Chapter Eight
The Application of Superior Responsibility in an Era of Unlimited Information

Charles Garraway

Introduction
The responsibility of command and the relationship between commanders and commanded has been at the heart of the military ethos for millennia. It is not new, therefore, and has been adapted down the centuries as the character of conflict has changed. That change has sometimes not been easy. The law of armed conflict, or international humanitarian law as it is now widely known, is based on certain key principles such as military necessity, humanity, distinction and proportionality. These principles have remained unchanged from earliest times although the way in which they have been applied, both individually and together, has been subject to variation in order to reflect the changing characteristics of conflict. The doctrine of command responsibility is no different. The underlying principle is unchanging but the interpretation and application have developed to meet new challenges.

The last century saw huge changes in the character of conflict. At the start of the twentieth century, air warfare was still a gleam in the eye of inventors, weaponry had limited range and conflicts were mainly between regular forces controlled by States. By the end of the century, manned air power was possibly at its zenith, weaponry range had extended beyond imagination and inter-State conflict was the exception rather than the rule as internal conflicts became increasingly the norm.

The twenty-first century will see even faster developments, particularly in the technological field. Unmanned drones and increased electronic surveillance of the battle space will mean that commanders will have unprecedented information available to them to make operational decisions. Whereas in times gone by, commanders were limited to their own vision across the battlefield, and

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to the reports that managed to reach them through the fighting, now commanders far from the battlefield can watch and hear what is going on in the minutest detail. The purported pictures of President Barack Obama watching in the White House as Navy Seals attacked the hideout of Osama Bin Laden in Spring 2011 were a dramatic illustration of that change.¹

How will this brave new world of information availability affect the traditional doctrine of command responsibility? To look forward to possible developments, it is first necessary to look back to see how the doctrine has adapted to earlier changes in the character of conflict and the principles that underlie it.

**Early History**

In his Introduction to his translation of Sun Tzù, Lionel Giles quotes the words of Sun Tzù in a biography by Ssü-ma Ch’ien: ‘If words of command are not clear and distinct, if orders are not thoroughly understood, then the general is to blame … But if his orders are clear, and the soldiers nevertheless disobey, then it is the fault of their officers’.²

Carl von Clausewitz, in his treatise *On War*, also spent much time analysing the responsibility of command. He recognised fully the ‘fog of war’ and commented:

> ... the great uncertainty of all data in war is a peculiar difficulty, because all action must, to a certain extent, be planned in a mere twilight, which in addition not infrequently – like the effect of a fog or moonshine – gives to things exaggerated dimensions and an unnatural appearance.³

Thus the two greatest military strategists of all time recognised the dichotomy of the need for clarity of command and the difficulties of achieving such clarity amidst the ‘fog of war’.

Sun Tzù also highlighted another issue in relation to responsibility. In his example, it is either the general or the officers who are at fault – not the soldiers. This attitude that soldiers are simply means of warfare and not sentient beings responsible for their own actions is one that carried down until at least the early twentieth century. Lassa Oppenheim, in his great treatise on international law, written at the turn of the nineteenth/twentieth century, put the doctrine of

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