychological impact of a particular stimulus on an individual, scientific researchers cannot overcome a number of impediments to drawing conclusions that apply to a population as a whole. A range of factors produce differences from one person to another including genetics, the social environment, and the degree of violence within the society of one particular individual. Access to weapons, poverty, and the degree of violence within one's family are believed to be essential factors in the decision to resort to armed violence. Moreover, most scientific research on the causes of violent behaviour is conducted within developed countries where violence is more limited and severely sanctioned. As access to Internet and video games is no longer limited to privileged countries,¹³ scientific research conducted in say Nairobi or in the favelas of Rio de Janeiro could yield very different conclusions from existing, often US-based,

- 11 For an illustration of the scientific debate: Anderson *et al.*, assert a causal link between violent games and violent behaviour: Craig A. Anderson, Akiko Shibuya, Nobuko Ithori, Edward L. Swing, Brad J. Bushman, Akira Sakamoto, Hannah R. Rothstein and Muniba Saleem, 'Violent video game effect on aggression, empathy and prosocial behaviour in eastern and western countries: a meta-analytic review', in *Psychological Bulletin*, Vol. 136, No. 2, pp. 151–173. For Ferguson the link is not proven and attention should be focused elsewhere (e.g., on poverty and domestic violence). See Christopher J. Ferguson, 'Media violence effects: confirmed truth or just another X-file?', in *Journal of Forensic Psychology*, Vol. 9, No. 2, April–June 2009, pp. 103–126. This is also the conclusion of the Swedish Media Council, *Summary of Violent Computer Games and Aggression – An Overview of the Research 2000–2011*, Swedish Media Council, Stockholm, 2012, available at: http://www.statensmedierad.se/upload/_pdf/Summery_Violent_Computer_Games.pdf (last visited 20 December 2012), and *Brown, Governor of California, et al. v. Entertainment Merchants Association et al.*, Certiorari to the United States Court of Appeals for the Ninth Circuit, No. 08–1448. Argued 2 November 2010 – Decided 27 June 2011 (hereinafter 'Brown') where the majority of the US Supreme Court noted that: 'Psychological studies purporting to show a connection between exposure to violent video games and harmful effects on children do not prove that such exposure causes minors to act aggressively. Any demonstrated effects are both small and indistinguishable from effects produced by other media' (Scalia, J., p. 13, who delivered the opinion of the Court, in which Kennedy, Ginsburg, Sotomayor, and Kagan, JJ., joined. Alito, J., filed an opinion concurring in the judgment, in which Roberts, C. J., joined. Thomas, J., and Breyer, J., filed dissenting opinions.)
- 12 Tragic events including mass killings by gunmen at Columbine, Virginia Tech, and Sandy Hook have heightened public concern. Like Norwegian mass murderer Anders Breivik, several US perpetrators regularly played *Call of Duty*. Police observations regarding similarities between Sandy Hook gunman Adam Lanza's modus operandi and methods used in a video game he frequently played are particularly revealing. See Dave Altimari and Jon Lender, 'Sandy Hook shooter Adam Lanza wore earplugs', in *Hartford Courant*, 6 January 2013, available at: http://articles.courant.com/2013-01-06/news/hc-sandy-hook-lanza-earplugs-20130106_1_police-cars-lauren-rousseau-newtown (last visited 10 January 2013).
- 13 In 2008 an estimated 31,68 million people, worldwide, played online video games, out of which an estimated 3 million played first person shooter games. These figures do not take into account those people who played either on unconnected computers, PlayStations or cell phones. In the Middle East, in 2010, 64 million people played online video games or on PlayStations. In 2012 there are an estimated 211.5 million video-games players in the US. See 'Mobile gamers now represent the largest gamer segment', in *NPD*, 5 September 2012, available at: https://www.npd.com/wps/portal/npd/us/news/press-releases/pr_120905/ (last visited 20 October 2012). In Turkey, in 2012, an estimated 21.8 million people played video games on computers, smartphones, and game consoles. See 'Infographic 2012', in *NewZoo*, 21 June 2012, available at: <http://www.newzoo.com/infographics/infographic-turkey/> (last visited 20 October 2012).

research.¹⁴ In any case, while researchers have not established a causal link between violent games and violent behaviour, they have not excluded such a link.

Video games, training, and skills acquisition

There is little doubt that video games represent an efficient medium for the transfer of knowledge and skills. According to a recent French language survey,¹⁵ more than 50 per cent of players claimed to play between one and four hours per day and over 90 per cent had played games depicting graphic armed violence. Repetition of actions is essential to the acquisition of automatism. Recognized by military leaders since antiquity, this technique is institutionalized in military training, and commonly known as 'the drill'. While playing for hours, regularly repeating the same actions and scenarios, video game players focus on the objective to be attained. Methods used are simply a means to achieving the goal. Inevitably, players learn from their own actions as well as from images displayed on the screen.

When performing as expected by the video game scenario or script, players are rewarded symbolically with a bonus, a medal, or improved equipment or weaponry, or by moving to the next stage of the game. Such rewards, combined with hormones produced by the brain, provide a sense of satisfaction and fulfilment for actions performed and skills learned.¹⁶ Arguably, a player regularly exposed to video game scenes of torture and perhaps compelled by the script to act out torture¹⁷ (to proceed to the next stage) and then rewarded for doing so will not necessarily commit acts of torture in real life. However, such a person may find himself or herself more easily inclined to regard torture as an acceptable behaviour. A study, conducted by the American Red Cross, while not mentioning video games, offers important insights into what Americans think about certain conduct frequently depicted in video games, including torture.¹⁸ Of the youth surveyed, 59 per cent considered the torture of captured enemy soldiers or fighters in order to

14 In the US alone there have been more than 200 studies into violence in the media. Over the last eighty years these studies have gradually shifted from cinema, to television, and now concentrate on video games.

15 Gaël Humbert-Droz, 'Les jeux vidéo et le droit international', 2012. This survey was posted on the following forums: jeuxvideo.com, Forum FantabobShow, Forum DpStream : Forum BF-France (battlefield France). The survey is no longer available online (copy on file with the authors).

16 See, for instance, Douglas A. Gentile, 'Video games affect the brain – for better and worse', in *the Dana Foundation*, 23 July 2009, available at: <http://www.dana.org/news/cerebrum/detail.aspx?id=22800> (last visited 10 February 2012).

17 By way of example, torture scenes appear in *Call of Duty: World at War*. See 'Call of Duty: Modern Warfare 2', in *Wikia*, available at: http://callofduty.wikia.com/wiki/Call_of_Duty:_Modern_Warfare_2 (last visited 10 October 2012). In *Call of Duty: Black Ops*, the player must take part in an act of torture (they must give a command for the hero to hit in the face a detainee in whose mouth shards of glass were previously introduced). In *Call of Duty: Modern Warfare 3*, the superior of the player tortures a Somali commander before shooting a bullet in his head (Figure 4). While the presence of torture in the narrative of these games certainly leaves no one indifferent, the rationale for its inclusion is unclear.

18 More than two-fifths of youth (41%) believe there are times when it is acceptable for the enemy to torture captured American prisoners, while only 30% of adults agree. More than half of youth (56%) believe that there are times when it is acceptable to kill enemy prisoners in retaliation if the enemy has been killing American prisoners, while only 29% of adults agree. Brad A. Gutierrez, Sarah DeCristofaro and Michael Woods, 'What Americans think of international humanitarian law', in *International Review of the Red Cross*, Vol. 93, No. 884, December 2011, pp. 1009–1034.

extract important military information as acceptable (compared to 51 per cent of adults). Only 45 per cent and 40 per cent respectively said this conduct was never acceptable.

