Part II. Academic Speeches

Section A
International Humanitarian Law Today

Contemporary Challenges to International Humanitarian Law

François Bugnion[1]
Director for International Law and
Cooperation within the Movement, ICRC

What are the main challenges to international humanitarian law today? When mentioning contemporary challenges to international humanitarian law, we immediately think of the attacks of 11 September 2001 and of the post September 11 environment, the so-called "global war against terrorism". The events of September 11, 2001, have, in some quarters, affected perceptions of what constitutes "war" in the legal sense. It is therefore legitimate to ask, what was new in the tragic events of 11 September 2001? Terrorism is certainly not a new phenomenon. The United Kingdom was confronted with terrorism at the time of Ireland's fight for independence. France also had to face terrorism on a wide scale at the time of the Algerian war. Many other countries have faced these types of violent acts.

What the acts perpetrated on September 11 showed is the emergence of transnational networks capable of inflicting enormous injury and destruction. It must be remembered, however, that whatever the motives, intentional and direct attacks against civilians in armed conflict – including by means of suicide actions – as well as indiscriminate attacks, are strictly prohibited under international humanitarian law when committed in armed conflict, and that arbitrary taking of life in peace time is a crime under both the domestic law of all States and under international treaties governing terrorism.

However, we should not let the tragic events of September 11 and their aftermath overshadow the fact that numerous conflicts were going

[1]François Bugnion, Doctor of Political Science (Public International Law), is since 2000 the Director for International Law and Cooperation within the Movement of the International Committee of the Red Cross. He joined the ICRC in 1970 and served as a delegate in Israel and the occupied territories (1970-1972), Bangladesh (1973-1974), Turkey and Cyprus (1974), Chad (1978), Vietnam and Cambodia (1979). From 1989 to 1996, he was Deputy Director for Principles and Law. From 1996 to 1998 General Delegate for Eastern Europe and Central Asia and from 1998 to 1999, Diplomatic Adviser of the Directorate. He published various articles or books on international humanitarian law or Red Cross history, in particular : *Le Comité International de la Croix-Rouge et la protection des victimes de la guerre (The International Committee of the Red Cross and the Protection of War Victims),* ICRC, Geneva, 1994.

on around the world prior to September 11 and continue to rage on, in Africa, in the Middle East, in Asia, in Latin America and elsewhere. We must not forget that some of these conflicts, even though absent from the front pages of our newspapers, continue to claim lives and cause untold suffering.

Deliberate attacks against civilians, indiscriminate attacks, destruction of infrastructure vital to the civilian population, the use of civilians as human shields, rape and other forms of sexual violence, torture and looting continue to be perpetrated in armed conflicts, both international and non-international, around the globe. New or aggravated features of contemporary violence present huge challenges, in terms of protection of civilians and the application of humanitarian law. Armed conflicts seem to have grown more complex and permanent peace settlements more difficult to reach. The instrumentalization of ethnic and religious differences appears to have become a permanent feature of many conflicts and new actors capable of engaging in violence have emerged.

The fragmented nature of conflicts in weak or failed states, likewise, has given rise to a multiplication of armed actors. The overlap between political and private aims has contributed to a blurring of the distinction between armed conflict and criminal activities. Ever more sophisticated technology is employed in the pursuance of war by those who possess it. The uncontrolled availability of large quantities and categories of weapons has also dramatically increased. Added to the confirmed trend of the instrumentalization of humanitarian activities for political or military purposes, these features make the work of humanitarian organizations in these contexts particularly difficult.

Unfortunately, there can be no doubt that the world is less safe, less secure today than was the case four or five years ago. The growth of military expenditures and the resumption of the arms race testify to this development.

It is against this background that we should try to assess the main challenges facing international humanitarian law today. I will mention five challenges, based on identified trends, it being understood that the most dangerous challenges are, as always, those we fail to identify and that will take us by surprise:

Terrorism and the reaction to it

The relationship between *jus ad bellum* and *jus in bello*
The distinction between combatants and civilians
Non-international armed conflicts
Ensuring respect for existing rules of humanitarian law

Let us now turn to these different challenges.

Terrorism and the reaction to it

Terrorism, by its very nature, amounts to a fundamental rejection of basic humanitarian principles, since it means attacking by surprise the most vulnerable, so as to produce the greatest possible suffering and psychological shock.

Needless to say, international humanitarian law prohibits any form of terrorism, when such acts are committed in armed conflict. *"Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited"* provides Article 51, paragraph 2, of Additional Protocol I to the Geneva Conventions. The same prohibition is found in Additional Protocol II to the Geneva Conventions, which governs non-international armed conflicts. (Article 13, paragraph 2, of Protocol II).

International humanitarian law also prohibits individual acts or measures akin to terrorism, with the aim of clearly shielding persons not or no longer taking part in hostilities from any form of collective punishment. We must bear in mind, however, that the acts of violence that constitute terrorism cannot be addressed by military action alone. The international community must devote a good deal more time and attention to examining and dealing with the root causes of this phenomenon.

It must be acknowledged that States' responses to acts of transnational terrorism may be said to have led to the erosion, in the fight against terrorism, of existing international standards of protection of the individual. In fact, the global fight against terrorism, regardless of how that phenomenon may be characterized in the legal sense, has led to a reexamination of the balance between State security and individual protections, to the detriment of the latter.

The ongoing debate on the permissibility of torture is an example. After decades of improvements in international standards governing the

treatment of people deprived of liberty, discussions on whether torture might in some situations be allowed have resurfaced, despite the fact that this abhorrent practice is a crime under international humanitarian law and other bodies of law and is prohibited in all circumstances. Extra-judicial killings and detention without application of the most basic judicial guarantees have proven to be other consequences of the fight against terrorism. Other examples could be cited as well.

It should also be noted that, after the 11 September 2001 attacks, some persons expressed the view that the Geneva Conventions do not apply to the war against terrorism or to asymmetrical warfare. A few days ago, a leading American newspaper attacked the ICRC on the grounds that the pressure we exerted to request that the prisoners detained in Guantanamo be treated in accordance with the provisions of the Geneva Conventions prevented the interrogators from extracting the information that is necessary to prevent future attacks.

"No cause can justify such attacks against civilians" declared UN Secretary General Kofi Annan a few hours after the bombing of the Twin towers of the World Trade Centre. In the current circumstances, it must also be reaffirmed that no cause can legitimate torture or other serious violations of international law. In the ICRC's view, the overriding legal and moral challenge presently facing the international community is to find ways of dealing with new forms of violence while preserving existing standards of protection provided by international law, including international humanitarian law.

The relationship between *jus ad bellum* and *jus in bello*

As you know, the modern law of armed conflict developed and is based on the assumption that the reasons for resorting to armed force have no bearing on the binding force of the law governing the way in which war is fought. In other words, the law of armed conflict has to be respected, whatever the motives for which one belligerent or the other resorts to war. Whether war has been declared in conformity with the provisions of the United Nations Charter regulating the recourse to armed force in international relations or not, the law of armed conflict has to be respected.

There are many reasons supporting the rigorous separation between

jus ad bellum – namely the law governing the right to use armed force – and *jus in bello* – namely the law governing the reciprocal relations between belligerents. The primary one is the need to protect the fundamental rights of persons affected by war in all circumstances, regardless of the reason for which an armed conflict started or is being waged. Over the last two or three years, as a result of the fight against terrorism, there has been an increased blurring between the rules of *jus ad bellum and jus in bello*. Invocation of the justness of the resort to armed force, particularly in the "war against terrorism", has not infrequently served as a justification for denying the applicability of the full range of the provisions of international humanitarian law in situations where that body of rules was undoubtedly applicable.

The ICRC's position on this has been clear: international humanitarian law is applicable whenever a situation of violence reaches the level of armed conflict. In our view, some aspects of the fight against terrorism constitute an armed conflict in the legal sense. Such was the case in Afghanistan, a situation that was clearly governed by the rules of international humanitarian law applicable in international armed conflicts. It cannot be said, however, that the totality of acts of violence being perpetrated around the world constitute a single global armed conflict. Other legal regimes, such as domestic law, human rights law and international criminal law, apply to these situations.

The distinction between combatants and civilians

The distinction between combatants and civilians and between military objectives and civilian objects is one of the pillars of international humanitarian law.

One issue that has given rise to considerable controversy since the launching of the "global war on terrorism" is the status and treatment of civilians who have directly participated in hostilities and have fallen into enemy hands. A minority claims that such persons are outside any protection by international humanitarian law, while others believe that "unprivileged belligerents" enjoy only basic protections of humanitarian law.

In the ICRC's view, civilians who have taken a direct part in hostilities remain protected persons under the Fourth Geneva Convention. There is no category of persons affected by or involved in international armed conflict who are outside any protection by

international humanitarian law, nor is there a "gap" in international humanitarian law coverage between the Third and Fourth Geneva Conventions.

While international humanitarian law does not recognize an "intermediate" status between combatants and civilians in international armed conflict, it does provide that civilians who directly participate in hostilities lose their immunity from attack and may be criminally prosecuted for their participation. Given the consequences of direct participation and the fact that the temporal aspect of direct participation is not defined, the notion of direct participation in hostilities under international humanitarian law merits further clarification. This is all the more important as civilian participation in hostilities occurs in both international and non-international armed conflicts. The ICRC is currently engaged in the process of trying to propose a solution, with the help of international legal experts, and we look forward to benefiting from your expertise and proposals in this respect.

Non-international armed conflicts

The fourth challenge is posed by non-international armed conflicts, which still constitute the majority of today's armed conflicts, claiming the majority of war victims. Think of Sudan, Somalia, Uganda, the Democratic Republic of the Congo, Sri Lanka and Colombia. There are also many other non-international armed conflicts that the world is hardly aware of. As we all know, the law of war was born of armed confrontations on the field of battle between sovereigns who enjoyed equal rights and obligations. For centuries, humanitarian law did not apply to the relations between a sovereign and his rebellious subjects. Even today, the rules applicable to non-international armed conflicts are still significantly less extensive than the provisions applicable to international armed conflict, although developments in customary international humanitarian law have helped to fill these gaps. Furthermore, the application of the rules of international humanitarian law governing non-international armed conflict raises specific difficulties, first of all the issue of ensuring that the insurgent party feels bound by its provisions and ensuring respect by non-State actors taking part in an armed conflict.

Ensuring respect for existing rules of humanitarian law

While it might be necessary to further clarify and develop the rules applicable in the case of non-international armed conflicts, it is generally acknowledged that the rules applicable to international armed conflicts provide adequate protection to war victims in this type of conflict. The abiding issue, and the fifth challenge that I would like to mention is: how to ensure respect for existing rules of humanitarian law, whether in international or non-international armed conflicts ?

What measures should be taken by the parties to an armed conflict to ensure that their own forces fully respect their international obligations? What measures could and should be taken by third parties to ensure that the belligerents comply with their obligations? This is perhaps the greatest challenge confronting international humanitarian law today. It must also be said that ensuring respect for international humanitarian law is part of a much wider challenge: How to ensure respect for public international law? Indeed, how can the law of armed conflict be respected if States do not comply with their obligations in time of peace ?

In 2003, the ICRC organized a series of five regional expert seminars with a view to asking government experts, experts from National Red Cross and Red Crescent Societies, academics and others, about how they interpret the Geneva Conventions' obligation of States to "respect and ensure respect" for international humanitarian law, provided for in common Article 1 of the Conventions. Given the ICRC's role as guardian of International humanitarian law, examining ways of strengthening respect for International humanitarian law remains a permanent task of the institution. In practical terms, the ICRC fulfils this task both through its direct contact in the field and through continued reflection on measures to improve respect for humanitarian law. Again, this is a field where we look forward to benefiting from your expertise and your suggestions.

Closing remarks

Humanitarian law has probably been referred to more often in the last two or three years, whether in diplomatic circles or in the public debate, than ever before. However, this does not mean that it is better respected and that the victims of war are better protected. It is not the case. Indeed, as I have attempted to outline, humanitarian law

is confronted with major challenges in the present environment. I have tried to indicate some challenges that we, at the International Committee of the Red Cross, consider to be a cause of major concern. I raised questions, but did not attempt to provide answers, since I considered that my role, at the first seminar session, was to open the debate, and not to close it. Furthermore, who can claim to have all the right answers to some of the most daunting questions of our times ?

We will join forces, during our seminar, to identify responses to pressing humanitarian issues based on the knowledge that humanitarian law remains an indispensable tool in restraining violence in war and in safeguarding, even in the midst of war, the values on which human civilization is based.

Contemporary Challenges to LoAC and the PLA's Perspectives

Maj. Gen. Fan Yinhua
Secretary-General of the GPD, PLA, China

In my presentation I will give you several personal views on the contemporary challenges to LoAC, elaborate PLA's basic standpoints on LoAC, express PLA's positive attitude toward the respect of and compliance with LoAC, and show our willingness and determination to fulfill international obligations and to safeguard world peace.

Contemporary challenges to LoAC

Law and regulations are a symbol of human civilization, and LoAC reflects the progressive civilization of human practice of warfare. The appearance of every convention of LoAC shows a step of human beings' diligent pursuing the way to civilization and innate knowledge, in which a kind of spirit has existed, namely, to implement LoAC to control the barbarity of the violence of war and diminish disasters and sufferings caused by war to a minimum.

In today's world, the new military revolution is developing rapidly, information technology is widely applied to the military field, the military fight against terrorism is increasingly complicated, and the current LoAC cannot fully and correctly cover the changing forms of war and the modes of operations. All these have caused many new challenges to LoAC, mainly reflecting in the following aspects.

First, the rising of Information War blurs the distinction between military objectives and civilian objects, between wartime and peacetime, between strategic, battle and tactical operations, and between the front area and the rear area in the battlefield. All these are challenging the traditional principles of LoAC.

Second, no specific provision of LoAC restrains the development and application of new weapons under the condition of modern high-tech war. As a result, some countries take modern conflicts as their testing ground for their new weapons, and use weapons, which violate the basic spirit and principles of LoAC, but they are not restricted by the conventions. This shows that the development of LoAC is, in some

aspects, slower than that of the practice of armed conflicts.

