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REPORT ON THE WORK OF COMMISSION B

REAFFIRMATION AND IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW: PRESERVING HUMAN LIFE AND DIGNITY IN ARMED CONFLICT

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REPORT TO CONFERENCE

Presented by: Jeffrey Chan Wah Teck– Rapporteur, Commission B

Madam. Chair, Ladies and Gentlemen

It is an honour for me to report on the work of Commission B of the 30th International Conference. This Commission deliberated on the theme "Reaffirmation and Implementation of International Humanitarian Law: Preserving Human Life and Dignity in Armed Conflict". The Commission session took place on November 28, 2007.

The President of the Commission was Ambassador Nicholas Thorne of the United Kingdom, and the Vice-President was Ambassador Mabel Gomez Oliver of Mexico. The Commission's deliberations were substantive and reflected a high degree of commonality regarding the issues addressed.

In his opening remarks the Chairman noted that the issues to be considered by the Commission, as indicated by the Guiding Questions, are aligned with the theme of the conference, which is the re-affirmation of the important role of International Humanitarian Law in armed conflicts. Of late, IHL has been criticised for not being relevant to modern-day armed conflicts. However, studies by the ICRC have concluded that the rules of IHL are adequate today but that the problem is the lack of respect for IHL rules in armed conflict. Thus the importance of the Commission's deliberations.

The deliberations began with a keynote speech by Professor Daniel Thurer, a member of the International Committee of the Red Cross. Professor Thurer referred to the ICRC study on Customary International Humanitarian Law and its report entitled "IHL and Challenges of contemporary armed conflict"s, both of which have been submitted to the conference. The customary law study was requested by the 26th International Conference. It concluded that the gap between the regulation of international and non-international armed conflicts is closing. State practice has affirmed that many rules of IHL apply in both international and non-international armed conflicts. Parties to all armed conflicts are thus bound to observe the same rules.

The ICRC report on "IHL and the Challenges of Contemporary Armed Conflicts" noted that IHL treaties supplemented by customary humanitarian law remain the relevant frame of reference for

regulating behaviour in armed conflicts. It noted in particular that there is growing awareness of IHL in today's world.

Professor Thurer also outlined the main sections of and rationale for the draft resolution on humanitarian law submitted by the ICRC to the International Conference. This draft resolution was premised on the principle that IHL is as relevant today as it was previously and continues to provide valuable protection for the victims of all types of armed conflicts. IHL underscores the principle of humanity by ensuring that no one is without legal protection in times of armed conflict.

In the deliberations that followed, numerous delegations congratulated the ICRC on its reports which provided strong affirmations for the importance of IHL in today's world. The Commission participants strongly reaffirmed the continued adequacy and relevance of IHL to contemporary armed conflicts. In this context, it was underscored that IHL regulates armed conflict only and that its application should not be extended to situations that do not amount to armed conflict.

One delegation however mentioned its view that the ICRC study should not be taken as authoritative on the applicable law as Customary International Law.

In relation to the principle of distinction the Commission participants reaffirmed the importance of this principle in the conduct of hostilities. They also reaffirmed the need to respect the fundamental guarantees provided by IHL to all persons.

Several delegations touched on IHL and the fight against terrorism, noting that just because new situations are encountered does not lead to the conclusion that IHL is inadequate for today.

A number of delegations noted the complementary nature of the IHL, human rights law and refugee law during times of armed conflict. The relationship between these bodies of law merits further exploration, given the relative paucity of IHL treaty rules applicable to non-international armed conflicts.

Numerous delegations commented on challenges posed to IHL by asymmetric warfare. It was pointed out by one delegation that reciprocity is not a condition for the application of IHL. The fact that an opposing party does not comply with IHL does not provide an excuse for a party to itself renege on its obligations to apply IHL.

A large number of delegations spoke on the adverse humanitarian consequences of cluster munitions and the need to prohibit such weapons. Such weapons were said to violate the principle of distinction. Mention was made of the initiatives to prohibit such weapons and to formulate a legally binding instrument to this effect by 2008. They urged support for this initiative.

Among operational challenges to international humanitarian law, it was noted that attacks against medical personnel and humanitarian relief workers were particularly egregious examples of serious violations of IHL. One delegation stated that there is also a need to clarify practical and legal issues related to detention carried out in multinational military operations. The protection of journalists during armed conflicts and their responsibilities, particularly in relation to persons captured or detained who have a right not to be subjected to public curiosity, need to be better made known.

Concern was also expressed over the misuse or abuse of the emblems. Such abuses include the fraudulent use of the emblem in the internet by criminals to solicit funds. National Societies were urged to monitor and prevent such abuses..

It was widely recognised by the participants that for IHL to be effective, there must be effective measures against impunity. This requires all states to ensure that they have the necessary national legislation to criminalise and prosecute breaches of IHL. In this context, it was noted that under IHL, states have universal jurisdiction and thus even non-parties to armed conflicts can take action to punish for breaches of IHL in a conflict. The principle enshrined in the Geneva Convention that states must respect and ensure respect for IHL means more than only that states must ensure that its own actors are compliant with IHL. States must also monitor breaches of IHL and take all feasible action to ensure compliance with IHL even in armed conflict not involving them.

Recent developments in the international environment such as the establishment of the International Criminal Court and other international tribunals to bring to trial violators of IHL were recognised as positive and important developments to combat impunity.

Many delegations also spoke on numerous other means whereby respect for IHL can be instilled. Often, they cited their own actions and programmes as examples of what can be done to meet this objective. Calls were made to all states to undertake the following:

- Become parties to all IHL instruments and enact the necessary domestic laws to give domestic effect to these instruments;
- Ensure that all armed forces personnel are adequately trained in the application of IHL and prosecute such personnel when they breach the rules of IHL. Of key importance is IHL training for military personnel deployed on international peacekeeping operations.
- Generally raise awareness of IHL throughout society, in particular among the young through programmes in school curriculum

Some delegations spoke of the necessity to ensure that decision-makers were sensitised to the legal obligation to respect and ensure respect for IHL. It is thus necessary to include lawmakers in IHL dissemination programmes. In this context, the Commission was informed of the initiative of one National Society of updating a publication on IHL addressed to national lawmakers. This will shortly be made available.

Many delegations reiterated the importance of partnerships in ensuring respect for IHL. Numerous delegations underscored the value they place on their partnership with the ICRC. Apart from the ICRC, such partnerships may be both domestic and international and should, apart from governments, include NGOs, academic institutions and civil society, and others, as the case may be. The upcoming, 60th anniversary of the Geneva Conventions in 2009 was pointed to as a good opportunity to plan a range of activities aimed at disseminating IHL.

The key role played by National IHL committees was brought sharply into focus. National commissions or committees on IHL were repeatedly mentioned as an invaluable way of creating the awareness necessary for improved domestic implementation of this body of rules. It was also stressed that States have the primary responsibility to respect, but also to ensure respect for international humanitarian law, and a call was made to utilize existing international IHL mechanisms. Among these is the International Fact-Finding Commission established under the Additional Protocol 1 to the Geneva Conventions. It was recalled that the services of the IFFC may be put in motion by any party and not just parties to an armed conflict.

Ladies and gentlemen, that is my Report. I thank you for your attention. I am keenly aware that given the large number of interventions and the numerous excellent points made during the deliberations, invariably this report cannot do justice to contributions made by many delegations. To these delegations, I would like to offer my sincerest apologies. I can only hope that the general tenor of this Report, which seeks to capture the strong sentiments among the Commission members to together work for humanity, will be to your satisfaction. Thank you.