The utility of video games and virtual environments for training and skills acquisition has been recognized by armed forces, leading to commercial-military collaboration in the development of games. Collaboration between the video game industry and the military is not new.¹⁹ Interaction flows in two directions and takes several forms. Commercial war game developers advise the armed forces on how to make their recruitment games more entertaining, while serving or former military personnel add realism to stories and scenes in commercial games.²⁰ Meanwhile, footage from real armed conflicts is adapted for use in both battlefield training software and commercial video games. Military interest in video games is not difficult to fathom. According to one study, US military personnel and potential recruits play video games at a higher rate than the general population.²¹ A US Navy review of the effectiveness of instructional games concluded that, for various different tasks and diverse learning groups, some games could provide effective learning in areas such as mathematics, attitudes, electronics, and economics.²² Computer simulation programmes have also been developed to assist veterans to reintegrate into society²³ and help trauma victims.²⁴ Another instance of the use of video games as a medium of influence is provided by the US Army's most powerful recruitment tool: a multiplayer²⁵ video game. In *America's Army*, players

- 19 For a brief history of how 'virtual worlds of war became a mutual enterprise uniting the media and military industries', see Robin Andersen and Marin Kurti, 'From *America's Army* to *Call of Duty*: doing battle with the military entertainment complex', in *Democratic Communiqué*, Vol. 23, No. 1, 2009, p. 45, available at: <http://www.democraticcommunications.org/communiqué/issues/Fall2009/andersen.pdf> (last visited 20 February 2012). See also, Tony Fortin, 'Jeux vidéo et monde militaire, un couple inséparable?', in *Rue89*, 22 September 2012, available at: <http://www.rue89.com/2012/09/22/jeux-video-et-monde-militaire-un-couple-inseparable-235526> (last visited 20 October 2012).
- 20 For example, in 2002, Bohemia Interactive, creators of the video game *ARMA II*, developed a battlefield simulation system for the US armed forces. *Virtual Battlespace (VBS) 1* and *2* are now used by armed forces including the US Marine Corps (and several other branches of the US armed forces), the British, Australian, New Zealand, and Canadian armed forces, and NATO. See also, 'US Army's new virtual simulation training system', in *Defence Talk*, 30 May 2011, available at: <http://www.defencetalk.com/army-virtual-simulation-training-system-34543/> (last visited 20 October 2012).
- 21 US military research suggests that 75% of male staff enlisted in the US military may play video games at least once a week, compared to 40% of the general US population. B. W. Knerr, 'Virtual media for military applications', Paper 21, *Current Issues in the Use of Virtual Simulations for Dismounted Soldier Training Data*, 2006. The study does not specify the type of game played (e.g., first person shooter or role-playing game).
- 22 Robert T. Hayes, 'The effectiveness of instructional games: a literature review and discussion', Naval Air Warfare Center Training Systems Division, Orlando, 2005, p. 6, available at: http://www.stotterhenke.com/projects/matisse/background_docs/Instr_Game_ReviewTr_2.005.pdf (last visited 10 January 2012).
- 23 'US war woe: suicide kills more soldiers than combat', in *RT*, 23 December 2011, available at: <http://www.rt.com/news/us-soldiers-suicide-combat-487/> (last visited 20 May 2012).
- 24 See Laurin Biron, 'Virtual reality helps service members deal with PTSD', 11 June 2012, available at: <http://www.defensenews.com/article/20120611/TJSJ01/306110003/Virtual-Reality-Helps-Service-Members-Deal-PTSD> (last visited 20 June 2012). See generally, Jane McGonigal, *Reality Is Broken: Why Games Make Us Better and How They Can Change the World*, Penguin Press, New York, 2011 (this post-doctoral work assesses how to harness the power of games to solve real-world problems).
- 25 Multiplayer games are set in an open battlefield. Dozens of people connect to the Internet compete to capture the enemy flag or eliminate other players.

engage – together with others connected on the Internet – in imaginary military operations in mostly urban settings that resemble combat conditions in Iraq and Afghanistan. Massachusetts Institute of Technology (MIT) researchers argue that this free online game is a more effective recruitment tool than all other forms of US Army advertising combined.²⁶ In addition to being a useful vector for communicating information of clear interest to potential recruits (for example, equipment, salaries, and career opportunities), the game is a tool for inculcating military values.²⁷

Resorting to video games as a medium of influence is not limited to the US or Western world armed forces. *Under Siege (Tahta – al Hisar)*,²⁸ a video game developed and produced in Damascus, Syria, departs from the familiar script of American soldiers as the heroes doing battle in Muslim countries. Set during the Second Intifada and designed for Arab youngsters, *Under Siege* offers a Middle Eastern view of that conflict. Players get to assume the role of a young Palestinian facing Israeli occupation. Hezbollah's video game *Special Forces 2 – Tale of the Truthful Pledge*, a follow up to *Special Force* (2003), adopts a similar approach. The second edition depicts armed conflict between Israel and Hezbollah based on key phases of the 2006 armed conflict.²⁹

Another, albeit indirect, form of interaction between the military and the video game 'sphere' is to be observed through the new generation of unmanned aerial vehicle (or drone) pilots who bring years of video-gaming experience to their new role of conducting combat operations.³⁰ This has sparked debate about whether such experience shapes attitudes and behaviour. The question of whether drone pilots have a 'PlayStation mentality' has generated heated debate within military circles. Concerns have been voiced by senior military officials about video games shaping perceptions about what is acceptable behaviour during war, including the perceptions of experienced video gamers recruited to operate armed drones from remote locations far from the battlefield.³¹ This issue deserves further examination by researchers independent of government and military forces.

The then UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston, frames the issue in the following way:

Young military personnel raised on a diet of video games now kill real people remotely using joysticks. Far removed from the human consequences of their

26 Jeremy Hsu, 'For the US military, video games get serious', in *Live Science*, 19 August 2010, available at: <http://www.livescience.com/10022-military-video-games.html> (last visited 15 June 2012).

27 One example is the notion of hero: biographies of 'real heroes' in the US army can be found on the *America's Army* website, available at: <http://www.americasarmy.com/realheroes/> (last visited 24 May 2012).

28 Kim Ghattas, 'Syria launches Arab war game', in *BBC News*, 31 May 2002, available at: http://news.bbc.co.uk/2/hi/middle_east/2019677.stm (last visited 15 June 2012).

29 Tom Perry, 'Hezbollah brings Israel war to computer screen', in *Reuters*, 16 August 2007, available at: <http://www.reuters.com/article/2007/08/16/us-lebanon-hezbollah-game-idUSL1662429320070816> (last visited 10 January 2012).

30 Peter W. Singer, 'Meet the Sims... and shoot them', in *Foreign Policy*, March 2010, available at: http://www.foreignpolicy.com/articles/2010/02/22/meet_the_sims_and_shoot_them (last visited 24 May 2012).

31 Air Marshall Brian Burridge, 'Post-modern warfighting with unmanned vehicle systems: esoteric chimera or essential capability?', in *RUSI Journal*, Vol. 150, No. 5, October 2005, pp. 20–23.

actions, how will this generation of fighters value the right to life? How will commanders and policymakers keep themselves immune from the deceptively antiseptic nature of drone killings? Will killing be a more attractive option than capture? Will the standards for intelligence-gathering to justify a killing slip? Will the number of acceptable 'collateral' civilian deaths increase?³²

Video games and the factors influencing the behaviour of combatants

On the issue of video games and their potential influence on behaviour, it is instructive to compare the mechanisms that shape the behaviour of combatants in real life and those at play within video games. Through empirical research and a review of the literature, the ICRC has identified various factors that are crucial in conditioning the behaviour of combatants in armed conflicts. The goal of a 2004 study³³ was to identify the causes of violations of IHL. It focused mainly on psychosociological factors universally present in any group of armed combatants taking part in a war, such as the influence of the group, integration within a hierarchy, and moral disengagement.³⁴ Interestingly (or disturbingly), most of these factors may also be identified in video games. With respect to behaviour of combatants, the study found that:

Combatants are subject to group conformity phenomena such as depersonalization, loss of independence and a high degree of conformity. This is a situation that favours the dilution of the individual responsibility of the combatant within the collective responsibility of his combat unit. . . . Combatants are also subject to a process of shifting individual responsibility from themselves to their superior(s) in the chain of command. While violations of IHL may sometimes stem from orders given by such an authority, they seem more frequently to be connected with a lack of any specific orders not to violate the law or an implicit authorization to behave in a reprehensible manner. . . . Combatants who have taken part in hostilities and been subjected to humiliation and trauma are led, in the short term, to perpetrate violations of IHL. . . . The gulf observed between the acknowledgement and application of humanitarian norms derives from a series of mechanisms leading to the moral disengagement of the combatant and to the perpetration of violations of IHL. The moral disengagement of

32 Philip Alston and Hina Shamsi, 'A killer above the law', in *The Guardian*, 2 August 2010, available at: <http://www.guardian.co.uk/commentisfree/2010/feb/08/afghanistan-drones-defence-killing> (last visited 1 August 2012).