Third, after the "9/11" event, terrorism has become a great threat to the whole world and anti-terrorism has become an important mode of operations in the military field. Some doubt whether LoAC is applicable to this kind of military operation. Some contracting parties even claim that the Geneva Conventions are not applicable to the anti-terrorism war and Iraq War. In our opinion, the basic principles of LoAC can be applied to all wars, including anti-terrorism military operations. In such an unsymmetrical war, however, debates on how to restrict the belligerents and who should be restricted more strictly still exist, which are the newest topic we must study and give an answer.

Fourth, as an international law accepted by most countries of the world, LoAC is a standard that the international community must follow. And most countries are willing to undertake the obligations according to international law and LoAC. It shows human's common requirement for peace, justice and humanitarianism. However, it is undeniable that LoAC has the problem of lacking enforcement mechanism and legal prestige. In modern armed conflicts, there exists the fact that some countries frequently adopt double standards in the implementation of LoAC. On the pretext of having conclusive or wrong information in operations, they intentionally blur the distinction between military objectives and civilian objects of their opponents and attack protected civilian objects. Their wantonly trampling of the law of armed conflict has been weakening the authority and the binding force of LoAC, thus, causing people to doubt the legal position, binding function, and justice of LoAC.

Fifth, the dissemination and promotion of LoAC can hardly satisfy the expectations and requirements of modern community. The maltreatment of PWs happening in Iraq has aroused general concern of all the people in the world. Many countries have condemned this behavior, which gravely breaches the Geneva Conventions. On the one hand, this shows that the world has a better understanding of and paid more attention to LoAC; on the other hand, it clearly shows that some armed forces disregard LoAC, causing the ICRC to be confronted with great obstacles both in disseminating LoAC and more difficulties in spreading LoAC .

Today is not a time of "might is right". As a legal basis to judge the justice of war, to restrict the cruelty of war, and to punish the crime of war, LoAC is being accepted and supported by more and more countries and people. However, to make LoAC deeply rooted in the hearts of the people and accept general approval and respect, there is still a lot of work to be done.

PLA's basic standpoints and attitudes towards LoAC

First, the PLA has inherited the essence of Chinese traditional culture and has been consistently implementing revolutionary humanitarianism ever since its establishment. China is a country with a civilization of thousands of years. The thoughts that "people are the foundation", "benevolence means love", "the benevolent have no enemy in the world", have been kept for thousands of years and have deeply influenced the Chinese society. What is reflected in the military area is the principle of revolutionary humanism that the PLA has been practicing ever since its birth. Its basic spirit is to protect civilians and the victims of war, which is totally consistent with what LoAC has advocated.

The PLA, since its establishment, has taken as its sole purpose to serve the people wholeheartedly and taken as its behavioral standard "the Three Main Rules of Discipline and the Eight Points for Attention." In its war practice for decades and several self-defense operations on the borders after the foundation of the People's Republic of China (PRC), the PLA strictly complies with LoAC, protects civilians and cultural relics, and gives lenient treatment to PWs, which made it a civilized army with strict disciplines. Second, the PLA seriously fulfills its obligations under international law and ensures that LoAC is legally implemented in the army. On 5 November. 1956, the Standing Committee of the National People's Congress (NPC) of China ratified the Geneva Conventions of 1949, which is the first international convention that China ratified after its foundation. On 2 September, 1983, the Standing Committee of NPC ratified the Two Protocols of 1977 Additional to Geneva Conventions. And the above-mentioned documents of law are the main evidence of LoAC.

To fulfill the international obligations under the Geneva Conventions and its two Protocols, we have them written in our domestic law. On

10 June, 1981, the Fifth Conference of the Standing Committee of NPC of the PRC adopted the Provisional Regulations on Punishing the Soldiers' Responsibility Violation, Articles 20 and 21 of which regulate the protection of civilians and captives. Now, the regulations have been replaced by Chapter 10 of the Criminal Law of 1997, which is the latest one. The protection of civilians and captives in war time has been put in the form of law. In the same year, China promulgated the Defense Law of the People's Republic of China, Article 67, which clearly provides that "in dealing with foreign military affairs, China complies with the relative treaties and conventions in which China is the contracting state party." This, in the sense of law, clearly demands the PLA to comply with LoAC and fulfill its obligations faithfully. On 15 May 1996, the Eighth Conference of the Standing Committee of the NPC passed the Law of Lawyers, which also established the system of military lawyers of China. In July 2000, the Central Military Commission (CMC) of the PRC decided to establish and appoint military lawyers at brigade level and above, which guarantees the implementation of LoAC in the large military units. As an important measure taken by the PLA to fulfill its international obligations, it has aroused general interest at home and abroad.

Third, the PLA has sincerely and actively strengthened the cooperation with the ICRC. For a long time, the PLA has attached great importance to the dissemination and instruction of LoAC, conscientiously fulfilled international obligations, and actively cooperated with the ICRC, which took a lot of work. The effective and constructive cooperation between the ICRC, its Regional Delegation for East Asia and the PLA has been highly valued. In November, 2002, Gen. Tang Tianbiao, deputy head of the GPD, said that China is against wantonly engaging in military ventures and against settling disputes with armed might when he met with Mr. Jacob Kellenberger, President of the ICRC. The PLA is a force to safeguard peace as well as a force of defense, with the main aim to safeguard China's territorial integrity, peace and unity, and to protect people's peace and labor. Before we can prevent a war, we will try our best and make great efforts to reduce the damages caused by war. This is our understanding of LoAC and our promise to fulfill our obligations. Mr. Kellenberger said that the PLA has closely

cooperated with the ICRC and its Regional Delegation for East Asia and has given great support to their work for years. The cooperation between the two sides has set a good example for the world. In this cooperation, the PLA has gained the respect for its sincerity and responsible attitude.

Fourth, the PLA, together with the ICRC and other armed forces, will continue to make efforts to promote the dissemination and development of LoAC. The Geneva Conventions have been in existence for more than 50 years. With the joint efforts of the ICRC, of the National Red Cross and Red Crescent Societies, of the peace-loving countries and people, the international community has formed a common understanding and the conventions have been respected and observed by most countries of the world. In the recent local wars and armed conflicts, we can obviously see that LoAC has gained more and more respect from the belligerents. From the viewpoint of avoiding LoAC intentionally, taking advantage of LoAC to reveal the opponent and gain the sympathy and support of the international community and then win strategic initiative, we can clearly see that LoAC has become an important yardstick to judge whether a war is just or not, and the major evidence to identify and punish the crime of war.

Therefore, the dissemination and promotion of LoAC is becoming more important than ever before. As military persons, we shoulder much greater responsibility and more obligations. And that's the reason why we are gathering here and having this seminar. The PLA will, as it did in the past, always respect and implement LoAC, and, along with the international community, make contributions to the promotion of the development and improvement of LoAC. The PLA will continue and strengthen its cooperation with the ICRC, participate in the international activities related to LoAC, strengthen its cooperation and communication with the armed forces of the Asia-Pacific region, and contribute to safeguarding peace and stability in the region and the world as well.

Law of Armed Conflict: Today's Challenges and Training

Aleardo Ferretti
ICRC Delegate to the Armed and Security Forces
Regional Delegation for East Asia

International humanitarian law (IHL) and other universal humanitarian principles are often too low a priority for the armed forces, police and security forces, not to mention the growing number of irregular forces involved in many non-international armed conflicts. This has grave consequences for war victims, for neutral humanitarian action and respect for the Red Cross and Red Crescent emblems.

Military interventions both with and without UN backing, the use of national forces in international peace-keeping and peace-support operations, and the continued involvement of national armed forces in conflicts make it essential to ensure the proper training of troops in the law of armed conflict. This is all the more true in view of the increasingly blurred distinction between the roles of the military on the one hand, and police and security forces on the other, with little preparation for one playing the role of the other. Irregular arms bearers, with little or no training, proliferate in many internal armed conflicts, committing grave acts against the population, and making humanitarian action difficult or impossible.

To complicate matters, acts of trans-national violence and the fight against terrorism have lead to the re-examination of the sensitive balance between state security and the protection of the individual. As it was stated in the report prepared by the ICRC at the 28th International Conference of the Red Cross and Red Crescent: *the overriding legal and moral challenge facing the international community today is to find ways of dealing with new forms of violence while preserving existing standards of protection provided by international law.*

Based on the situation described, it is therefore more than appropriate to discuss the issue of military operations, the laws applicable therein,

which include the law of armed conflict, and its instruction and training. Even more so, since we have the pleasure to address the top representatives of the armed forces of the Asia-Pacific region in charge of military training and the instruction of International humanitarian law among their military forces. Since I share the privilege of being part of the joint PLA/ICRC committee responsible for the organization of this seminar, let me dwell a moment on the purpose and aim of this important regional event.

This seminar is the fourth event of its kind since we opened our ICRC Armed and Security Forces unit in the region back in 1996. Through our quest to promote the integration of the law of armed conflict (LoAC) in operational training, we realized the importance of providing a regional setting for the officers in charge of military education and training, to discuss and exchange ideas and experiences on issues pertaining to the instruction of LoAC.

I have personally been active – either in my capacity with the ICRC or with the Swiss Army[1] - in the field of training and instruction of the Law of armed conflict (LoAC) for almost fifteen years and worked with armed and security forces in more than thirty countries. The experience gathered by me and my other ICRC colleagues, all of us senior military officers, active or retired, shows that in most countries worldwide instruction of LoAC places too heavy an emphasis on theory and not enough on practice and practical implementation. As a general trend it appears that, LoAC is considered a purely legal issue and consequently sidelined to be part of the legal section of a given armed force. It is then difficult to translate it in operational terms and having it accepted by the tacticians, operators and the individual combatant.

Such a position was already shared during our first gathering of senior officers in charge of military training, which took place in 1997 in Thailand[2] and was co-hosted with the Supreme Command of the Royal Thai Armed Forces. It was the first time that representatives

[1]A.Ferretti has been involved in the development for the ICRC of LoAC training methodologies like, among others, the LoAC Teaching Files for Instructors (first edition 1991), and the joint ICRC/Swiss Army LoAC self-teaching CD-ROM 'The Law of War' (first edition 1994). A former battalion commander he is now a staff officer in the Swiss Army Chief of Staff's LoAC unit.

[2]The event bore the title *International rules of warfare and command responsibility.* A publication containing the papers and proceedings of this first regional seminar on LoAC is available with the ICRC.

from sixteen countries of the region shared the opportunity to brief each other on their LoAC training methods. Everybody came to realize that more should and could be done to bring LoAC matters closer to the individual combatant, the commanding officer or the planner of military operations.

Following this first positive experience, it was decided to hold these types of regional meetings on a regular basis, ideally every two years. In 1999 Australia and its Australian Defence Force (ADF) organized the event within the enlarged framework of the ASEAN Regional Forum (ARF). This was an important step since the involvement with ARF lead to the decision to declare IHL a confidence building measure to be ascribed in the political agenda of the Forum. The specific topic standing for debate this time, apart from training[3], was the issue of so-called (military) Humanitarian Intervention.

In 2001, Thailand offered to host the second ICRC/ARF event with the main topic being IHL and Peacekeeping Operations. After these three successful events, China and its People's Liberation Army (PLA) decided to take the responsibility of organizing the fourth regional seminar in 2003. Unfortunately, due to the SARS outbreak in many parts of Asia the event had to be postponed. Hence, here we are in this prestigious Academy, enchanted by this unique historical setting of the ancient capital of Xi'an and its terracotta warriors. What better setting could we have chosen to once again focus on the implementation of the rules and provisions which find their roots in ancient military wisdom and traditions.

I would like to congratulate our hosts the PLA, in particular the General Political Department, and the Academy of Politics, in particular its President, for having taken up the challenge of organizing with us this seminar. An event, that has become an important tradition among the armed forces of the Asia-Pacific region. A gathering of military decision makers, who have a common goal: to further enhance the knowledge of LoAC within their national ranks.

As I stated in my opening remarks, there are new challenges to the

[3]ADF presented its latest LoAC training product in CD-ROM format.

implementation of IHL, thereby there are new challenges to its training and instruction. This is the reason why this fourth event bears the title *The Law of Armed Conflict Today: Realities, Perspectives and Training*. It is both important and necessary that all of us, who are directly or indirectly involved in promoting, teaching and training LoAC take time to clarify certain issues, which are rooted in legal, political and geo-strategic aspects linked to humanitarian situations in general, and International humanitarian law in particular. To help us in this task we have invited distinguished scholars and experts, decision, policy and opinion makers from both the civilian and the military.

Given the short time at my disposal, my objective is to bring evidence to the necessity of integrating the instruction of LoAC into basic and advanced combat training, into tactical and operational planning and the decision-making process throughout the chain of command and, in particular, in staff exercises (CPX) and in maneuvers. I will also elaborate on the importance of disposing of appropriate training methodologies so as to enhance the interest for what is taught and instructed and, last but not least, the necessary credibility of the instructor appointed to teach and train in the subject matter of LoAC[4].

Forming professional soldiers requires a professional approach. Soldiers work in the hostile environment of war. One must assume that the mental and physical stress of battle more or less reduces the individual's capacity for reflection and reaction. The aim of LoAC training is to ensure that all levels of armed, police and security forces and other armed groups know and apply the law of armed conflict and other universal humanitarian principles. At the tactical level, training aims in particular at making the combatant behave in a militarily correct and disciplined way, hence, in accordance with LoAC, with reflex actions adapted to the specific combat situation. At operational level, the emphasis is on the automatic incorporation of the principles of LoAC into decision-making, planning, command and control processes. In conjunction with the aforesaid, the objective for the military leaders of all ranks is to intervene immediately, if the rules of

[4]The core of this paper stems from a presentation given by the author at the US PACOM conference in Manila in 2000. Its content reflects the practical experience gathered by the author, and is also based on various papers/documents published by the Armed and Security Forces Unit (ASF) of the ICRC

international law are violated.