33 Daniel Muñoz-Rojas and Jean-Jacques Frésard, 'The roots of behaviour in war – understanding and preventing IHL violations', in *International Review of the Red Cross*, Vol. 86, No. 853, March 2004, pp. 169–188 (hereinafter 'the study').

34 'Moral disengagement is a complex process and malicious acts are always the product of interactions between personal, social and environmental influences'. *Ibid.*, p. 197. 'Moral disengagement is not only a gradual process but also one that determines behaviour which draws from past actions the force needed to sustain future actions'. *Ibid.*, p. 199.

combatants is effected mainly by having recourse (1) to justifications of violations,³⁵ and (2) to the dehumanizing of the enemy.³⁶

Several parallels may be drawn between the conclusions of this study and video games that portray contemporary battlefields. Out of the five causes of violations identified in the study, at least four are mirrored in video games. Namely, the encouragement to crime that is part of the nature of war, the definition of war aims, reasons of opportunity, and psycho-sociological reasons. It goes without saying that reasons linked to the individual (the fifth identified cause of violations) may not be generalized here.

The study identified encouragement to crime³⁷ as part of the nature of war. In video games it flows from perceptions that battlefields are places devoid of civilians or those *hors de combat*. Consequently, players are left under the impression that the whole battlefield is an open shooting range where no precautions are to be taken. In the view of the authors, the decision of video game companies to remove civilians from their products fuels the same perception: anything alive is a foe and killing is the only option – there are no limits to the use of force. This impression is reinforced by the example sometimes set by the behaviour of other characters in the video games. For instance, when a squad leader in a video game engages in torture or extrajudicial killing, this provides the signal to players that such behaviour is implicitly authorized.³⁸

The definition of war aims (or campaign objectives) of video games tends to justify the results, whatever the methods. As in real armed conflict, the enemy is commonly demonized and dehumanized in video games, justifying their killing. The enemy's failure to respect the law is also presented as a justification for players using any method of warfare at their disposal to fulfil their mission.

In real armed conflicts many combatants break the rules simply because war is the ultimate experience and they are given the opportunity to do so. Such reasons of opportunity are reflected by the enjoyment of transgressing rules. This is at the very centre of the experience of many types of video games, including many that depict contemporary battlefields. As noted by some video games developers,

35 Combatants resort to different justifications or a combination thereof, such as declaring oneself not as a torturer but as a victim; arguing that circumstances render some reprehensible behaviour not only admissible but also necessary; invoking violations by the enemy and sometime blaming the victims themselves; or denying, minimizing, or ignoring the effects of their actions through the use of euphemisms to refer to their operations and their consequences. *Ibid.*, pp. 198–200.

36 'The humanity of the other side is denied by attributing to the enemy contemptible character traits or intentions . . .', sometimes equating it with vermin or viruses to be eradicated. 'Combatants thus find it easier not only to attack but also to rationalize the most extreme kinds of behaviour and to convince themselves that they are justified and necessary'. *Ibid.*, p. 199

37 *Ibid.*, p. 189.

38 'Ordinary men submit willingly to an authority when they believe that it is legitimate; they then perceive themselves as its agents . . . This principle . . . is further reinforced when it is a question of combatants placed within a military hierarchy, a framework generally more constraining than any civilian authority . . . Although, under these conditions, the individual commits acts which seem to violate the dictates of his conscience, it would be wrong to conclude that his moral sense has disappeared. The fact is that it has radically changed focus. The person concerned no longer makes value judgements about his actions. What concerns him now is to show himself worthy of what the authority expects of him'. *Ibid.*, pp. 194–195.

players tend to shoot civilians in games simply because they can. For both the combatants and the players, the sense of opportunity is reinforced by a feeling of impunity. In most video games, violations are not followed by sanctions.

Finally, as in real armed conflicts, psycho-sociological reasons such as obedience to authority, group conformity, as well as moral disengagement are all embodied within the limited freedom of decision-making offered to the player. For instance, in one sequence in *Call of Duty: Black Ops*, the player must watch his or her own character introduce shards of glass into the mouth of a captured enemy. Immediately afterwards the player is requested and compelled to give a command to the computer or play station for the hero to hit the detainee in the face. With no other alternative than to obey or quit the game, the player is left to construct his or her own justification for this act of torture in order to distance himself from the facts and continue with his or her life. This mechanism is known all too well to numerous combatants in real armed conflicts.

Applicability of IHL and IHRL to video games

A plethora of legal norms are relevant to video games. Before addressing IHL, it is important to note that players, game designers, and distributors can point to a range of protections guaranteed under IHRL that are relevant to their respective activities. These protections flow from freedom of expression,³⁹ the right to property,⁴⁰ the right to privacy and family life,⁴¹ and the right to play.⁴² Freedom of expression, for instance, has been successfully invoked on numerous occasions in US courts to uphold the legality of video and computer games that depict violence, including torture and summary execution of captives.⁴³ However, this right has its

39 According to Article 19, International Covenant on Civil and Political Rights, entered into force on 23 March 1976 (adopted on 16 December 1966) (hereinafter 'ICCPR'), 'everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'. For similar guarantees under international and regional instruments, see Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention for the Protection of Human Rights, Article 9 of the African Charter on Human and Peoples' Rights, Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights.

40 The right to property is found in Article 17 of the Universal Declaration of Human Rights; Article 1 of Protocol I to the European Convention for the Protection of Human Rights; Article 21 of the American Convention on Human Rights; and most explicitly in Article 14 of the African Charter on Human and Peoples' Rights (ACHPR).

41 Article 17 of the ICCPR guarantees the right to protection from unreasonable interference by the state with respect to how computers and the Internet are used in private life.

42 Articles 1 and 31 of the Convention on the Rights of the Child, entered into force on 2 September 1990 (adopted on 20 November 1989).

43 By way of example, attempts to persuade US courts to ban or impose restrictions on games that depict violence rarely succeed. The outcome usually rests on whether games fall within exemptions to freedom of speech. See *American Amusement Machine Association v. Kendrick*, CA7 2001, 244 F. 3d 572, 577 (video games are protected on free speech grounds: no compelling justification was offered for the restriction sought); *Benoit v. Nintendo of America, Inc.* 2001 Lsa. Dist. Ct. (even if the death of a child during epileptic seizures was caused by exposure to violence in *Mortal Kombat*, the speech in the video game was protected

limits.⁴⁴ Lawmakers in various countries have relied upon these limits to ban games that depict extreme physical violence, sexual violence, and other content deemed offensive. The fact that specific provisions of IHRL,⁴⁵ copyright and intellectual property law,⁴⁶ and domestic law are the main sources of law applicable to the design, sale, and use of video games⁴⁷ is uncontroversial and not central to the present article. Of more interest for present purposes is the issue of the applicability of the rules on the use of force and the treatment of persons in the hands of the enemy, as contained within IHL and IHRL, to virtual battlefields created by the militainment industry.