Let us now examine in detail the points I have made. At troops and NCO's levels, the theoretical teaching is to be limited to the basic concepts of individual responsibility, of protected people and objects as well as on the related protective signs. This instruction should be the responsibility of the unit commander. He is the person with ultimate command and moral responsibility for the action of the subordinates attached to his unit. He should supervise that the instructor in charge of training them in the basic combat skills, integrates into his combat exercises, like attack, defence, infiltration, ambush and check points, situations depicting LoAC situations, like the capture of an enemy combatant or a suspect, giving first aid and medical attention to a wounded or the handling of civilians and non-combatants.

More training is naturally needed when it comes to educating junior officers, from whom a good understanding of the law is required, at least as far as it addresses the tactical conduct of operations and the protection of persons not or no more participating in the hostilities. Command responsibility should particularly be emphasized, specifically in terms of issuing correct orders and the control of the collective and individual execution of the mission. Commanding and staff officers are to be able to adopt a pro-active approach towards the incorporation of the rules of LoAC in their operational concepts. They are therefore not only to have a good general knowledge of the different legal instruments - this is usually the only part of LoAC training that, according to our experience, is usually given in most of the armed forces in their Command and Staff Colleges courses – but they are in addition to be trained to routinely integrate the provisions of the law in their decision-making process. In particular, their findings and recommendations should then be made known to their subordinates through the incorporation thereof in the subsequent orders issued.

At the higher echelon, let us say brigade level and above, where staffs and services deal with other related issues which go beyond the regular operational planning, qualified lawyers with an in-depth knowledge of humanitarian law and the universal humanitarian principles are to be integrated in the staff work. These legal advisors, according to GC API, are to be in a position permitting them to take part in the decision making process as personal advisor to the

commander, who ultimately retains the responsibility for the decision.

But, Ladies and Gentlemen, even if a well organized training process can lead to convincing the soldiers of the need to respect non-combatants or adversaries put 'hors de combat', we all know that a mere theoretical approach will never significantly reduce the risk of collateral damage by units or individuals exposed to combat stress and urged on to instantaneous, automatic reactions. If we want to see them applied, the rules governing the protection of the non-combatants must be part of the collective procedures and individual automatisms, which form the backbone of training. At practical level, incorporation of the provisions of the law into standing operational procedures, operational and tactical guidelines as well as systematic training will do much more for avoiding unnecessary sufferings than any moral guidance, theory or repeated lectures. Such a practical approach will in no way hinder the capacity of the commander or the combatant to fulfill his military mission, on the contrary, it will enhance the chance for a successful mission.

The ICRC, through its unit of military LoAC instructors, has developed various training programmes which meet the requirements of all the various levels of the chain of command. We offer a wide range of possibilities, including short lecture-type presentations in military academies, three-day seminars for senior staff and line officers of combat units, and five-day workshops for LoAC instructors, as part of our 'train the trainers' approach. Only last year 112 such training courses have been conducted in more than 90 countries. Further, the ICRC sponsors the participation of select officers from various armed forces to international training courses on International humanitarian law, or organizes international and regional events to further promote the knowledge of IHL among the armed forces worldwide.

These types of activities have been taking place for quite some years and have been quite successful in making the military decision-makers aware of the importance of this type of instruction. Our role is not to substitute ourselves for their own instructors, but rather to initiate a comprehensive and coordinated training process which should lead to the full integration of LoAC in their military training curricula. Parallel to the instruction, we develop specific didactic tools, training methodologies and reference documents to assist the local instructors

in their challenging task of teaching and training LoAC[5].

Let us now come to the issue of LoAC training and education conducted by military lawyers and legal advisers. In fact, most of the time they are the ones tasked to teach the humanitarian rules and provisions regulating the conduct of hostilities to the ones who are called upon to apply them in combat situations and on the battlefield. I am certainly in no position to give advice on how and what should be part of the educational background of such a professional person. I, myself, in spite of having been involved in training the Law of armed conflict, have no legal background and my experience is purely based on military and humanitarian field experience and practice. But, of course, I had the chance of meeting many military lawyers involved in LoAC training, or rather, who had been appointed to teach the subject matter within their armed forces.

I do not want to generalize, but by talking to them I almost invariably got the impression that the teaching of LoAC was for them a chore more than a privilege. As teachers and lecturers of military law in general they were, rightly so, also called upon to teach LoAC in the various schools and academies. The thought of confronting a class of young, intrepid and battle-ready cadets, who had only one aim, to test themselves against the ultimate challenge of a battlefield, or even worse, to confront a group of battle-seasoned senior officers, gave them the shivers. 'In love and war there is no law' goes the slogan. How do we explain that there are indeed laws that apply and that they have to be respected? The teaching and the instruction of LoAC is certainly a challenging activity, which requires not only the necessary knowledge of the subject matter as such, but for the instructor it requires, above all, credibility and refined didactic skills. If the trainees consider the lecturer as not credible, they will most certainly also reject the content of the lesson. Such situations are immensely detrimental to the cause of the promotion and acceptance of LoAC among members of the armed forces. There is plenty of expertise on LoAC out there, in the Headquarters of the various armed forces, in the academies and

[5]Most of the armed forces in the Asia-Pacific region have incorporated ICRC's standard LoAC training methodology. In particular, its reference documents like, the LoAC Handbook, the Teaching File for LoAC instructors, and other LoAC publications and audio-visual material. Many have also produced their own LoAC training video and LoAC manuals.

training institutes, but it is usually theoretical knowledge, which finds it difficult to make its way into the tactical and operational framework of the military practitioners who are supposed to apply it.

We should be careful about the way we present the subject matter to our military audiences within the chain of command. The lower ranks should not be exposed to long theoretical lectures conducted in a classroom by a legal officer coming from the HQ. The instruction, based on small, practical combat exercises should be conducted in the field by the regular instructor, who has himself been previously trained during a centralized course at battalion or brigade level. At that level, and in close coordination with the chief instructor, a 'train the trainers' module should be carried out by the military lawyer or the legal advisor from the larger unit. The training should be tailored to the specific circumstances or the special activities and tasks of the units, which will be exposed to the training of LoAC. Practical examples and case studies will definitely facilitate the understanding and acceptance of what is transmitted.

The field training session itself should focus on the discrimination between military targets and protected persons and objects and be carried out under hard physical and mental stress, so as to allow the trainees to experience situations close to the reality of combat. The same practical approach should be applied to line and staff officers through map exercises, which include LoAC elements, problems and dilemmas to be solved by the trainees. The same is true for specialized training levels. During artillery observer courses, when the fire is to be adjusted on the forward edge of a village, the basic LoAC principles of 'limitation' and 'proportionality' should be integrated into the learning process, which should lead to the implementation of a standing order, which calls for the application of the so-called 'creeping' method. We know for sure that this would in no way reduce neither the accuracy, nor the effect sought, nor delay it's delivery. This would however avoid two to three useless impacts inside the village at no tactical cost. The same principles of 'limitation' and 'proportionality' should be part of the training of forward air controllers who have the difficult task of leading from the field close air support fighters up to targets; targets which the pilots sometimes do not see until the very moment their weapons are to be fired or launched.

At collective training level and particularly in maneuvers, the general conduct of operations should already incorporate the LoAC elements as it is done with the traditional factors of tactical appreciation. Apart from the classical parameters and elements like own means and those of the enemy, time and environment, humanitarian concerns are to be already included in the planning phase. Elements like protected objects, civilians, prisoners, casualties, all with their particular requirements for specific evacuation channels towards the rear area, have to be identified and planned in advance by appointed staff officers. The tactical commander who will eventually face all these problems in his sector of responsibility should not be put in the awkward situation of having to improvise solutions which at the end are counterproductive in humanitarian terms and even detrimental to the fulfillment of his own military mission.

How often and to what extent are the combat units being trained, after active engagement, to undertake the so-called after-combat measures like the search for victims, which the law requires to be performed without delay after an engagement? The absence of such training not only makes almost sure that the task would be totally overlooked in times of hostilities but, in addition, it blurs a correct assessment of the availability and quantities of the necessary medical material, reserves and evacuation assets to be brought in the case of a real situation. Recent examples have demonstrated how poorly known, or worse, poorly respected were LoAC concepts like protected zones or localities, or the right of free passage of humanitarian relief convoys.

The point I am trying to stress here is that a few hours of basic knowledge on the Geneva Conventions for officer cadets, which is unfortunately the case in terms of LoAC training within most of the armed forces worldwide, is certainly not enough to develop a professional attitude towards these ethics of war, or to fully prepare them for their important leadership task as commanding officers. What is more worrying is the perception by officers and soldiers alike that the meager knowledge they received gives them a kind of good conscience about their combat and military leadership readiness for the worse case scenario which is the real combat engagement on the battlefield. To train our men to the fullest extent of combat readiness means that we have to give them the knowledge, skills and expertise required to face the ultimate challenge of confronting the enemy's threat and fire

in today's combat environment. War games, map exercises and, in particular, maneuvers which are the ultimate test of combat readiness should always include the elements of LoAC, because they represent the other part of reality which the troops will be facing on the ground.

All this only answers the need to prepare the armed forces for the accomplishment of their traditional missions. Innovative thinking in terms of military training is required when it comes to engagements in missions outside the traditional scope, like peacekeeping, peace support or peace enforcement operations. Different individual and collective skills, as well as other automatisms are required by the need for flexibility in switching between the various specific tasks according to the evolution of the situation. To maintain a permanent capacity to adequately answer the situation, rules of engagement have to be drafted and officers and units are to be trained to understand and apply them. These rules determine the circumstances under which the use of force may be applied. They generally extend the right to use force in self-defence to the use of force for protecting material assets considered essential for the fulfillment of the mission. Here again, LoAC, in particular, the principle of proportionality, and other universal humanitarian principles will give the framework within which the use of force may be applied[6].

Where do the LoAC instructors and the military lawyers stand in all this, and what is their role? I think the answer is given by the challenges the military world is confronted with in today's strategic environment. Since they are given the task of training the Law of armed conflict they should strive to project a realistic and comprehensive image of what their fellow soldiers and officers can expect out there and they should translate their technical and legal expertise into workable tactical and operational assets to be exploited in reaching the final goal, which is the fulfillment of the military mission in full respect of the international legal standards set out by the community of civilized states.

[6]The ICRC is frequently asked to conduct pre-deployment briefings on its mandate, IHL and the humanitarian situation in a given country, to contingents involved in peacekeeping or peace support operations. Such practice is very useful to ensure a proper coordination once the troops are engaged in their area of operation, where ICRC delegates will also be present and carrying out their humanitarian task.

Dissemination and Implementation of IHL by the Indonesian Armed Forces (TNI)

Maj. Gen. Bambang Darmono
TNI, Indonesia

I. Introduction

The global issue of Human Rights has urged the nations around the world to pay attention to the needs to respect and implement human rights in all aspects of our life as a society, a nation, and a state. This issue should not be looked down at by the ruling regime of any state. For, the international community can launch an immediate intervention into a country if they judge that some extraordinary violation of human rights has been going on in the country in question. What has happened in Kosovo is but one instance (humanitarian intervention).

As part of the international community, the Indonesian nation has been well-aware of this issue. This is evident from the fact that the Indonesian nation established the National Human Rights Commission (or *Komnas HAM*) as early as the beginning of the 1990s and, subsequently, enacted Law No. 39 of 1999 re Human Rights. Under this law, Komnas HAM performs its tasks, functions, and duties as an agency responsible for ensuring the enforcement and respect of human rights.

As a component of the nation, the Indonesian Armed Forces (TNI) has an obligation to promote and implement human rights within its environment. In fact, TNI's efforts at carrying out such an obligation have been going on since the 1960s although they were not very intensive at the beginning. At the end of the 20th century, TNI re-organized its doctrine and training systems by drawing upon the experiences it had gone through. As regards the dissemination and implementation of the IHL, which provides an international legal instrument for the implementation and respect of human rights during armed conflicts, TNI has been carrying on with such activities on an intensive basis. This is so because TNI realizes that the IHL is the international legal instrument which strongly promotes human rights in the implementation of military duties.

This paper presented at the Xi'an seminar on "Law of Today's Armed

Conflicts – Realities, Perspectives, and Training" has the purpose of sharing with the international community some information about how far TNI has made progress in disseminating and implementing the IHL within its environment. With this paper, TNI hopes that the international community will have an understanding of the various measures which TNI has taken in its attempt at implementing and respecting human rights.

II. Reality of IHL in the contemporary world

International humanitarian law (IHL) is a legal instrument in war. It must be recognized that IHL governs limitations on war on the basis of humanitarian and military interests and with the purpose to protect the victim. Because of this, IHL is known in many states as the law of war. As a legal instrument which governs how to conduct a war, IHL must be obeyed by all armed forces. In reality, however, the world sees that the IHL is not fully complied with in the conflicts taking place in many parts of the world. Unsurprisingly, therefore, the issue of war crimes has continued to prevail in the contemporary world.

War crimes in practice - A war crime is a criminal act and, as such, it is not supposed to occur in the course of a war. Although the act of using force is permissible for combatants according to IHL, there are limitations on such an act. All acts by combatants which go beyond the limits of proportionality that are legally applicable to such acts are war crimes, which are prohibited from taking place. Ironically, such acts are also committed by U.S. and British soldiers in Iraq, who everybody knows are the most professional soldiers in the world. Such reality makes us realize how important it is to oversee conflict areas and to cultivate dignified ways of fighting in the armed forces of all states. In my opinion, the ICRC has to do all it can to make that happen.

Viable options - To my knowledge, the ICRC in its capacity as a global humanitarian institution has been taking strategic steps to prevent non-compliance with the IHL by disseminating the law among armed forces and academic institutions and has been taking concrete steps in the field. Due to the reality that war crimes are still going on in various conflict areas in the world, such strategic steps must be kept ongoing. In my view, IHL should become an integral part of the doctrine of every armed force because such doctrine governs how

soldiers must carry out their duties. Furthermore, the United Nations and other international humanitarian institutions besides the ICRC should be able to monitor the implementation of IHL by a State which is having a conflict with another state or which is trying to resolve an internal situation of violence as well as to give pressures to such a State to comply with the law.

III. IHL dissemination

Historical background of TNI – The variety of experiences in the history of the Indonesian people has brought about a place within its life as a society, a nation, and a state for TNI to exist for the people. It is a historical fact that TNI came into being as the Indonesian people was struggling for an independent Republic of Indonesia. Originally, TNI is not a military organization that was born well-organized and well-prepared to be the Indonesian armed forces. It is only in the subsequent years that TNI developed into armed forces. First, it became what was then called TRI (the Republic of Indonesia's Armed Forces) and then, on 5 October, 1945, it became TNI (the Indonesian Armed Forces). In 1965, then President Soekarno integrated the Indonesian Police (POLRI) into TNI and named the whole organization ABRI (the Republic of Indonesia's Armed Forces) because the national unity was then still in a fragile state with possible negative impact on the cohesiveness within and among the different forces of the military, including the police. Subsequent developments in the life of the Indonesian nation led to the official separation of the police from the military in 2000. Since then, the police and the military have been playing different roles in accordance with the different principles applicable to the military and the police in a democratic State. Such is the course of history which has coloured the growth and modernization of TNI into what it is now.

IHL dissemination during TNI's growth period – During the growth period as described above, IHL – which was known within the TNI environment to be the Laws of War – was taught to TNI soldiers in all TNI educational units, both those which aimed to shape the participants into TNI soldiers and those which provided advanced education. IHL was among the subjects taught at each and every of these educational units, and the only technique used to present IHL was that of lecturing. Therefore, the implementation of IHL as part of the TNI doctrine was still minimum. IHL was implemented by TNI more

in its policing duties rather than in its military duties due to the priority roles TNI had to play in that era. The tactics and techniques as regards besieging and cleansing a *kampong* (village) were among those which had incorporated respect for non-combatants. The techniques used to keep civilians from becoming engaged in a battle were implemented with humanitarian approach and without direct reference to the articles of Geneva Conventions 1949. How to implement the Rules of Engagement was not much understood although these rules were stated in the part of each and every operations order which contained coordination-instructions.

Analysis of the implementation of TNI's tasks from an IHL perspective – An analysis of the implementation of duties by TNI units showed that disseminating IHL only by teaching it as a classroom subject was not good enough to make soldiers understand the law and behave accordingly, especially as regards the *dos* and *don'ts* in a battlefield. A transformation process, which only emphasized the transfer of knowledge through a military education activity, was not effective enough to bring about changes in the soldiers' attitudes and behaviour towards respecting and implementing human rights in the field. In view of this, the Chief of Staff of the Indonesian Army (TNI AD) set up the so-called IHL Permanent Working Group in 1999. This working group has been cooperating with the ICRC in planning and achieving its objectives. The Director of the Legal Directorate of the Indonesian Army serves as chairman of the permanent working group, and the Director of the TNI AD Directorate of Doctrines as deputy chairman. The members of the working group are the Director Training of the Army, representatives from each staff of the TNI AD Headquarter (intelligence; operations; personnel and territorial) as well as representatives from KOSTRAD (the Army Strategic Command) and from KOPASSUS (the Army Special Forces).

Impact of developments in the strategic environment – The global trend towards implementing and respecting IHL and Human Rights provides an obligation for every nation on earth. No government can look down at, or even ignore, the need to respect and implement human rights, and much more so with the issuance of the UN Resolutions on Human Rights. The influence of the global trend aside, human rights constitute a basic need of the people and therefore the government must seek to implement and facilitate the implementation of human

rights as well as to oblige each and every citizen and institution under its authority to respect them. It is this insight that has encouraged some fundamental changes to take place in the administration of Indonesia as well as in the TNI in its capacity as a State institution. In line with the reformist movement, which surfaced in 1997, TNI has continued to conduct internal reforms with the purpose to enable it to play appropriate roles amidst changes in the State administration system as well as to enable it to function as a national military organization with good professionalism. It is these internal reforms that have provided an opportunity for the IHL dissemination process within TNI to proceed more intensively up to the present moment.

Strategy adopted – From the analysis and evaluation of the implementation of TNI's field duties, the objective of IHL dissemination should be to achieve such outcomes as each field unit developing an operations plan and soldiers developing attitudes and behavior that are justified under IHL. The soldiers and field units must have attitudes and behavior which reflect IHL norms. With such operations plans, attitudes, and behavior, field operations will be able to proceed on a professional basis, at least it can be justified from the legal point of view. With the existing opportunities taken into account, the strategy to achieve the said objective should be to disseminate IHL by revising and updating the relevant doctrines as well as by modifying the training system in such a way that it can produce soldiers/field units of which the attitudes and behavior are appropriate with IHL. The IHL Permanent Working Group should serve as a source of references for the implementation of the strategy.

Measures taken – In order that the strategy can achieve the objective, certain operations-related measures have been taken by each force within TNI. At this stage, it is TNI AD (the Indonesian Army) that has been making intensive IHL dissemination efforts due to the urgent nature of its assignments. However, TNI AL (the Indonesian Navy) has also been making such efforts, and TNI AU (the Indonesian Air Force) will follow suit. Among the measures that have been taken are as follows:

Integrating the IHL into the TNI doctrines – Basically, a doctrine is a norm/rule which guides soldiers/armed forces in carrying out their main duties. Therefore, the performance of the soldiers and units of

an armed force is very much determined by what is formulated in the relevant doctrines. Being aware of this, and in line with the revision currently underway of its doctrines, TNI has been incorporating the fundamental ideas, principles, intentions, and formulations of the IHL into its doctrines by adjusting them to the level of the doctrine being revised.

Developing new manuals and duplicating existing ones – Besides revising its doctrines, TNI has also been developing new manuals and duplicating the existing ones concerning the IHL and Human Rights. This measure is part of the dissemination process that has been underway. Some of the new manuals are adapted-translation versions.

Producing IHL instruction films – One dissemination tool which is effective to get the message across to soldiers is using an aid in the form of an instruction film. TNI had a cooperation program with the ICRC on the production of such instruction films, and this program was completed in 2001. The films produced through this program are now in use at all education units and other units in the TNI environment.

Integrating the IHL into the training system – In general, training is an attempt to improve professionalism. In particular, military training is given to get soldiers used to the kind of attitudes and behavior that are required so they can accomplish the mission assigned. Aware of this, TNI uses training as a means of shaping its soldiers' and units' attitudes and behavior. TNI, in particular TNI AD, has published a training book which incorporates the IHL into its training system. This book has been distributed to all the units within the TNI AD environment, together with the instructions on how to use the book in the applicable training system. This measure is believed to be producing some success. From the attitudes and behavior of TNI soldiers currently on duty in Aceh, the success of this measure is evident.

Training of trainers – The training of trainers (TOT) measure has been taken to make sure that the training conducted at TNI's units will achieve its goals. The personnel participating in the TOT comprises the officers in charge of training within the TNI AD environment, namely both the training officers assigned to training units and

those assigned to other units. With such a measure, the process of disseminating IHL to all the units will go on through the training system within the organization. Another activity which can be seen as part of this measure is the cooperation with the ICRC in sending some TNI AD and TNI AL officers to San Remo, Italy for an IHL course.

IHL seminars – On the policy-makers' level, IHL dissemination is sought by way of seminars. For example, a seminar on command responsibility was organized by the IHL Permanent Working Group in 2002.

IV. Implementation

General – The snowballing issue of human rights has spurred TNI to continue improving its capabilities of performing its roles, functions, and responsibilities with dignity for the country. TNI's experience in handling various cases in the past has encouraged TNI soldiers to improve their capabilities of safeguarding the sovereignty of the Unitary State of the Republic of Indonesia in professional and dignified ways. It is in this context that IHL is to be implemented in areas which the Government declares to be areas under martial law. For, such areas see the staging of military operations called security-restoration operations under the command of Koops TNI (the TNI Operations Command). However, the reality shows us there are some constraints faced by Koops TNI in relation to the implementation of IHL such as:

Since the Indonesian Government decided in 1999 to resolve the Aceh issue by means of dialogue, GAM has continued to use this momentum to grip the local people by using force, coercion and terror. As a result, it looks on the surface as though the people have been supportive of GAM, but it is extreme fear which have caused the people to act as if they sympathized with GAM. This is one factor of difficulty which must always be considered in the process of determining methods of operations.

The demand that Human Rights be respected, which has been persistent since the start of the national reforms and the settlement of the East Timor issue, has often made soldiers hesitate to act in the field.

The legal instrument providing the basis for military operations in Aceh is Law No. 16 of 1960, which is part of the National Law that is used to settle Aceh issues. This means that all military operations in

the province must be conducted in reference to the said law. However, not all of the things that are required to conduct military operations are covered by the said law.

Rules of Engagement (ROE) – Although the military operations in Aceh can only be categorized as low-intensity conflict, the ROE-related tools are highly required for the operations, much more so because most of the area of coverage of the operations is inhabited by people categorized as non-combatant and because the basis of the military operations in Aceh is to win the hearts and minds of the people. An important document for these military operations, the ROE, has been prepared in writing for the commanders of all the military units participating in the operations and explained to them. The ROE serve as the basis on which all the other facilities for the military operations are to be prepared so as to make sure that the implementation of these operations will not violate the norms applicable in the community, the national law, and IHL. All the provisions relating to the operations environment, to non-combatants, and to the ways non-combatants should be treated are included in the ROE document.

Issuance of yellow card for the soldiers – If the unit commanders are provided with the ROE document, each and every soldier is provided with a card listing the *dos* and *don'ts*. This card makes it much easier for the soldiers to remember what they must and must not do in the field. The soldiers are obliged to have the card with them. It is called the yellow card after its colour.

Consistent enforcement of law – To ensure the implementation of all the applicable legal provisions, law enforcement is strictly sought. During the security-restoration operations, the so-called field military court has been established to try the soldiers accused of violating the law, including IHL. All the cases that have been judged by the field military court up to this day relate to the treatment of non-combatants and the property belonging the community members.

Treatment of detainees – Although Indonesia has not ratified yet Additional Protocol II of the Geneva Conventions, the treatment of detainees under the military operations in Aceh has been oriented to the Protocol II. This is so for the legal consideration that nearly

160 countries have ratified the Protocol, as well as for humanitarian considerations.

Access for the ICRC – Under Presidential Decree No. 43 of 2003, foreign citizens, including foreign NGOs, have not been allowed to stay in the NAD (Aceh) since the first weeks of the Martial Law Administration in the province. The ICRC was among those banned from operating in Aceh. However, Koops TNI made efforts to have the ICRC resume its operations in Aceh by giving the Government considerations and recommendations in favour of the ICRC returning to the province. Upon considering all the relevant aspects, the Government has finally allowed the ICRC to operate again in Aceh.

Conclusions

Even today, at the beginning of the 21st century, human rights violations and how IHL is implemented in various conflicts that are taking place in the world still provide a matter of concern. The crimes committed by U.S. and British soldiers in Iraq show that even in the global era of today, violations of IHL prevail. Therefore, the ICRC should intensify its IHL-dissemination efforts in the global community. The ICRC, the United Nations, and the other global humanitarian organisations should be able to conduct an ongoing oversight of the implementation of the IHL by a State which is having a conflict with another State or which is trying to settle an internal situation of violence and to give pressures to such a State to comply with IHL. In the perspective of the demands for the implementation and respect of human rights, it is no longer possible for a government to escape from them. In its own case, Indonesia is also faced with national demands to implement and respect human rights within its territory. Such global and national demands have urged the Indonesian Government, particularly TNI in its capacity as the component of the nation which is always in contact with human rights-related issues, to address them properly.

In response to, and in line with, such global and national demands, TNI has taken various steps and measures to carry out its roles, functions, and tasks in this regard. Aware that the implementation of human rights in the context of military tasks is to be carried out with IHL as the foundation, TNI has determined a number of appropriate steps to strengthen the implementation of IHL within the TNI environment. The strategy used by TNI to achieve the said goal is by disseminating

IHL through revised and updated doctrines and by modifying its training system in such a way that it can bring about soldiers and units which have attitudes and behaviour deemed appropriate by IHL. This strategy has been followed up with concrete steps in re-organizing the doctrine and training systems.

In addition to the dissemination of IHL targeted at the attitudes and behaviour of soldiers and units within the TNI environment, TNI also implements IHL in military operations areas through Koops TNI, e.g. in Aceh. The ROE application for units and individuals, law enforcement measures, and the treatment of detainees in military operations are oriented towards IHL, although Indonesia has not ratified yet Additional Protocol II. In addition, Koops TNI is also concerned about the presence of the ICRC in the conflict area of Aceh.

Concluding remarks

It is hoped that this paper can shed some light for the seminar participants on how TNI sees IHL and how TNI has been disseminating and implementing the law. Thank you.

References:

- Catatan tentang UU No.13 tahun 1960 (hlm 11 berkaitan dengan kendala yang dihadapi TNI)
- Apakah yang dimaksud bukannya PP No.16 tahun 1960 tentang Pelaksanaan dan bantuan Militer (Goverment Regulation No.16 tahun 1960 relating to the request and fulfilment of military support?

State Responsibility for LoAC Implementation

Maj. Gen. Yu Zhengshan[1]
Professor of Xi'an Political Academy

As all the other laws, the Law of Armed Conflict (LoAC) can make sense and realize itself only when it is carried into execution, when it enters the life, regulates the life and guides the life; only when the right has been taken, the duty has been performed, the ban has been complied with and the crime has been penalized. LoAC cannot be implemented without the joint efforts of each aspect of the international community. The International Committee of Red Cross (ICRC) is not only a sponsor and booster of LoAC, but also a fruitful carrier who has won worldwide appreciation and credit. The United Nations (UN) has also played a more and more important role on this aspect. However, in LoAC, which is a branch of International Law, countries play a fundamental and central part. This fact determinates the implementation of LoAC and puts more weight on whether countries are abiding to their obligations. The four Geneva Conventions of 1949 and the Additional Protocol I of 1977 both made a definite and general stipulation in their first articles of the weighty responsibility countries take to implement LoAC: the High Contracting Parties undertake to respect and to ensure respect for the present Convention (Protocol) in all circumstances. In order to put such weighty responsibility into reality, the four Geneva Conventions and the additional protocols stipulate the obligation for the States to widely spread LoAC domestically. Measures such as: including

[1]Yu Zhengshan, Major General in professional technology, is a professor in the Military Law Department, and director of International Institute of Law of War, Xi'an Political Academy of the Chinese People's Liberation Army (PLA). In 1945, Maj. Gen. Yu was born in Qu County, Zhejiang Province, China. In 1963, he was admitted to Renmin University, China, majoring in philosophy. After graduation, he embarked on a military career in West China as a company commander and a staff officer successively. In 1979, he was transferred to Xi'an Political Academy, teaching military officers the subjects of philosophy, logic and ethics. During this period, he attended advanced courses on aesthetics and ethics in Beiijing University. Since 1993, he has been engaged in the research and teaching of the law of armed conflict (LoAC), being a supervisor of postgraduates on LoAC and popularizing LoAC among the armed forces of the PLA.

legislation, so as to acquire the effectiveness of the state law and then to implement domestically; not shirking and allowing other countries to violate the responsibility of the conventions of LoAC; promoting LoAC, etc.