It goes without saying that playing video games falls within the realm of fantasy. It does not involve participation in a real armed conflict. The same is true of use of battlefield simulation technology for military training purposes. Nonetheless, two questions need answers. First of all, do IHL and IHRL rules apply to the situations portrayed within video games? And second, do states have any particular obligation to ensure that the content of video games complies with the rules on the use of force and the treatment of persons in the hands of the enemy?

Any operation on a battlefield takes place within a legal framework shaped by international law (IHL and IHRL) and national legislation. Even though video games are only virtual it is argued here that, for the sake of realism, IHL and IHRL rules on the use of force should be applied to scenes in video games that portray realistic battlefields (in the same way that the laws of physics are applied). Incidentally, video games are not the only context where this legal framework can

unless it was an 'incitement to violence', which it was not); *Video Software Dealers Association v. Schwarzenegger*, Appeals Court upheld 2005 District Court 2009 US CA 9th Cir. (legislation restricting sale of violent video games to minors was unconstitutional. For the Supreme Court appeal, see *Brown*, above note 11); *Entertainment Software Association v. Granholm* 2005 Mich. Dist. Ct. (violent game protected as free speech, insufficient evidence of harm); and *Entertainment Software Association; Entertainment Merchants Association v. Minnesota* 2008 US CA 8th Cir. (injunction granted against law banning the sale or rental of violent video games to minors: freedom of speech and absence of proof of harm were decisive).

- 44 Freedom of expression can be limited under domestic law to protect the rights and reputations of others, national security, public order, public health, or morals. See Article 19(3) ICCPR.
- 45 In addition to the treaties mentioned above, others of relevance to video games include: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force on 26 June 1987 (adopted on 10 December 1984) (hereinafter 'CAT'), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, entered into force on 12 February 2002 (adopted on 25 May 2000, whether this Protocol is considered as part of IHL or of IHRL is a matter of debate), and the Convention on the Elimination of All Forms of Discrimination against Women, entered into force on 3 September 1981 (adopted on 18 December 1979).
- 46 Aside from games made available for free by their creators, video-game software is usually protected by copyright laws, international copyright treaties, and other treaties, and intellectual property laws. International agreements on copyright include the Berne Convention for the Protection of Literary and Artistic Works, 1886; Universal Copyright Convention, 1952; WIPO Copyright Treaty, 1996; and The World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.
- 47 Domestic legislation can apply to various activities associated with video games. Domestic copyright, property, privacy, and criminal laws (e.g., offences involving inciting racial hatred, providing support for a terrorist organization, etc.) may regulate the creation, distribution, use, and enjoyment of video games. On 'counselling' a criminal offence through video games, see *R. v. Hamilton*, Supreme Court of Canada, 29 July 2005, 2 S.C.R. 432, 2005 SCC 47.

shape a situation even though no armed conflict is actually in progress. Another important example is military training and planning. Whenever military commanders train their personnel, or plan operations with their staff, they must take into account the relevant law. They are certainly not expected to wait for the operation to be carried out before factoring in the law.

Whether IHL or IHRL or both are relevant to the situation portrayed in a video game depends upon whether the game depicts a situation of armed conflict. Each game must be examined individually. As IHL only applies during armed conflict, it has no relevance if what is portrayed in a video game is internal tensions, such as riots or protests, falling below the threshold of armed conflict. In these situations, the law enforcement regime,⁴⁸ which falls within IHRL, prescribes applicable rules on the use of force, firearms, arrest, detention, search and seizure during law enforcement operations.⁴⁹ For example, IHRL provides that firearms may not be used against a person, unless the person in question poses an imminent threat to life and there is no possible alternative.⁵⁰ Where the situation portrayed reaches the threshold of armed conflict, both IHL and IHRL are relevant. IHL contains the rules that combatants must follow when planning and conducting military operations (for example, rules on distinction, proportionality, and precautions). The conduct of hostilities regime, which falls within IHL,⁵¹ allows for the killing of legitimate targets.⁵² Where it is unclear whether the setting of the video game reaches the threshold of an armed conflict⁵³ – and therefore whether IHL applies – IHRL continues to be applicable, including the law enforcement

48 The law enforcement regime (IHRL) is the set of rules regulating the resort to force by state authorities in order to maintain or restore public security, law, and order.

49 These rules are found in treaties (e.g., ICCPR; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child) and non-binding instruments (e.g., Standard Minimum Rules for the Treatment of Prisoners; Code of Conduct for Law Enforcement Officials; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Basic Principles for the Treatment of Prisoners; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Declaration on the Elimination of Violence against Women).

50 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the eighth United Nations Congress on the prevention of crime and the treatment of offenders, Havana, Cuba, 27 August to 7 September 1990, in particular, provisions 5, 9 and 10.

51 Frida Castillo notes that: 'To define which IHL apply in a given situation, it is necessary to check what instruments were ratified by the state in question. While the 1949 Geneva Conventions were ratified universally, there are other IHL treaties, such as Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non International Armed Conflicts of 8 June 1977 (AP II), which have not been ratified by all states. So here too, it is necessary to verify, whether the states involved in the conflict have ratified the relevant instruments. Rules considered to be customary law on the other hand, apply to all states.' Report by Frida Castillo, *Playing by the Rules: Applying International Humanitarian Law to Video and Computer Games*, TRIAL, Pro Juventute, Geneva, October 2009, p. 3, footnote 1.

52 Combatants and civilians if and for such time as they directly participate in hostilities. See AP I, Articles 48 and 51(3), and Rules 1 and 6 of the ICRC Customary International Humanitarian Law Study, ICRC, *Customary International Humanitarian Law*, Vol. I: rules, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), Cambridge University Press, Cambridge, 2005 ('the ICRC Customary Law Study').

53 While any resort to armed force between two states constitutes an international armed conflict, in order for the threshold of non-international armed conflict to be reached, there must be 'protracted armed violence' involving a sufficient intensity of the violence and level of organisation of the parties. For the intensity requirement, relevant factors cited in case law include: the number, duration, and intensity of

regime referred to above, as well as the prohibition in particular of torture, arbitrary deprivation of life, and cruel and degrading treatment.⁵⁴

Looking at the second question, that is, whether states have an obligation to ensure video game content complies with the rules on the use of force, consider the following hypothetical example. A video game enables players to commit acts of torture and other grave breaches or serious violations of IHL in a virtual armed conflict. Players are not informed that such acts are prohibited. Sometimes players are even rewarded for acting out such behaviour in the game. For the sake of simplicity, let us put the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to one side. Does the game engage the IHL treaty obligations of states to respect and ensure respect⁵⁵ and to disseminate⁵⁶ IHL as widely as possible?⁵⁷ It is uncontroversial to note that states, at the very least, must ensure that their military training tools (including video games used either for recruitment or training purposes) do not permit or encourage any unlawful behaviour without proper sanctions. In the best case scenario, in fulfilment of the state's obligations, military training tools should fully integrate applicable rules on the use of force, that is, these tools should enable military personnel to respect, and train in the respect of, the law.⁵⁸ State obligations to 'respect and to ensure respect' for IHL and disseminate IHL as widely as possible and to comply

individual confrontations; the types of weapons used; the number of casualties; the extent of material destruction. See, *inter alia*, International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Ramush Haradinaj, Idriz Belaj, Lahi Brahimaj*, Case No. IT-04-84-T, Judgement (Trial Chamber I), 3 April 2008, para. 49. Indicative factors for the organisation requirement include: the existence of a command structure and disciplinary rules; headquarters; the fact that the group controls a certain territory; the ability to plan, coordinate, and carry out military operations. See, *inter alia*, ICTY, *Ibid.*, para. 60.