Publicizing LoAC treaties extensively

The implementation of LoAC begins with the comprehension of it. Chinese philosopher Cheng Yi said "Awareness goes before action" (*Will* by Cheng Yi), "The more clearly you get to know, the more steadily you'll take action."(*Collection of Zhuzi* by Zhuxi, Vol. 14) and "Awareness is the beginning of action, and action is the result of awareness" (*Chuanxilushang* by Wang MingYang). To make LoAC respected and implemented, we should firstly make people know it, understand it and believe it. Hence, if one country is willing to implement LoAC, it should publicize it extensively, make its people understand and know it clearly and make its armed service members, its citizens and authorities concerned know its content, grasp its rules and basic knowledge and understand its principle and spirit. Therefore, the four Geneva Conventions of 1949 and the two additional protocols of 1977 all stipulated in special articles (GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144; GP I, Art. 83; GP II, Art. 19) the High Contracting Parties bear the responsibility of disseminating LoAC extensively in their respective countries, publishing reading materials and the text of LoAC as widely as possible, placing the learning of LoAC into military educational programmes, training their armed forces according to the programmes, organizing and encouraging their citizens to study LoAC, especially making the military and administrative authorities, which take responsibility for proper application of LoAC in wartime, familiar with the items and requirements of LoAC treaties and the texts. At the end of April this year, the media exposed the horrible pictures in which US Army maltreated Iraqi prisoners of war. The whole world was startled. US President Bush also expressed it was "queasy". Why did this happen? The American military spokesman said on April 30 the soldiers that maltreated Iraqi prisoners of war (PWs) had not received the relevant systematic training of the Geneva Conventions. There were certainly the commander's responsibilities and more profound reasons for this serious maltreatment event, but it also reversely explains for sure how importantly countries undertake disseminating LoAC extensively in their own countries, especially among their armed forces!

Endorsing LoAC with the effectiveness of State law and domestic application

As a branch of international law, LoAC must acquire the effectiveness of the domestic laws of the contracting state parties and be implemented in the contracting countries in order to get respected and enforced. Abidance by the treaty is a basic principle of international law. However, it is different for the contracting parties to endue the international treaties with the effectiveness in their domestic legal system. Even if the treaties of LoAC are endorsed with in the contracting countries, they are still faced with the problems of application because they can be applied only when they are adapted to the domestic legal specification both in content and in structure. The contracting state parties of LoAC have the responsibility to guarantee to endue the treaties with the effectiveness of state law flawlessly and the domestic applicability, and accordingly ban all the behaviors of breaking the treaties conscientiously. Hence, the Geneva Conventions put forward specific requirements in this respect for the contracting countries. For instance, the conventions require the contracting countries to take necessary measures for preventing and repressing any abuse of the distinctive signs of the Red Cross and the Red Crescent, (GC I, Art. 54 and GC II, Art. 45), especially to "enact any legislation necessary, to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case." (GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146). That the High Contracting Parties having gained the effectiveness of state law flawlessly and completely implement it domestically are the key elements for the nations to carry out the law of armed conflict.

No absolving oneself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches

Both Article 3 of Hague Convention IV (1907) and Article 91 of Protocol I Additional to the Geneva Conventions stipulate that a belligerent party "shall be responsible for all acts committed by persons forming part of its armed forces." As to the grave breaches of

LoAC due to nations, the prosecutions on the individual responsibility do not renounce responsibilities of nations. The four Geneva Conventions respectively state that "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article."（GC I, Art. 51; GC II, Art. 52; GC III, Art. 131; GC IV, Art. 148）According to the regulations of Hague Convention IV and Additional Protocol I, a party to the conflict which violates the Conventions shall be liable to pay compensation or reparations. Reparation is a form of compensation. Under the condition that resuming the original form or reparation can not make up sufficient compensation, the liable country should make full compensation.

Compensation can take different forms such as admission of violations, expressing regret, formal apology or other appropriate etiquettes. For the liable party often absolving itself of its liability, the Geneva Conventions state that no High Contracting Party shall be allowed to absolve itself of any liability incurred by it. To avoid the self-absolving of liability, the conventions also state that no High Contracting Party shall be allowed to absolve of any liability incurred by another High Contracting Party in respect of breaches. But the Conventions give no specifications for what certain procedure or measures the High Contracting Party can take to achieve the goal of no permission of absolving of any liability incurred by another High Contracting Party. Generally speaking, the victim country and other High Contracting Parties shall ask the liable party to put an end to its grave breaches and ask for compensation. The victim party can also take action of reprisal during armed conflict. Of course, reprisals should be pursuant to the international obligations of humanitarian protection and be proportionate to the breach of the law of war committed by the enemy. Article 89 of Additional Protocol I expressly states that "In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter." This regulation is very good, but it is too general to be implemented. View from the whole, it is clear that the High Contracting Parties have the obligation to prohibit absolving itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches, while it is

not clear that what certain procedure and measure the High Contracting Party can take to achieve the goal of no permission of absolving of any liability incurred by another High Contracting Party.

Enhancing the Development of LoAC

LoAC is an active law that is still being improved and perfected. An ancient Chinese great thinker Han Feizi said: *"law should be made to keep up with times to get its execution, and its execution should be pursuant with the conditions to achieve its function."* To respect as well as ensure respect for the Conventions in all circumstances also inherently includes the enhancement and improvement of LoAC, namely, to further make LoAC "keep up with times" as well as "to be pursuant with the conditions". One important part of promoting the development of LoAC is to extent the scope of its application so as to make more countries become high contracting parties of LoAC treaties, especially be the high contracting parties of the Geneva Conventions and its two Protocols. This is very helpful to the wider implementation of LoAC. The four Geneva Conventions state that "From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention", which mainly focused on solving the issues said above. Under the conditions of facing the challenges of scientific development and new military revolution, the other part of enhancing the improvement of LoAC is to supplement, revise, enrich and perfect the present LoAC treaties, which should also be made to keep up with the progress of the international idea of human rights, the humanitarian idea and the civilization of the whole world. In modern times LoAC is faced with various severe challenges, the responsibility of implementing LoAC on States is to improve and perfect LoAC more actively but not to lay restrictions on its scope of application deliberately.

Nations should show their sincerity to respect and implement LoAC

On 26 March 2002, Mr. Jakob Kellenberger，the president of ICRC, said on the 58th annual meeting of the UN Commission of Human Rights, with more and more views on the LoAC, we are more pressed to see that "We lack the respect to laws, especially the sincerity to implement the LoAC politically rather than the lack of laws itself." States can really take their responsibilities to implement LoAC if they have sincerity to do it. As a PLA man engaged in implementing LoAC,

I do deeply feel that the Chinese Government and our PLA have saved no sincerity to implement LoAC.

China has acceded to all the most important LoAC treaties, which include the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1971 Convention on the Prohibition of Bacteriological and Toxin Weapons, 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its four Protocols, the 1993 Convention on the Prohibition of Chemical Weapons, etc. China was the only state of the five UN permanent members who had acceded to all the 1949 Geneva Conventions and its two protocols before 1989, year when another UN permanent member acceded to all the above treaties. Six years later, another UN permanent member state acceded to all the treaties above.

The LoAC treaties China acceded to found their legal effect in China's domestic laws with a combination of absorbing and transforming. Firstly, Chinese Military Parent Law "the Defense Law of the People's Republic of China (PRC)" Article 67 states that "In international military relations China shall be pursuant to the treaties and agreements we concluded with foreign countries or we have signed as well as acceded". Secondly, to enact special domestic laws which involve the content of LoAC. For example, to make the various regulations of the emblems of the Red Cross be domestically effective, we promulgated the "Law Concerning the Use of the Emblem of CRCS" in 1996. This legal document precisely distinguishes the protective use and the indicative use of the emblem of the Red Cross, expressly states only five sorts of persons and four kinds of organizations and institutions and their locations, objects, and medical transports which can use the protective emblem of the Red Cross. The five sorts of personnel include medical personnel and staff in the medical units of the armed forces, staff and medical personnel of the national Red Cross Society, and staff and medical personnel of the international Red Cross organizations and the national Red Cross Societies of other countries authorized by the State Council or the Central Military Commission of the PRC. The four kinds of organizations and institutions include the medical units of the armed forces, the Red Cross Society providing aids, voluntary aiding groups and medical units authorized by the State Council or the Central

Military Commission of the PRC, and the international organizations authorized by the State Council or the Central Military Commission of the PRC.

As for what is not mentioned in the provisions of using the protective emblems, the rules and regulations of the Geneva Conventions and the Additional Protocols should be followed. The abuse of the emblem of Red Cross is prohibited. Punitive rules have been enacted to punish violators. Again, and according to the Geneva Conventions, we specially established "Provisional Regulations on Punishing the Soldiers' Responsibility Violation" (passed in 1981, entered into force on 1st January 1982). The statute firstly stipulates crime and punishment, implement criminal sanction for the person who commits grave breaches of the LoAC. Afterwards, more modifications and perfection were made to the related provisions to fit into the Chinese Criminal Law (1997). For example, the Criminal Law stipulates that: in wartime, slaughtering civilians and looting their properties in the operational area should be sentenced to no more than 5-year imprisonment. But in more serious cases, the imprisonment is from 5 to 10 years. In the most serious cases, the imprisonment is above 10 years or for life or death penalty (Article 446). Abusing PWs in a wicked way should be sentenced with no more than 3-year imprisonment (Article 448).

China domestically publicizes the Geneva Conventions and the knowledge of LoAC extensively mainly by the PLA, also with combination with civilian persons. Firstly, we have published in large quantity publications of the treaty texts, popular reading materials and works of LoAC for military persons and civilians to study. Secondly, we hold several workshops annually to disseminate LoAC. Guided by the Red Cross Society of China (RCSC), we have been organizing social strength to spread the knowledge of LoAC to civilian residents. Directed by the General Political Department (GPD), we hold military training courses on LoAC for military officers and instructors of the Army, Navy and Air Force, and train the mainstay persons on such legal issues. In this respect, we have been in very good cooperation with the ICRC. Thirdly, we integrate the education and training plan of LoAC into the education and training plan of our armed forces. We carry out LoAC education courses in military schools and train our army in line with the plan, e.g. set up captive detention center in

military maneuvers, carry out maneuvers on retention, cure, protection and management of battlefield captives; establish mass work groups, inspect and supervise the compliance of battlefield disciplines, as well as the implementation of security measures protecting the lives and properties of civilians. Fourthly, we have established special organizations and have professional persons to take responsibility of the dissemination and implementation of LoAC. The Office of GPD has a special organization in charge of managing the lawyers of the whole army and corresponding work. One of the important missions of the service of the army lawyers is to disseminate LoAC to persons forming part of his armed forces.

The *Handbook on the Law of War for Armed Forces* published by the ICRC points out that "the strategic situation (geography, population, economy, politics, military) of the State is determinant for the internal clarifications and precisions which are indispensable to achieve effective respect of the law of war." Our sincerity and responsibility for LoAC and its implementation are derived from the consistency between LoAC and China's strategic interest of peaceful development, and from the consistency with our duty to maintain peace. Machiavelli, a historian and influential Italian in the field of politics and philosophy during the Renaissance, said in his Principe that there are two means of fighting: one is to apply the law; the other is to use force. The first is the character of mankind, while the second is the character of beasts. We have to resort to the latter for the weakness of the former." It's really a pity that we are not progressive enough to control, adjust and regulate the use of force by law, to reform "the means of beasts" in line with the humanitarian requirements, to protect civilians and other war victims as possible as we can, so as to ameliorate the sufferings of war. And the law we noted here is LoAC. We are called together here by LoAC. I'm sure we will further enhance the dissemination and implementation of LoAC after this seminar so as to make our world more peaceful, more humane and more glorious!

Outcome of the 28th International Conference of the Red Cross and Red Crescent

Jean-Philippe Lavoyer[1]
Head of the Legal Division, ICRC

The International conference in general

The participants to the International Conference are the States Party to the Geneva Conventions, the recognized National Red Cross or Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies, and the ICRC. The Conference meets every 4 years. This mixture of States and non-State entities makes it a unique forum to discuss humanitarian issues. International humanitarian law is always high on the agenda of these Conferences. The International Conference adopts resolutions that are as such not legally binding. Some are nevertheless very important and often referred to. A good example is the Statutes of the International Red Cross and Red Crescent Movement that are key to the Movement's activities. Other examples are the Plan of Action adopted in 1999 and the Declaration and Agenda for Humanitarian Action adopted last December. The relevance of such resolutions and documents is based on the fact that they were adopted by consensus.

The International Conference is considered to be a somehow special conference also because of its rather non-political nature. It

[1]Jean-Philippe Lavoyer, born in 1950 in Berne, Switzerland, is Head of the Legal Division of ICRC. He studied Law at Berne University and got Admission to the bar in 1976.He worked as Legal Adviser of Swiss National Bank (Reserve Bank), Zurich; worked in International Committee of the Red Cross (ICRC) in South Africa, ICRC in Somalia, ICRC in Afghanistan, ICRC in Kuwait and Arabian Peninsula; worked as Legal Adviser of the Legal Division of ICRC and Deputy Head of the Legal Division. He organized and participated in international meetings and conferences. He participated in international negotiations, such as the Establishment of the International Criminal Court (Preparatory Committee and Diplomatic Conference in Rome), Conventions on international terrorism, Guiding Principles on Internal Displacement. He promoted and taught international humanitarian law. He prepared and participated in International Red Cross and Red Crescent Conferences. He participated in the UN General Assembly and the Human Rights Commission. His publications are on a variety of subjects such as terrorism and international humanitarian law, refugees and internally displaced persons, protected zones/safe areas, the Red Cross and Red Crescent emblem, the legal status of the ICRC, the Centenary of the First International Peace Conference, the (first) Gulf War, and other issues related to international humanitarian law.

certainly should remain different from other meetings, e.g. within the United Nations, which tend to be much more politicised. The International Conference is usually preceded by a meeting of the Council of Delegates, which is composed of all the components of the International Red Cross and Red Crescent Movement. The aim of these meetings is to discuss matters of importance to the Movement, and also to prepare the International Conference.

Brief presentation of the last international conference

The last International Conference took place in Geneva from 2 to 6 December 2003.

Its overall theme was: "Protecting Human Dignity", organized by the ICRC and International Federation. More than 1700 delegates from 153 Governments, 176 National Societies and 65 observers attended the Conference. You will probably agree that these figures are quite impressive. The structure of the Conference was the following:

A welcoming ceremony;

Plenary meetings at the beginning and at the end of the Conference;

Debates in Commissions, and

The Drafting Committee.

In addition, at the end of every day there were workshops that were not part of the official programme, but that allowed informal discussions. States and National Societies had the possibility to make pledges. The idea of workshops and pledges had been introduced in 1999 and had been considered to be very successful. Work on the International Conference started long before the Conference. At regular intervals the ICRC and the International Federation consulted a group of Ambassadors on the format and contents of the Conference. This preparatory work was extremely important for the success of the Conference. Further bilateral consultations took place in Geneva and in some capitals.

More detailed analysis of certain issues

Meetings in plenary and in commissions

No less than 124 delegations have participated in the debate in the plenary meetings.

After keynote addresses by the President of the ICRC and the International Federation, the discussion focused on "Contemporary humanitarian challenges and protecting human dignity". In this general debate participants strongly reaffirmed the importance of international

humanitarian law and its relevance in contemporary armed conflicts. It was also underlined that international humanitarian law must be respected in the fight against terrorism.

In addition, participants unanimously condemned terrorist acts directed against the civilian population. They also showed their increased concern about the attacks against humanitarian personnel.

Many participants also reaffirmed the solidarity in the Movement and the importance of a good relationship between National Societies and States. Many other issues were addressed, in particular the question of the emblem, the need to fight against the erosion of the Fundamental Principles, the necessity to fully respect IHL (and here, common Article I and Article 90 of Additional Protocol I were mentioned), and the problem created by aggression and foreign occupation. Other issues that were dealt with in the Plenary were:

The election of the Standing Commission, including its new Chairman, Dr. Al-Hadid, President of the Jordanian Red Crescent; The presentation, by the ICRC, of a report on women and war. On that occasion, Queen Rania from Jordan delivered a speech; The ICRC also presented a report on its study on Customary international humanitarian law;

On its part, the International Federation presented a report on the « Auxiliary Role of National Societies», as well as on «International Volunteer Day»; The Plenary was also an opportunity to mention the implementation of the Plan of Action that had been adopted by the International Conference in 1999. The debate also took place in two Commissions on issues that were reflected in the documents submitted to the Conference, namely a draft Declaration and a draft Agenda for Humanitarian Action.

Drafting committee

The Drafting Committee was chaired by Ambassador Molander from Sweden and met each time until midnight. It first negotiated a ***Declaration*** with the title "Protecting Human Dignity". Compared to the Agenda for Humanitarian Action, the Declaration is a short text. Its aim is to reaffirm forcefully what "Protecting Human Dignity" actually means. That makes this document so important. The Declaration contains a clear reaffirmation of States' obligation to respect and ensure respect for international humanitarian law. It calls upon the parties to an armed conflict to make all efforts to reduce incidental and

prevent deliberate injury, death and suffering of civilian populations. The need to protect women and children is highlighted.

The Declaration recalls that international humanitarian law is applicable to all situations of armed conflict. It vigorously condemns all acts or threats of violence aimed at spreading terror among the civilian population. The Declaration also stresses that all detainees must be treated with humanity and that all persons alleged to have committed crimes must be granted due process of law and fair trial. Furthermore the Declaration states very firmly that humanitarian workers must be respected and protected in all circumstances. Their independence from political and military actors must be reaffirmed. Finally, the Declaration commits the participants to reduce the risks and effects of disasters on vulnerable populations, as well as to reduce their vulnerability to disease due to stigma and discrimination, particularly that faced by people living with and affected by HIV/AIDS.

It is interesting to note that the text of the Declaration has been reinforced during the debate in the Drafting Committee. The Drafting Committee went on to negotiate the ***Agenda for Humanitarian Action***. It is very focused and deals with very concrete issues. It is structured in the following was: An introduction; 4 General Objectives; 15 Final Goals; 64 Proposed Actions. For time reasons, I will only be able to give here some highlights of the Agenda, while concentrating on legal issues.

General objective 1 deals with how to respect and restore the dignity of persons missing as a result of armed conflicts or other situations of armed violence and of their families.

This objective is based on the observations and recommendations of an international conference that the ICRC had organized in Geneva in February 2003.

The Agenda covers a broad range of activities linked to missing persons, starting with the prevention of persons becoming missing.

The Agenda then recalls that Article 32 of Additional Protocol I refers to the right of families to know the fate of their relatives.

In addition, four topics are covered:

The management of information and process files on missing persons;

The management of human remains and information on the dead;

The support of families of missing persons; and finally,

An encouragement to organized armed groups to resolve the problem of missing persons, assist their families and prevent persons from becoming missing.

General objective 2 aims to strengthen the protection of civilians from the indiscriminate use and effects of weapons and the protection of combatants from unnecessary suffering and prohibited weapons, through controls on weapons development, proliferation and use.

The five following issues are dealt with in this second general objective:

To end the suffering caused by anti-personnel mines

According to the Agenda, States will pursue the ultimate goal of the eventual elimination of anti-personnel mines. States, in partnership with the Movement, will provide assistance for the care, rehabilitation, social and economic reintegration for war wounded, including mine victims, as well as for mine awareness and clearance programmes.

The Agenda also reaffirms the ICRC's lead role in the implementation of the Movement Strategy on Landmines. National Societies, in partnership with the ICRC and States, will maintain mine action among their priorities and develop their capacity in this regard.

Minimize suffering from weapons that may be extremely injurious or have indiscriminate effects

The Agenda welcomes the recent adoption of a new Protocol on "Explosive Remnants of War" and encourages States to consider its ratification as soon as possible. States are also encouraged to consider adhering to the Convention on Certain Conventional Weapons of 1980, and to the extension of the Convention's scope of application to non-international armed conflicts.

Reduce the human suffering resulting from the uncontrolled availability and misuse of weapons

According to the Agenda, States, with the support of the ICRC and National Societies, should ensure that armed, police and security forces receive systematic training in international humanitarian law and human rights law, in particular concerning the responsible use of weapons.

Protect humanity from poisoning and the deliberate spread of disease
This Agenda point refers specifically to the ICRC initiative called "Biotechnology, Weapons and Humanity". This initiative aims at reinforcing the existing prohibitions of chemical and biological weapons, given the increased risk of hostile use of biotechnology. In order to reinforce these prohibitions and improve controls in biotechnology, the ICRC would like States to adopt a ministerial level declaration.

Ensure the legality of new weapons under international law
The Agenda urges States to establish review procedures to determine the legality of new weapons, means and methods of warfare, in accordance with Article 36 of Additional Protocol I of 1977. The second part of the Agenda deals with reducing the risk and impact of disasters, issues that were closely followed National Societies and by the International Federation.

These two documents were adopted by consensus by the International Conference. The Conference urged all its members to implement the Declaration and the Agenda for Humanitarian Action.

Workshops
As already indicated, the workshops allowed more informal discussions. There were 11 workshops that dealt with issues that had a link with the International Conference. Six workshops dealt with the implementation of international humanitarian law: Contemporary challenges to international humanitarian law; the protection of children; Biotechnology, Weapons and Humanity; small arms and human security; domestic implementation of the Statute of the International Criminal Court; and Challenges to humanitarian action. The workshops were organized by States, National Societies, the International Federation or the ICRC.

Pledges
Like in 1999, many States and National Societies made pledges, in addition to the ICRC and the International Federation. A total of 372 pledges were made, including many collective pledges. For its part, the ICRC made a pledge on missing persons. Thus, these pledges will be able to reinforce the commitments made by the Conference.

Looking at this region of the world, it is very encouraging to note that the following States have made one or more pledges: China, Japan, Australia, New Zealand, Thailand, The Republic of Korea and Singapore. Of the 25 pledges, 6 were made jointly with the National Society.

The pledges made cover a wide area. In relation to humanitarian law, the commitments focus on increased respect and promotion of humanitarian law and humanitarian action, strengthening teaching of humanitarian law (especially to the armed forces), the ratification of the 1977 Additional Protocols and the 1954 Cultural Property Convention, the elimination of anti-personnel mines and the promotion of the Ottawa Treaty, and strengthening of National Societies. In addition, no less than 14 National Societies of the States present here have made pledges. They made altogether 43 pledges. The Timor Red Cross also participated in a collective pledge as an observer. Here also, the pledges are of a great variety, including the wish to strengthen the operational capacity of the National Society, dissemination of humanitarian law, better protection of the emblem, increased cooperation with other National Societies, reinforcing the international network of tracing services, ratification of the Additional Protocols and the setting up of a National Humanitarian Law Committee.

Question of a new emblem

The International Conference also adopted a resolution on the emblem. The resolution, which had previously been adopted by the Council of Delegates, reiterated the commitment of the International Red Cross and Red Crescent Movement to achieve, with the support of States, a comprehensive and lasting solution to the question of the emblem. The basis for such a solution would be the draft Third Protocol to the Geneva Conventions that had been elaborated in 2000. The resolution also requests the Standing Commission to continue to give high priority to securing, as soon as circumstances permit, a comprehensive and lasting solution to the question of the emblem. There is broad agreement that, for the time being, the circumstances in the Middle East do not permit the resumption of the process that was interrupted in autumn 2000. The Standing Commission has recently set up a Working Group to continue work on the emblem issue. It should be recalled that the draft Third Protocol offers a solution in the form of a simple, easily recognisable emblem without any religious, political or

cultural connotations. Its name has not yet been decided, although the name “Red Crystal” has been proposed.

Global assessment of the conference

I think it is possible to say that for a vast majority of the participants, the Conference was a success. It took place in a political environment that could have easily led to severe tensions and ; a politization of the whole event. This in itself could have threatened future conferences.

One of the main achievements of the International Conference is the reaffirmation of the importance of international humanitarian law, of its continued relevance in today’s armed conflicts. This reaffirmation was particularly important in the post 11 September reality.

Not only the draft documents have been accepted, but they were all adopted by consensus. The Declaration and the Agenda for Humanitarian Action are therefore strong documents that will provide useful guidance. Of course it will be now up to States, National Societies, the International Federation and the ICRC to act. Ultimately, only the implementation of the accepted commitments will make it possible to measure the success of the Conference.

To conclude, let me say that the next International Conference will take place in Geneva in 2007.

The Relationship between States and the Red Cross and Red Crescent Movement

Jeffrey Chan, Wah-Teck[1]
Singapore Red Cross Society

Introduction

It is not often well understood how closely States are linked to the Red Cross and Red Crescent Movement. Such misunderstanding can have unfortunate results. States who do not fully understand this relationship can unintentionally breach their obligations under International Law. More serious than this is the fact that they may not fulfill the expectations of their own citizenry as well as that of humanity generally. It is of crucial importance therefore that States, and their public officials, understand fully the relationship between the work that they do and the Red Cross and Red Crescent Movement. Included among the class of "public officials" are military commanders and administrators of security agencies. This class also encompasses political leaders and, especially, the administrators of public healthcare and welfare agencies.

The first step to understanding the relationship between States and the Red Cross and Red Crescent Movement is to understand the Movement itself.

The Red Cross and Red Crescent Movement

The Red Cross and Red Crescent Movement refers to the same entity. Originally it was known as the Red Cross Movement. The term "Red

[1]Mr. Jeffrey Chan is a member of the Council and Executive Committee of the Singapore Red Cross Society. He is also the Chairman of Society's Legal Commission and International Services Committee. His involvement in the Red Cross began in 1963 when he joined the then Singapore Branch of the British Red Cross Society. Mr. Chan is presently a Principal Senior State Counsel of Singapore and heads the Civil Division of the Attorney-General's Chambers of Singapore. He read law in the University of Singapore and subsequently obtained his Masters in Law from Harvard University, USA. He also attended the Advanced Management Programme at Wharton Business School. His prior appointments include being Director Legal Services of the Ministry of Defence as well as various appointments in the subordinate Judiciary in Singapore. His many concurrent appointments include being a Member of the Military Court of Appeal, the BioMedical Executive Council, the Bioethics Advisory Committee and the Board of the National Archives. He has special interest in International Humanitarian Law and was a member of the San Remo Roundtable of Experts on International Humanitarian Law Applicable to Conflicts at Sea. Apart from his involvement in the Red Cross, Mr. Chan is an active member of the Rotary Club of Raffles City and other civil society groups.

Crescent" was introduced to accommodate Islamic States who identify more closely with the symbol of the crescent rather than the symbol of the cross. The Movement is an international entity comprising 3 separate but related components. These are the International Committee of the Red Cross (the "ICRC"); National Societies and the International Federation of Red Cross and Red Crescent Societies (the "IFRC").