- 54 IHL and IHRL contain common prohibitions that must be respected at all times during armed conflict. Examples include the prohibitions against discrimination, summary execution, rape, torture, and cruel and degrading treatment. Both legal regimes also include provisions for the protection of women and children; prescribe basic rights for persons subject to a criminal justice process; and regulate aspects of the right to food and health.
- 55 Common Article 1 of the four Geneva Conventions of 1949; Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 (hereinafter 'GCI'); Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949 (hereinafter 'GCII'); Convention Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949 (hereinafter 'GCIII'); Convention Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (hereinafter 'GCIV'). See also, Rule 139 of the ICRC Customary Law Study states that: 'Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control'.
- 56 GCI Art. 47, GCII Art. 48, GCIII Art. 127, and GCIV Art. 144 all provide: 'The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries and, in particular, to include the study thereof [if possible] in their programmes of . . . civilian instruction, so that the principles thereof may become known to the entire population'. See also, GCIII, Arts 39 and 41; GCIV, Art. 99; AP I, Art.83; AP II, Art. 19.
- 57 On the obligation of continuous dissemination, see Claude Pilloud, Yves Sandoz and Bruno Zimmermann (eds), *Commentary to Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, ICRC, 1987 (Commentary to Article 80), p. 929, para. 3290.
- 58 Detailed study of relevant state practice on 'how far these obligations extend' in the context of training tools and 'what are the consequences of failure to fulfil them' exceeds the word constraints of this article. Comprehensive research on these important issues would be useful.

with their treaty obligations⁵⁹ are very general and apply at all times.⁶⁰ While these rules should, as a matter of logic, apply to commercial video games sold or distributed on the sovereign territory of states, the practice of states indicates otherwise.

To conclude this section, it is important to note that questions about whether States have an obligation to ensure that the rules on the use of force, and the treatment of persons in the hands of the enemy are properly integrated into video games are not just theoretical. Depictions of violations of the law are not uncommon in video games. A 2009 Swiss study of popular video games⁶¹ identified frequently depicted violations of IHL. They included: violations of the principles of distinction and proportionality; extensive destruction of civilian property and/or injury or deaths of civilians without military necessity; and intentionally directing attacks against civilians or civilian objects, including religious buildings.⁶² The study found that cruel, inhuman, or degrading treatment or torture was most often depicted in video games in the context of interrogation.⁶³

The same study found that direct attacks against civilians not directly participating in hostilities were frequently depicted.⁶⁴ The victims – mostly hostages or civilians present in a village – were not mere incidental casualties: they were directly targeted. In only one game was this conduct punished.⁶⁵ Indeed, failure to comply with the principle of distinction occurred in various games. One instance is the use of munitions, including tank shells and cluster munitions⁶⁶ that are indiscriminate in their effects⁶⁷ when deployed in densely populated areas. In *Medal of Honour Airborne*, weapons that do not discriminate between combatants and civilians on the ground are deployed in airborne operations in urban areas.⁶⁸ Several games also allowed players to shoot injured soldiers who are *hors de combat* or watch others do so.⁶⁹ Many produce inconsistent consequences when players target

59 These provisions are based on the customary rule *pacta sunt servanda* as enshrined in Article 26, of the *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331.

60 According to the Commentary of Article 1 of GCI, p. 26, 'if it is to keep its solemn engagements, the State must of necessity prepare in advance, that is to say in peacetime, the legal, material or other means of loyal enforcement of the Convention as and when the occasion arises'. See also, Commentary AP I, p. 41; Commentary GCIV, p. 16; Commentary GCIII, p. 18; Commentary GCII, p. 25. According to Art. 1(1) of Protocol Additional I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (hereinafter 'AP I'), such respect is required 'in all circumstances'.

61 F. Castillo, above note 51.

62 In one game only, *Call of Duty 4 (Modern Warfare)*, attacking a church resulted in termination of the mission (game over). Attacking mosques never triggered this outcome. *Ibid.*, p. 24.

63 In many cases, the interrogation ends with extrajudicial execution. *Ibid.*, p. 42.

64 *Ibid.*, p. 42.

65 *Tom Clancy Rainbow 6 Vegas*. See *ibid.*, p. 37.

66 Examples include *World in Conflict* and *Frontlines: Fuel of War*. See *ibid.*, pp. 30–31. The Convention on Cluster Munitions of May 2008 (open for signature since 3 December 2008) prohibits the use of cluster munitions by states parties. However, their use in circumstances where civilians and combatants are indiscriminately targeted is always prohibited.

67 For the applicable law see The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (entered into force 2 December 1983) 1342 UNTS 137.

68 F. Castillo, above note 51, pp. 34 and 42.

69 *Ibid.*, pp. 15–16, 42. Relevant games include: *Call of Duty 5 (World at War)*, *Call of Duty: Modern Warfare 3*, *ARMA II*, *Call of Duty: Modern Warfare 2*, *Call of Duty: Black Ops*. See also, 24, *The Game*.

civilians or engage in other conduct that would constitute violations in a real armed conflict.⁷⁰

The authors of the present article have identified various other examples in video games of conduct that could constitute violations in a real armed conflict. They include: firing on medical units bearing the Red Cross, Red Crescent, or Red Crystal protective emblem or misuse of that emblem; destruction of civilian objects which appears to be disproportionate; use of anti-personnel landmines; removing identity discs from dead enemy combatants as trophies; use of heavy weapons in densely populated areas without regard for the rules on precautions in attack; and attacks on civilian objects that may involve the death of innumerable unseen civilians.⁷¹ The last two problems are illustrated in the video game *Battlefield 3*. In one scene, an entire floor of a multistorey hotel is destroyed in order to kill a single sniper.

Challenges to humanitarian norms

Simply playing a video game does not give rise to violations of IHL or IHRL by the player. At the risk of stating the obvious, a player does not commit a criminal act by pressing a button to enable a character in a video game to perform torture or summary execution: video games are fantasy. Furthermore, there is neither a need nor a way to take any legal action against gamers in such circumstances. Armed conflicts are, by definition, violent environments in which participants or combatants may apply a certain degree of force to compel the enemy to surrender. The depictions of violence in video games, per se, are therefore not the issue. However, in our view, video games pose two important challenges to humanitarian norms. The first is their tendency to trivialize violations of the law. No less important is their potential undermining effect on perceptions of the normative framework among players (who include current and potential combatants, opinion-makers, lawmakers, decision-makers, and the general public).

Messages conveyed by video games and humanitarian challenges

In this debate it is necessary, first of all, to have a closer look at the messages video games convey. By doing so, their potential undermining effect on perceptions of, and respect for, the fundamental rules of IHL – especially those governing the use of force and the obligation to spare civilians and combatants *hors de combat* – can be better understood. This section highlights several messages video games convey, as well as positive efforts by the video game industry to address the perception issue.

Several messages conveyed by video games are of particular concern precisely because they reflect and reinforce certain ideas that pose a direct challenge

70 For example, in various scenes in the *Call of Duty* games, torture of captives attracts no penalty, whereas in other games shooting civilians results in 'game over'.

71 For example, *Call of Duty* games set in Paris and Tehran.

to IHL. Important examples include the following: war is a law-free zone; the ends justify the means; the means and methods of warfare are not limited; anything living on a battlefield is to be shot at without distinction; identity discs are trophies; and medical staff and facilities can be attacked.