The original component is the **International Committee of the Red Cross** (the "ICRC"). The ICRC was established in Switzerland in 1863 as a result of the efforts of Jean Henri Dunant. Dunant was present and observed the horrendous aftermath of battle after the Battle of Solferino in 1859. He then advocated very strongly for the establishment of neutral organizations that would take care of soldiers wounded in battle. This organization grew into the major humanitarian organization of the world with the mission of protecting victims of both international as well as internal armed conflicts. It also has the important task of promoting International Humanitarian Law. The ICRC has a special place in International Law as it has the mandate conferred to it by states under the Geneva Conventions to protect victims of armed conflicts. Additionally, unless otherwise agreed between belligerents, the ICRC is the Protecting Power under the Geneva Conventions with the responsibility as well as the legal power to protect non-combatants.

The second component of the Movement is the **National Societies.** These are national bodies established in 176 countries throughout the world. Each of these bodies are established under the national laws of their respective country. As such, these National Red Cross and Red Crescent Societies take a variety of forms. Most are constituted as societies, that is, they are organized bodies of like-minded persons established in order to achieve mutually agreed objectives. Some are organized as statutory corporations while there are reported instances of some National Red Cross Societies that are established and operated as government departments. Whatever form these National Societies may take, they are all established to achieve the same objectives as defined by the Red Cross and Red Crescent Movement.

Historically, all National Societies are strongly supported by their respective national governments. This is because in every country, the

National Red Cross or Red Crescent Society is a national institution, which operates for the good of the society generally without being partisan in the politics of the nation. This neutrality is a critical tenet of the Red Cross and Red Crescent Movement. National Societies were originally established to facilitate the achievement of the aims of the Red Cross Movement in individual countries. Over time, National Societies have developed a range of core competences. In the main, these are in responses to natural and health emergencies and in public health. This focus, together with the historical development of the Red Cross Movement, is the reason why all National Red Cross and Red Crescent Societies conduct first aid training for their members and encourage the acquisition of these skills by everyone in their respective communities. Apart from this, many National Societies are also heavily involved in other community welfare programmes such as providing various services to those in need. This has developed into the paradigm that the main focus of Red Cross and Red Crescent work is to "provide for the most vulnerable" whether in peace or in war.

The third component of the Movement is the **International Federation of Red Cross and Red Crescent Societies.** This was formerly known as the "League of Red Cross Societies". This is an international organization headquartered in Geneva, Switzerland. The League was initially established as a secretariat to co-ordinate the international activities of National Societies. This was especially in relation to the provision of assistance by National Societies to other states during natural disasters. This can range from earthquakes and famines to epidemics of infectious diseases. Over time the IFRC has developed in response to changing situations as well as expectations of the international community into an operational international organization with National Societies as its members. The IFRC is now the leading international agency for emergency response to natural disasters. To undertake this, the IFRC has grown in size and complexity with a large number of officers in its headquarters in Geneva as well as in various regional offices and in the field. In recent times, it has acquired additional assets such as an Emergency Response Unit that can be quickly deployed when required.

All the separate components of the Red Cross and Red Crescent Movement subscribe to and are united by the Seven Fundamental Principles. These are Humanity; Impartiality; Neutrality;

Independence; Voluntary Service; Unity and Universality. Although comprising 3 separate but related components, the Movement is often viewed by its stakeholders as a single entity but with national and international components. The major stakeholders of the Movement are those persons and entities most touched by its objectives and its work. In the main, these are people who are in situations where they are most vulnerable. These include victims of armed conflicts, both international as well as internal; victims of natural disasters as well as victims of health emergencies such as health epidemics. But seen from a wider perspective, the major stakeholders of the Movement are, first and foremost, humankind as a whole, and in particular, the nations of the world.

States and the Red Cross and Red Crescent Movement

The relationship between states and the Red Cross and Red Crescent Movement is defined by a number of factors. The most important of these are International Law, the national laws of respective states; the relationship between the Government of a State and its National Society and, perhaps most important of all, the expectations of the populace of a State.

The main determinant of the relationship between states and the Movement in International Law is International Humanitarian Law. This is commonly discerned as either Hague Law, which governs mainly the means and methods of warfare and has its roots in the Hague Regulations of 1907; and Geneva Law which concerns the protection of victims of armed conflict and has its roots in the rules of warfare in ancient times and encapsulated in modern times in the numerous Geneva Conventions since 1864. The ICRC is the custodian of the rules of IHL and takes upon itself the responsibility of developing the law in response to changing situations and encouraging its observance. The rules of IHL in modern times are mainly set out in various international treaties. They bind states who are parties to these treaties. But it is widely perceived that many of these rules have, through wide acceptance, attained the status of customary international law. They are thus binding on states, even if these states are not parties to the treaties or conventions that established these rules.

The basic obligation of states in IHL is to be found in Common Article 1 of the 1949 Geneva Conventions. This obliges states to respect and

ensure respect for these Conventions. Many other rules, which bind states, concern the special status of the Movement, which centers on maintaining the integrity of the emblem of the Red Cross and the Red Crescent. States are legally obliged under the Geneva Conventions to respect these Emblems and to protect them from being compromised. States are also obliged to disseminate the rules of IHL to its armed forces and to ensure compliance with these rules. This translates in practice to the obligation to prosecute and punish persons guilty of breaches of IHL. The ICRC has an active programme to encourage and assist states in meeting these obligations. States are also legally obliged to respect and facilitate the role of the ICRC as a Protecting Power under the Geneva Conventions. Perhaps the best known manifestation of this legal obligation is the duty of states to facilitate access by the ICRC to areas of military operations and Prisoner-of-War encampments.

Apart from the above, states are also obliged to comply with duties set out in other IHL instruments such as the Genocide Conventions, the Chemical Weapons Convention, the Ottawa Treaty on Landmines and, perhaps most significant of all, the Rome Statute of the International Criminal Court. In its role as the custodian of IHL the ICRC encourages accession to these instruments. National Societies work with the ICRC to advocate for greater awareness of and sensitivity to the rules of IHL in their respective nations. In order to give effect to their obligations under IHL, states are obliged to enact the rules of IHL as domestic law rules. These include enacting them as rules in the codes of discipline of the armed forces. Failure to do so can result in a state being in breach of its obligations under international law with all its attendant consequences. As IHL rules are also enacted as national laws, failure to comply would mean also that a state would be in breach of its own laws.

An important facet of the relationship between states and the Red Cross and Red Crescent Movement is that its own National Society is invariably established under its own national laws. A National Red Cross or Red Crescent Society is not merely another voluntary welfare agency or the local branch of an international organization. Because of the principles of the Movement and the responsibility of states under International Law, National Societies are in fact national institutions. They are officially established as auxiliaries to national governments

in the undertaking of humanitarian matters. These include national responses to emergencies, public health and the welfare of those most in need in any nation. Because of this special role, National Societies are always strongly linked to their national Governments, but keep themselves outside the realm of national politics. By leveraging on its own National Society, a state can obtain access to the institutional knowledge, resources as well as opportunities of the Movement on these matters. This is particularly important during times of emergency, whether natural or otherwise. The institutional expertise, assets and other resources of the Movement, which can be accessed through the state's National Society are, for many states, crucial for disaster preparedness and in meeting emergencies when these occur.

Apart from the above, National Societies have an important role in the dissemination of IHL. An important tenet of the Movement is that National Societies work with the ICRC in disseminating IHL in its own state. They have a particularly important role in furthering the understanding of IHL among civil society. Many National Societies have active programmes to achieve this objective. As states are obliged under International Law to ensure respect for IHL, its National Society is therefore its partner in meeting its international obligations.

States and the power of humanity

The relationship between states and the Red Cross and Red Crescent Movement is increasingly being driven by availability of information and the ease by which information can be obtained on an almost immediate basis. This in turn is the result of improvements in technology, particularly the greater availability of news on current affairs and the Internet. This has shaped the domestic politics of many states. Given what they see and hear over the media and in the Internet, the public are now more demanding of their governments as regard humanitarian matters. Governments of better endowed states are often moved by popular public opinion to engage in humanitarian intervention in other states during times of need. These include instances of natural disasters, famines and health emergencies. This is very often without regard to political considerations. Conversely, public opinions in states that are victims of such adverse circumstances expect that their governments will be open to humanitarian assistance from other states without regard to political factors.

The networks of the Red Cross and Red Crescent Movement provide an efficient channel for such humanitarian assistance to be provided and received without being confused by political considerations. Apart from humanitarian assistance, public opinions in many states are increasingly focused on instances of abuses of human rights in their own and in other states. Human Rights Law and International Humanitarian Law are different species of International Law with different focuses. Human Rights Law seeks in the main to protect the individual from abuses by his own state while IHL is concerned with protecting the vulnerable during times of armed conflicts, regardless of their state. The Movement is concerned with IHL, not Human Rights Law. But since both Human Rights law and IHL are based on the same value, that is the value of Humanity, there is a natural alignment of these two species of International Law. The practice of IHL, in particular the work of the ICRC among persons in detention, overlaps with Human Rights Law. States that facilitate this work thus would be indirectly fulfilling this increasingly important expectation of their citizens.

The collaboration between states and the Movement in humanitarian activities both during times of armed conflict and during peacetime is therefore an expression of the power of humanity that the human race as a whole is increasingly sensitive to. This is a common human value that can invoke strong emotions. It bonds all mankind regardless of race, religion or social class. This shared value can result in the realization by mankind as a whole of other shared values of the human species. This commonality of values is an important means of promoting mutual understanding among peoples, reducing frictions and thereby reducing armed conflicts. It is thus an important element in the promotion of world peace.

Elements of the relationship between States and the Movement

When the nature of the relationship between states and the Red Cross and Red Crescent Movement are analyzed, what is patently clear is that states and the Movement as a whole are mutual stakeholders. The ultimate objective of the Movement, which is the achievement of a just and humane world order for mankind, cannot be achieved without the collaboration of the nations of the world. Likewise, national governments are greatly facilitated in the compliance of their International Law obligations, in the provision of services to their

people, as well as in meeting the humanitarian expectations of their citizenry, by the activities of the Movement. By collaborating with their National Society and the Movement as a whole, governments of states achieve important social and political goals. This is apart from providing for the most vulnerable in their own society as well as in other societies that they are in a position to render assistance to. This relationship between the Movement and States is manifested in the regular Red Cross and Red Crescent International Conferences which bring together not only all the components of the Movement but also states as well. These Conferences set the directions for the Movement and also for states in the area of IHL and humanitarian activities.

What is clear today, even if it is not expressed, is that there is a natural assumption by the people of the world, wherever they may be, that the ICRC will be on hand to provide for the vulnerable during times of armed conflicts, and that the IFRC and National Societies will be on hand to provide assistance during times of emergency. No government of any state today can reject any collaboration with the Movement and still remain a respected member of the international community. It will have to contend with its own population who would expect that it will at the least not obstruct the various components of the Movement from carrying out their work. The collaboration between states and the various components of the Movement is a positive development that augurs well for mankind as a whole. It facilitates the establishment of a more humane and inter-dependent world. This is the most important factor in ensuring world peace.

Conclusion

The relationship between states and the Red Cross and Red Crescent Movement is important for the people of individual states and for humanity as a whole. It is defined by both International Law as well as national laws and is increasingly being shaped by the expectations of the populations of individual states. As International Law is law that is formulated and established by states, the activities of the Movement, in particular the dissemination of IHL and programmes to ensure compliance, means that the Movement acts as the conscience of the state in complying with its international legal obligations. The Movement also provides a channel for states to undertake humanitarian activities within as well as outside their national borders without factoring in political considerations. As such, states and the

various components of the Red Cross and Red Crescent Movement are mutual stakeholders. They not only require each other in order to achieve their objectives but, in many ways, they define each other. This relationship makes for a more humane, interdependent and, most important of all, a peaceful world.

A New IHL for a New World Order: Views from a Thai Journalist

Kavi Chongkittavorn[1]
Asst. Group Editor of "The Nation", Thailand

New world environment

In the past Cold War, there were new conditions and changes that have been the outcome of the globalization. I would outline only some of the most important characteristics: the birth of the World Wide Web or the Internet, which allows people regardless of their locations to be connected instantly. Internet connects us together and has given birth to information society throughout the world. Internet gives information sometimes you can never find elsewhere. The instant information has impacted on international relations and the conduct of war. Just look at the online video showing terrorists beheading an American businessman. The 24-hours satellite news channels, which enable us to watch news coverage non-stop and real time, whether, it is in remote areas or the top of Himalaya. In the case of Iraq War, you can "feel" those experiences directly from conflict zones. Embedding journalists with the US and coalition troops can inform the readers and viewers at home the first hand experience of arms conflicts. The world is familiar with CNN, BBC and Al Jarzeera. But in the Asian region, there are Channel News Asia of Singapore and CCTV 9, which show the Asian' s eagerness to maintain their views and voices in the globalized world.

More and more countries are cooperating with ruled-based international

[1]Kavi Chongkittavorn is Assistant Group Editor of Multimedia Nation Group. He has been a journalist for more than two decades with The Nation, Bangkok-based English newspaper. After serving as diplomatic correspondent and regional editor, he was sent to Cambodia to open the Phnom Penh bureau in 1987 and stayed on until 1990. He then went to Hanoi in mid-1990 to open the bureau which he stayed until 1993. From 1994-96, he served as a special assistance to the Secretary General of Jakarta-based Association of Southeast Asian Nations (ASEAN). He returned to The Nation in 1996 as executive editor and in 2001 took up the current position. He was a Reuter Fellow at Oxford University in 1993 and Nieman Fellow at Harvard University in 2000. He was named the Human Rights Journalist of 1998 by Amnesty International Thailand to commemorate the 50th anniversary of UNDHR. He has conducted numerous workshops related to media development and net workings in developing countries. From 1998-2001, he was president of Thai Journalists Association. He is currently chairperson of Southeast Asian Press Alliance, Bangkok-based free media advocacy group.

organizations such as United Nations, World Health Organization, World Trade Organization, to mention but a few. The fight against SARS in the past years and Bird Flu recently demonstrated the importance of this international cooperation. Next month, there will be an international meeting on HIV/Aids, one of the world's biggest gatherings to tackle this deadly disease. In the world today, one country just cannot solve problems, especially transnational ones, alone.