War is a law-free zone

In many video games, inflicting injury or death is normal and the only option available. Impunity is the norm and the law applicable to the situation portrayed in the game is rarely, if ever, acknowledged or enforced. One result is the absence of humanity in video games. In contemporary armed conflicts, the challenge of upholding humanitarian values is not the result of a lack of rules, but a lack of respect for them. Achieving greater respect, implementation, and enforcement of IHL remains an abiding challenge for the international community and a constant priority of the ICRC. This is the responsibility of parties to a conflict, state or non-state, but also requires action by states in peacetime. In addition, sanctions of a disciplinary or criminal nature must be adopted.⁷²

The ends justify the means

Some video games require players to witness or participate in graphic scenes of torture and/or murder of enemy captives in order to proceed in the game.⁷³ In real life, such conduct is absolutely prohibited at all times under both IHRL⁷⁴ and IHL.⁷⁵ In many video games, enemy fighters are depicted as treacherous villains who broke the rules first. They are often labelled 'terrorists' who deserve brutal treatment including summary execution or torture. A recent challenge for IHL has been the tendency of states to label as terrorist⁷⁶ all acts of warfare against them committed by armed groups, especially in non-international armed conflicts. This

72 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 30th International Conference of the Red Cross and Red Crescent, October 2007, ICRC, pp. 30–31, available at: <http://www.icrc.org/eng/assets/files/2011/30ic-8-4-ihl-challenges-report-annexes-eng-final.pdf> (last visited 10 January 2012).

73 In *Call of Duty: Black Ops*, players watch a superior coldly execute prisoners of war. Forced onto their knees and begging the executioner for mercy, all prisoners receive a shot to the head, except the last one – who is slain with a knife. On another instance in *Call of Duty: Black Ops*, the player must take part in an act of torture (they must give command for the hero to hit in the face a detainee in whose mouth shards of glass was previously introduced).

74 ICCPR, Art. 7; Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3; CAT, Art. 2.

75 Common Article 3 of the four Geneva Conventions of 1949 prohibits torture or cruel, inhuman, degrading, or humiliating treatment. See also, Articles 50, 51, 130 and 147 of the four Geneva Conventions respectively, Art. 75 of AP I, Art. 4 of AP II, and CIHL Study, rule 90.

76 There is no commonly agreed legal definition of 'terrorism'. See Additional Protocol II (APII), Art. 4(2) (d). In addition, both Additional Protocols to the Geneva Conventions prohibit acts aimed at spreading terror among the civilian population. See API, Art. 51(2), and AP II, Art. 13 (2). For a discussion on IHL and terrorism, see ICRC, 'International humanitarian law and terrorism: questions and answers', 2011, available at: <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm> (last visited 10 January 2012).

has created confusion in differentiating between lawful acts of war, including such acts committed by domestic insurgents against military targets, and acts of terrorism.⁷⁷

The means and methods of warfare are not limited

Amongst the weaponry available to players in many video games are explosive devices that are detonated by the presence or proximity of the enemy or on physical contact. On a battlefield and in legal terms such devices would be considered as anti-personnel landmines.⁷⁸ Nowadays, some 160 countries have committed themselves to ban these weapons from their military ordinance. Since the Ottawa Convention's adoption fifteen years ago substantial progress has been made in response to the humanitarian issue posed by these mines that keep on killing and maiming long after wars have ended. Nevertheless, great challenges remain, especially in removing remaining mines and relieving the suffering of the hundreds of thousands of injured and their families. In 2009, during the Second Review Conference for the Ottawa Convention, states adopted a plan of action that contains strong commitments to improve work in the fields of victim assistance, stockpile destruction, and mine clearance.⁷⁹

Anything living on a battlefield is to be shot at without distinction

In many first person shooter games, use of force resembles sport. Instead of hunting wild game, players hunt virtual human beings. Since most virtual battlefields are void of civilians, anything living is an enemy.⁸⁰ When they are wounded, enemy combatants usually continue fighting thereby justifying their killing. IHL essentially distinguishes between two categories of people in armed conflict: combatants and civilians. While the latter are protected at all times, except and only for such time as they take a direct part in hostilities, the former are protected once out of combat due to illness, injury, capture, or surrender. In contemporary armed conflicts there is a blurring of civilian and military functions. Added to the difficulty of distinguishing

77 See ICRC, above note 72, pp. 6–7. IHL essentially distinguishes between two categories of people in armed conflict, members of the armed forces and civilians. While the latter are protected at all times, except and only for such time as they take direct participation in hostilities, the former are only protected against attack once out of combat (due to illness, injury, surrender, or capture). In contemporary armed conflicts there is a blurring of civilian and military functions. One example is the involvement of civilian agencies (e.g., the CIA drone programme) in military operations. This highlights another difficulty when it comes to distinguishing between civilians and the military: the problem of civilians who directly participate in hostilities.

78 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997, Art. 2.

79 On anti-personnel landmines see, for instance, the ICRC website, available at: <http://www.icrc.org/eng/war-and-law/weapons/anti-personnel-landmines/index.jsp> (last visited 25 May 2012).

80 One exception is a playable scene from *Call of Duty: Modern Warfare II* that includes the mass killing of civilians inside an airport (although this scene does not take place on a battlefield proper). Players can participate in this killing spree without penalty.

between civilians and the military is the problem of civilians who directly participate in hostilities.⁸¹

Identity discs are trophies

In recent video games,⁸² players must retrieve dog tags from the enemy combatants they have killed in order to validate these kills and be rewarded. In war, many people go missing, causing anguish and uncertainty for their families and friends because their bodies may not be identified. IHL and IHRL require parties to an armed conflict to take measures to ensure that people do not go missing. For instance, all combatants should carry proper identity documents⁸³ so that their fate can be recorded. The collection of one of the identity discs is authorized under IHL for its transmission to the National Information Bureau or the Central Tracing Agency. The other half should remain with the body to facilitate its identification. In 2003 the ICRC organized an international conference to tackle this hidden tragedy and seek ways to help the families and communities affected. In 2006 the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearances.

Medical staff and facilities can be attacked

Another message sent by some video games is that directly targeting medical staff and facilities is normal and triggers no consequences (Figure 3).⁸⁴ The impression is reinforced when medics in video games are given offensive roles and weaponry, including grenade launchers.⁸⁵ In real armed conflicts thousands of wounded and

81 For the notion of 'direct participation in hostilities' see also, Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009.

82 These include, in particular, *Call of Duty: Modern Warfare 3* and *Call of Duty: Black Ops 2*.

83 The identity card is the basic document with which the status and identity of persons who have fallen into the hands of the adverse party can be determined, and it must be issued by states to any person liable to become a prisoner of war (GC III, Art. 17). It must contain at least the owner's surname, first names, date of birth, serial number or equivalent information, rank, blood group, and Rhesus factor. As further optional information, the identity card may also bear the description, nationality, religion, fingerprints or photo of the holder, or the date of expiry. In parallel with this measure, the authorities are required to issue specific identity cards for military personnel carrying out special tasks or for certain categories of civilians. The authorities may supplement the above measures by providing identity discs (GC I, Art. 16; GC II, Art. 19). The identity disc is worn permanently round the neck on a chain or strap. It can be a single or double disc made, as far as possible, of durable, stainless material that is resistant to battlefield conditions. The inscriptions it bears are similar to those on the identity card and should be indelible and fade-proof.

84 The Red Cross emblem became synonymous with 'health care' in video games upon the release of *Doom* in 1993. In *ARMA II*, the Red Cross, Crescent, and Crystal emblems are highly visible (Figure 5). Armoured vehicles rigged with an emblem do not carry weapons, only medical equipment. However, 'artificial intelligence' units controlled by the game do not differentiate between persons and objects bearing the protective emblem and those that do not. In the game *Crisis 2*, players can attack an ambulance with impunity. No warnings or penalties are triggered by attacks on ambulances.