Proliferation of non-state actors including nongovernmental organizations, international humanitarian organizations, Al Qaeda cells and other terror networks, etc. According to a statistic, there are at least 12,500 international nongovernmental organizations registered with the UN. That's a lot; these non-state actors have taken issues that would not normally be taken by states. The anti-landmine coalition was a good example of how a nongovernmental organization could push a campaign forward and eventually turn it into an international commitment. Growing importance of international laws, and in this case international humanitarian law (IHL), because of increased armed conflicts among rival groups and movements throughout the world. When the world's only superpower has a preponderance to use force and a unilateral approach, it will eventually encounter more opposition internationally and at home. In turn, this will encourage smaller and lesser powers to together and support international laws

Having said all this, there is no need for a new IHL, but it is necessary to repackage IHL to make it more attractive, even sexier to the public. If the public understands these laws, they could influence their governments' decisions trying to avoid wars at all cost. In this connection, it is not only the officials in uniform who should know more about IHL. Journalists need to be educated in IHL as well because most of them do not understand IHL and often confuse the nature of conflicts with war. Since they are the first group to disseminate the information, they should get in right in the first place. Otherwise, pens could prove to be mightier than swords.

Reflection of a new IHL in a new world order

When I was a rookie reporter at The Nation in 1975, the Khmer Rouge had already taken over Cambodia and began to evacuate the people living in the capital city, Phnom Penh, to the countryside. What followed during the next three years of Khmer Rouge's reign would shock the world. More than one and half million were systematically

terminated by the Khmer Rouge cadres. It would become one of the world's worst genocide in human history. I was too naive to understand the whole gamut and implications of such an atrocity occurring the next door. The Thai media failed miserably to report on the massacre because they treated it as an internal affair.

On the fateful Christmas Eve of 1978, the 150,000 Vietnamese troops intervened and invaded Cambodia. Within days, the foreign forces purged the Khmer Rouge out of Phnom Penh to the Cardamon Mountain hideouts along the Northwestern Thai-Cambodian border. Vietnam's military action, which was strongly and universally condemned by the United Nations and international community as violation of international law, was one of the most dramatic political events of the latter half of the 20th century. For 13 years after the invasion, the United Nations issued a resolution annually at the General Assembly to repeatedly denounce the invasion and demand the immediate troop withdrawal, which occurred only in 1990, following a series of negotiations leading to a peace framework that ended the conflict in Cambodia. None would have thought that the history would repeat itself in other localities. The end of the Cold War in 1990 has ushered in a new international environment, which was no longer divided by political ideologies or great power conflicts. It also helped to promote the role of UN as in the case of Iraq's invasion of Kuwait in 1991.

Pariah states around the world, which had been left detached from their patronage countries, had to grope for their own roles and survivals. Iraq stands out. This nation has now come to epitomize the relevancy of international law as well as humanitarian laws. The unilateral decision by the US to invade Iraq in March 2003 without a UN mandate was considered illegitimate-the action that has thrown the new world order up side down and laws governing international relations into chaos. Unfortunately, the US action in the name of war against terrorism was not universally condemned, as it was in the case of Vietnam's invasion of Cambodia. Some of US allies throughout the world hailed its military action to oust President Saddam Hussein as a necessary step to stop the threat of weapons of mass destruction and prevent mass killings of the Kurds living in Northern Iraq.

But an issue that has been in the mind of human rights activists is

the fate of 600 captives who are still jailed by the US armed forces at the Guantanamo Bay Naval Base, Cuba. The US cannot justify holding these captive indefinitely. They are being held without the supervision or assistance of international bodies, which is in violation of humanitarian laws. After the war in Iraq, President George W Bush reiterated that the US invasion was a pre-emptive action against the cruel leader who stockpiled weapons of mass destruction and committed genocide against the Kurds. The US, he argued, has to act first to protect its security. Bush said the US was acting in self-defence under the UN Charter Article 7. He also added that any terrorist groups or countries that harbor terrorism would be dealt with harshly.

As the world marked the tenth anniversary of the Rwanda genocide in April 2004, the Western countries and the international community have the opportunity once again to reassess their roles and the relevance of international humanitarian laws including interventions. At present, the Western countries and the UN share a deep sense of guilt for doing nothing to prevent the genocide that killed more than 800,000 Tutsi people in Rwanda. Together they could have intervened and saved innocent people from the senseless massacre. But they were immobile by useless and endless arguments among the parties concerned. Obviously, nobody seemed to back the military intervention at that time because Rwanda ranked very low on the international agenda. It also did not possess strategic values that could harm major powers' interests in Africa.

These three international incidents pose huge challenges to international law, especially laws governing arms conflicts and the ways in which governments respond to various kinds of international crisis. By all accounts, IHL is still relevant and remains a foundation to protect people who are not or are no longer taking part in hostilities and that it can be used to restrict the means and methods of warfare. Moreover, when it is used in a timely fashion, it can prevent genocide and save millions of lives. But IHL must be exercised with utmost caution. The UN, through the UN Security Council, should have the highest power to decide. There are no short cuts or arms twisting to get a global consensus to act on a military intervention, for humanitarian grounds or "responsibility to protect". Judging from the previous UN-mandated military actions, such decisions usually were time-consuming, bogged down by UN procedural measures. Depending on the gravity of the problems, it is incumbent on the UN and UNSC

members to improve on their decision making process to ensure that their actions could be executed in a timely manner relevant to the situations they want to salvage.

US as the global police

The US has been nicknamed the global cop because of its involvement in international conflicts throughout the world. Washington's decisions have long-term implications on the world as the US is the world's superpower which has the military might to inflict damage any place in the world. Ironically, it is also one of the world's largest single markets for rich and underdeveloped countries. Many developing countries' well-being depends on their exports to the US. The US also has a global strategy that reaches to the four corners of the world. Political changes or military actions in other areas will somehow link to US interests, one way or another. When the US decides to wage war unilaterally, it provides a huge impetus for other countries to do the same if they are confronted with similar situations. In modern history, small countries or groups have gone to war whenever they lose hope of just treatment. Even though international law prohibits the use of force, war continues to be waged between states and groups from within.

As such, IHL is an essential part of the order of peace as set forth in the Charter of the UN. The international community cannot allow itself to neglect international humanitarian law. Obviously, the international community has questioned continuously the US action in Iraq because it was based on the war against terrorism. The US leaders view IHL as archaic and not protecting their interests, especially when it comes to terrorists. That also has had contagious effects on the American soldiers in Iraq. Without the due respect to IHL, they mistreated the Iraqi soldiers at Baghdad's Abu Ghraib. Photos of naked male Iraqi soldiers abused by grinning American soldiers, which have been aired worldwide in early May, have raised new issues related to the US attitude toward international norms because all these actions contravened IHL. The US is losing all of its creditability and justifications to liberate the Iraqi peoples from the dictatorship of Saddam Hussein following the publication of the controversial photos. ICRC director of operations Pierre Kraehenbuehl revealed recently that the abuse it found in Iraq's US-run prisons was systematic and amounted to torture. "The elements we found were tantamount to

torture ... There were clearly incidents of degrading and inhuman treatment," he said.

Existing IHL adequately deals with all types of conflicts, including the war on terrorism. Articles 33 of the Fourth Geneva Convention, Article 4(2d) of Additional Protocol II, (see Laurent Colassis) prohibit collective penalties - including acts of terrorism - against protected peoples and terrorist acts against civilians are not allowed. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II also mentions that any acts or threats of violence against the civilian population are prohibited. But unfortunately, the US would like to have international laws protect its actions on the anti-terrorism campaign. In such a war situation, which is currently the situation because the US has declared war on terrorism, some human rights violations can be expected. And the US wants it to be considered as such.

IHL: Western versus Asian perspective?

The majority of the important military interventions for humanitarian reasons in the past 100 years were carried out by the Western world. But Asia had its own problems. The continent went through two military interventions. The first was the invasion of India of East Pakistan in 1971 and the second was Vietnam's invasion of Cambodia at the end of 1978, which I have alluded to in the beginning. Both cases were done on the context of oppression and genocide. For the former, it was the Western Pakistani authorities' brutality against the Bengali people, while the latter was due to the Khmer Rouge' s genocide and systematic killings towards its own people. But both countries used the right of self-defence to defend their military actions and attracted strong condemnation from the UN.

At that time, the notion of state sovereignty was untouchable. When the international peacekeeping forces were dispatched to East Timor in 2000, it was done because Indonesia had asked for them. At first, Indonesia wanted an ASEAN peacekeeping forces inside their territory, reflecting the country's fear of non-ASEAN members. Only Thailand and the Philippines were ready to commit troops, which were sufficient. Later on, they came to East Timor as part of the Australian-led international peace keeping forces with the UN blessing. Debates have been raging at the moment on whether the international community should now get involved in the situation regarding Burma

(or Myanmar as it is officially called). Although the UN special envoy on Burma, Tan Sri Ismail Razali, has been visiting the country to broker peace and initiate political dialogue between the government and the opposition, the UN role is still far from clear. Indonesia is currently fighting a secessionist war in Aceh. A few months after the cease-fire agreement was signed, both militaries are now fighting war again. Martial law was lift recently.

But it was the war in Iraq that has really scared off the Asian countries. With more than US$250 billion spent, the Iraqi war has become the world's most expensive military intervention *cum* humanitarian operation. For the time being, the concept on a pre-emptive strike as practiced by the US, does not find resonance in Asia. It is interesting to note that Asia has not taken part in the debate of humanitarian interventions, except a few personalities who were members of the International Commission on Intervention on State Sovereignty, when the issues of humanitarian interventions were widely debated in response to the atrocities in Bosnia and Rwanda.

Indeed, Asian countries are not comfortable with any notion of interventions under all circumstances because of their histories. They fear, quite rightly, that outside interventions, especially from the West, would complicate the issues. Asian powers like China and India are also very cautious about mediation and facilitation by an outsider. For instance, the overlapping claims between China and the ASEAN claimants consisting of Brunei, Vietnam, Malaysia and the Philippines over the resource-rich South China Sea have always been considered by both sides a matter to be resolved the Asian way. It took almost a decade of confidence-building between China and ASEAN to work out an acceptable solution and discover ways to create mutual trust and future plans to jointly develop the contentious areas. Repeated suggestions in the past of third party interventions even United Nation-sanctioned, have failed. So was the case of Kashmir, India has been adamant in opposing any international mediation over the dispute with Pakistan. Both countries have now reached detente and hope to work out peaceful means to settle their territorial disputes soon. As the international roles of China and India keep expanding rapidly, Asia will certainly not shy away from the controversies over IHL in the new world order.

The role of the International Committee of the Red Cross

For the past 140 years, the ICRC has done its humanitarian job to protect the lives and dignity of victims of war and violence, regardless of race, religion or ethnic group. ICRC's neutrality and impartiality has never been questioned in carrying out their tasks. However, after September 11, 2001, the world has been divided between the countries willing to fight war against terrorism and the rest. This situation has also affected the ICRC operation in Iraq. For instance, the ICRC was forced to shut down its operations after a series of bombings in Baghdad last year. It was unusual for the ICRC to do so because its presence in Iraq has a long history dating back to the 1980's during the Iran-Iraq war and the Gulf War. The fact that the ICRC had to act in responding to increased violence in Iraq was indicative of the organization's growing dilemma in the war on terrorism as it has been seen as part of the Western world (FT, 29 Jan. 04).

It is the concept "you are either with us or against us" that is hampering the work of the ICRC. In Iraq, if both sides of the conflict view the ICRC presence as neutral and allow the organization to perform its duty without any politicization, then the ICRC can continue its traditional role. However, the ICRC has been viewed as part of the Western forces. After one of its staffers was killed in Iraq, followed the bombing of the UN office, the ICRC has drastically reduced its local and international staff. During the fighting in Fallujah, ICRC staffers have been distributing food and medicine to the Iraqi civilians affected by the fighting between the US troops and Iraqi insurgents. This time around their identities have been concealed to avoid being targets of attacks. It is a bit of irony in this sense because in normal practice the ICRC logo, the Red Cross, must be displayed and respected. Without it, the ICRC cannot do its job.

However, when the ICRC staffers became targets of attrition for whatever reasons, they could be drawn into the conflict. The latest case of the condition of Abu Ghraib prison illustrated the dilemma the ICRC has to cope with. Its continuous effort to call for improvement of the prison's condition there went unheeded until it was exposed by the US media and has since then stirred up further anti-American sentiment through the world. If the US troops listened and complied earlier, this horrendous outcome could have easily be avoided. It is imperative that there must be a neutral ground, in which the ICRC

or similar organizations can work and carry out their humanitarian operation. Most importantly, as many scholars have pointed out, although the ICRC sees itself as the guardian of IHL, the responsibility rests with the states that signed and ratified IHL.

Conclusion

In the 21st century, conflicts, big or small, will continue to be an essential part of international relations and inter-state relations. But ways must be found to ascertain that when conflicts do occur they must not end up with destructive violence. Non-violent solutions must be worked out. If and when conflicts arise, efforts must focus on dialogue and negotiations, even when these meetings could be tense and uncompromising. If all these fail and wars become unavoidable, the rules of engagement during war times must be respected. Certainly, this is easier said than done as no war in this world have followed strictly IHL.

As far as Asia is concerned, there will be two trends to discern. The first one is the increased involvement of Asian countries in protecting and implementing IHL. Asian countries see themselves as the IHL defenders, judging from incidents of interventions throughout the world. If China takes the lead it can encourage smaller countries in the region to follow suit. It is considered a kind of self-defence mechanism to ward off pressure from outsiders. The Asean plan put forwarded by Indonesia to set up a security community in the future is the case in point. It is natural that the Asian countries would continue to strengthen further international laws as a means to prevent future conflicts or genocide tendencies as well as shield themselves from outside interventions.

With more active participations from Asia, the level of comfort of working with international humanitarian missions will also increase. That, I believe, could lead to common planning and cooperation in this area. In other words, in the long term, the effective use of IHL will no longer be confined to the Western world; especially those belonging to traditional major powers. Even though IHL is not perfect, its unwavering recognition is a pivotal element to ensure that future conflicts, if they do happen, will be humane and the law of international armed conflicts must be respected.