85 In multiplayer games each player chooses a class or function. In addition to snipers, grenadiers, or engineers there are often nurses or combat medics whose function is to heal or resurrect fallen comrades. Nurses, sometimes dressed in white and often bearing a Red (or other coloured) Cross, are generally equipped with light weapons and a short reach, but good offensive skills when performing combat



Figure 3. In the game *Crysis 2*, players can attack an ambulance with impunity. No warnings or penalties are triggered by attacks on ambulances. © ICRC, Thierry Gassmann.

sick people are denied effective health care when: hospitals are damaged by explosive weapons or forcibly entered by fighters; ambulances are hijacked; and health-care personnel are threatened, kidnapped, injured, or killed. The problem is so acute in the wars of today that the ICRC is running a global Health Care in Danger campaign to raise awareness about this humanitarian issue.⁸⁶

Innovations by the video games industry addressing humanitarian challenges

Over the last years a number of initiatives have been taken by game designers to address some of the concerns highlighted above. This demonstrates a willingness to 'do the right thing'.⁸⁷ Innovations include: the removal of civilians from video games, the introduction of rules and penalties, the reinforcement of the principle of

functions. Such games send several inaccurate messages about the rules of war (e.g., protective emblems may be worn by persons with offensive combat roles, and attacks on medical personnel are acceptable).

86 See ICRC, *Health Care in Danger: A Sixteen-Country Study*, ICRC, Geneva, 2011, available at: <http://www.icrc.org/eng/assets/files/reports/4073-002-16-country-study.pdf> (last visited 2 August 2012). States and Red Cross and Red Crescent National Societies unanimously passed a resolution on this issue at the 31st International Conference of the Red Cross and Red Crescent. See 'Resolution 5, Health Care in Danger: Respecting and Protecting Health Care', document prepared by the ICRC, adopted at the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November–1 December 2011, available at: http://www.rccconference.org/docs_upl/en/R5_HCiD_EN.pdf (last visited).

87 See for example changes between *Battlefield 1* and 3. In the later version, players do not have to see or act out torture.

distinction, the provision of options other than killing, the removal of the Red Cross and Red Crescent emblems, and the inclusion of warnings and target restrictions to the players.

Removal of civilians from video games

After observing that players shoot innocent civilians in video games 'simply because they can', the creators of *Battlefield 3* decided to remove all civilians from their game and sideline the issue of distinction.⁸⁸ However, this rather radical solution leads to some unrealistic depictions of urban conflict, including fighting taking place in city centres devoid of civilians.⁸⁹

Introduction of rules and penalties

In an attempt to mirror battlefield reality some video game designers have built rules and penalties into the script. In doing so they have integrated aspects of the law applicable during a real armed conflict. In some games, characters are penalized for killing civilians. For example, in *Dar al-Fikr – Under Ash*, produced by the Syrian creators of *Under Siege*, shooting civilians triggers a loss of points or 'game over'. In *Rainbow Six: Vegas*, 'excessive' killing of civilians is punished by removing the player from command.⁹⁰ In *ARMA II*, players can shoot unarmed civilians. However, if they persist with such behaviour they will eventually be shot by soldiers from their own side.⁹¹

Reinforcement of the distinction principle

In *Call of Duty – Modern Warfare 3*, the majority of enemy soldiers are depicted wearing distinct uniforms and emblems, and act largely within the bounds of IHL. In those parts of the story where they are not in uniform, enemy fighters are distinctly armed and intent on harming the player, causing no confusion about who is and who is not a legitimate target.⁹²

88 Alec Meer, 'Why you can't shoot civilians in *Battlefield 3*', interview of Patrick Bach CEO of DICE, in *Rock, Paper Shotgun*, 30 August 2011, available at: <http://www.rockpapershotgun.com/2011/08/30/why-you-cant-shoot-civilians-in-battlefield-3/> (last visited 2 August 2012).

89 While civilians may not be visible in the game, it is difficult to imagine an armed conflict taking place in downtown Tehran (*Battlefield 3*) or Paris (*Call of Duty: Modern Warfare 3* and *Battlefield 3*) without any civilians being present.

90 F. Castillo, above note 51, p. 37.

91 Alternatives to the use of lethal force against friendly forces include allowing players to arrest and court-marshal soldiers that commit war crimes. The challenge for designers is to find ways to implement such changes without affecting the flow of the game.

92 Unlike early versions of these games, *Call of Duty 4* and *Halo 3* also integrate changes to avoid improper use of the emblems. For example, the Red Cross emblem is no longer used in these games as an indicator of how players can recuperate and replenish their health.

Provision of options other than killing

While IHL permits the use of lethal force against enemy combatants and military objectives,⁹³ the parties to an armed conflict are free to achieve their military aims without resorting to the use of lethal force. In a bid to better reflect reality, some games include options, other than killing the enemy, to achieve certain objectives. In Hezbollah's video game, *Special Force 2*, the objectives include capturing enemy soldiers. *ARMA II* is the only game, known to the authors, that includes a 'surrender option' for players or enemy troops.⁹⁴ In *Under Siege* the hero rescues wounded Palestinians shot by the enemy.

Removal of the Red Cross and Red Crescent emblems

In some video games the Red Cross and Red Crescent protective emblems are replaced with alternatives (usually blue, green, or white crosses).⁹⁵ Nevertheless, replacing the protective emblems with other symbols does not change the fact that medical personnel and volunteers who engage in medical tasks must always be respected and protected, unless they commit, outside of their humanitarian function, acts harmful to the enemy.⁹⁶

Warnings and target restrictions

Another innovation in game design is the inclusion of warnings for players against acts that could be construed as violations of IHL if they occurred in a real armed conflict. In *Call of Duty – Modern Warfare 3*, game makers have gone to some lengths in Version 3 to avoid making civilians and civilian infrastructure targets (a feature of Version 1).⁹⁷ Where civilian objects become military targets, the game explains why. When civilians are in the player's line of fire, an invisible commander announces that they are civilians and instructs the player to either hold fire or aim with care. If the player chooses to shoot a civilian, the mission instantly ends in failure and the game explains why.⁹⁸

93 Subject always to the rules on distinction, proportionality, and precautions.

94 In direct contrast to IHL, the general rule in video games is that 'no one surrenders' to enemy fighters. The requirement to release the enemy if they cannot be detained is entirely absent. As noted above, in games tested by the ICRC, wounded persons generally struggle or try to fight back with a firearm. Others just wait until their adversary kills them. In some (unplayable) scenes, injured fighters are shot at while trying to surrender.

95 An exception is *ARMA II*, which includes three of the distinctive emblems of the Red Cross and Red Crescent Movement.

96 When they carry and use light weapons to defend themselves or to protect the wounded and sick in their charge, medical personnel do not lose the protection to which they are entitled. The wounded and sick under their care remain protected even if the medical personnel themselves lose their protection. See AP I, Art. 13, rules 25 and 28 of the ICRC Customary Law Study (see also p. 85 of the commentary to rule 25, in the ICRC Customary Law Study, above note 52).

97 For several problematic scenes in Version 1 of *Call of Duty – Modern Warfare 3*, see F. Castillo, above note 51, pp. 23–25.

98 Such innovations suggest the involvement of military and/or legal advisors in game design. See also, Dave Their, 'The real soldier behind the 'Call of Duty' games', in *The Washington Post*, 19 October 2010,



Figure 4. Summary execution of a captive in *Call of Duty: Modern Warfare II*. Players must view this unplayable scene to proceed further in the game. No penalties, warnings, or consequences accompany this scene.    ICRC, Thierry Gassmann.

ICRC initiative

On the basis of field experience and research⁹⁹ the ICRC has come to the conclusion that behaviour is more effectively changed by modifying the environmental conditions that influence it than by directly trying to alter people's opinions, attitudes, or outlook. Accordingly, the ICRC's activities aim to prevent human suffering caused by armed conflict and other situations of violence by fostering an environment conducive to respect for the life and dignity of persons affected by armed conflict and other situations of violence, and respect for humanitarian work. With respect to video games and individual behaviour, there is no conclusive scientific basis for linking IHL violations that occur in real life with those depicted in video games. Nonetheless, it is contended that the widespread use of video games has the potential to desensitize players to the very existence of rules on the use of force.

Considering the potential of video games to convey both positive and negative messages to players regarding what is a permissible conduct during armed conflict, the ICRC is concerned that a range of video games are trivializing heinous behaviour such as torture and summary execution (Figure 4). New releases continue

available at: <http://www.aolnews.com/2010/10/19/the-real-soldier-behind-the-call-of-duty-games/> (last visited 30 July 2012).

99 D. Mu  oz-Rojas and J.-J. Fr  sard, above note 33.



Figure 5. The Red Cross, Red Crescent, and Red Crystal emblems are rarely displayed in today's video games. An exception is *ARMA II*. In this screen shot, a medic treats a wounded fighter next to medical post and vehicle marked respectively with the Red Cross and Red Crystal emblems. © Bohemia Interactive.

to allow players to perform, without penalty, acts that would constitute violations of IHL if they occurred in a real armed conflict. In 2011 the ICRC invited states and Red Cross and Red Crescent National Societies to a presentation on video games that portray contemporary armed conflicts. A short film, highlighting scenes from some of the world's most popular video games, including the *Medal of Honor*, *Call of Duty*, and *ARMA* franchises, generated a vibrant discussion, both at the event and subsequently online, about whether rules of IHL should be integrated into video games. In raising these concerns, the ICRC has emphasized that it does not propose a ban on the depiction of violence in video games. Nor is it calling for further regulation of the video game industry. As paradoxical as it may appear, the ICRC does not advocate for video games in which violations are prohibited. Violations occur on real battlefields and may therefore also take place in video games. However, the ICRC does call for the depiction of battlefields that mirror reality. Some recent releases, including *ARMA II* (see Figure 5), represent an important shift in this direction. This requires the portrayal of military operations regulated by law and the presence of civilians and civilian objects so that the principles of distinction and proportionality can be properly understood and respected. Players who act out combat roles should face the same dilemmas and challenges as real combatants do. Characters who break the rules in video games should be subject to penalties and punishments as real combatants.

Considering the positive steps already taken by some designers to integrate aspects of the rules governing the use of force, the ICRC, together with a number of Red Cross National Societies, seeks to work with the industry in order to influence

major video games. The overall objective is to see a change of behaviour on the part of the industry leading to the inclusion, in new video games or new versions of existing ones, of penalties for violations of the rules of war, when such violations are possible within the parameters of the game.

Since its creation in 1863, the ICRC has gained extensive first-hand experience of armed conflicts and other situations of armed violence. Thanks to its work with government authorities, non-state armed groups, the military, police, and others for the adoption of preventive measures for the respect of the law, the ICRC may offer useful advice to the industry in their endeavours. Together with concerned Red Cross and Red Crescent National Societies it has initiated a dialogue with game producers, designers, and players on the production of more realistic games that integrate the law and therefore present players with the same dilemmas as those faced by soldiers on contemporary battlefields. The outcome of this initiative will be measured by the content of video games released by December 2013.

The aim is not to spoil players' enjoyment by, for example, interrupting game play with pop-up text listing legal provisions or lecturing gamers on the rules of war. Instead, the aim is to see rules governing the use of force integrated into video games so players can have a truly realistic experience and deal first hand with the principles of distinction (by verifying the nature of targets), proportionality (by choosing the course of action that will cause the least incidental damage to civilians and their property), and precautions (by deciding whether attacks can proceed or must be delayed or aborted). Consequently, persons and objects protected by IHL need to be included if the game is to reflect the realities of armed conflicts.

By way of example, a more realistic approach to the issue of the respect of medical units and to the use of protective emblems would be to retain the Red Cross and Red Crescent emblems in video games, highlight their protective and indicative functions,¹⁰⁰ and introduce penalties when players attack medics, medical transports, and hospitals displaying the emblem. Penalties should also apply if a player misuses or abuses the emblem (for example, by transporting weapons to the frontline in ambulances or launching attacks from ambulances (the war crime of perfidy)).¹⁰¹

Initiatives already taken by the industry demonstrate the feasibility of such solutions. In a survey of gamers most respondents supported the idea that a player

100 See ICRC, *Study on the Use of the Emblems: Operational and Commercial and other Non-operational Issues Involving the Use of the Emblems*, ICRC, Geneva, 2011.

101 Art. 37 of AP I prohibits acts of perfidy or 'inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence'. Examples include: feigning intent to surrender or negotiate under a flag of truce; feigning incapacitation by wounds or sickness; feigning civilian, non-combatant status; and feigning protected status by the use of signs, emblems, or uniforms of the UN or of neutral or other states not Parties to the conflict'. The Rome Statute of the International Criminal Court (hereinafter Rome Statute), opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), includes as war crimes, the improper use of distinctive emblems resulting in death, serious injury, intentional attacks on buildings, material, medical units and transport and personnel using the distinctive emblems of the Geneva Conventions. See Art. 8(2) (b)(vii) and (xxiv), and (e)(ii) of the Rome Statute.

who respects the rules of war in a video game should be rewarded for doing so.¹⁰² Conversely, those who break the rules should be sanctioned. Strong sales of new releases that have integrated rules of war provide evidence that integrating the law does not undermine the commercial success of video games.¹⁰³

Conclusion

This article has called for more realistic video games where players face the same dilemmas as combatants. Considering the mechanisms at play in video games and their pedagogical value, it is argued that players should be rewarded when they respect the law and sanctioned if they violate it. Undoubtedly, video games represent an important vector through which applicable rules on the use of force and the treatment of persons in the hands of the enemy can be identified or ignored. In the view of the authors, their reach far exceeds that of traditional IHL and IHRL education and training programmes.¹⁰⁴ Those who have doubts about the importance of video games for the dissemination of humanitarian norms need look no further than the size of the video game industry; the limited awareness of IHL and IHRL among players of video games¹⁰⁵ and the general public;¹⁰⁶ the large number of military personnel recruited through video games; and the higher than average rate of video game play by serving military personnel.¹⁰⁷ A number of questions pertaining to video games require further research. The potential for drone pilots to bring a 'PlayStation mentality' to work and the possible impact on decision-making during military operations is an important example. Another is the nature and scope of IHL and IHRL obligation of states with respect to commercial video games. It is the authors' hope that this article may serve as a source of inspiration for others to examine, in greater depth, these and other questions concerning the relation between video games and humanitarian norms.

102 G. Humbert-Droz, above note 15. According to this French language survey, few players knew much about IHL. Interest in integration of IHL into video games was low.

103 For instance, in 2012, *Call of Duty: Modern Warfare 3* (in which game-makers have gone to some lengths to avoid making civilians and civilian infrastructure targets – a feature of Version 1) ranked number eight within the top ten best-selling games and number two among first person shooter games depicting combat situations (*Call of Duty: Black Ops 2* being number one). See '10 best selling videogames in 2012', above note 4.

104 According to McGonigal, tens if not hundreds of millions of people play video games each year. See Jane McGonigal, 'Gaming can make a better world', TED Talk filmed in February 2010, available at: http://www.ted.com/talks/jane_mcgonigal_gaming_can_make_a_better_world.html (last visited 30 July 2012). See also Entertainment Software Association, *Sales, Demographic and Usage Data: Essential Facts about the Computer and Video Game Industry*, Entertainment Software Association, Washington, D.C., 2011, available at: http://www.theesa.com/facts/pdfs/ESA_EF_2011.pdf (last visited 30 July 2012).

105 See G. Humbert-Droz, above notes 15 and 102.

106 See B. A. Gutierrez, S. DeCristofaro and M. Woods, above note 18, p. 1038 ('many Americans have never been taught about the Geneva Conventions, except perhaps that they exist . . . two in five young people and one in three adults in the US believe that American soldiers detained abroad can be tortured').

107 See B. W. Knerr, above note 21.