

CONTRIBUTORS

General (ret.) Jean Abt

Member of the Committee
International Committee of the
Red Cross
19, Avenue de la Paix CH–
1202, Geneva, Switzerland

Colonel Razali Hj Ahmad

Principal Assistant Secretary
Policy Division, Ministry of
Defence
5th Floor, TH Selborn Tower
153 Jalan Tun Abd Razak
50400 Kuala Lumpur,
Malaysia

Mr Denis Allistone

Head of ICRC Regional
Delegation for East Asia
B4-2 Qijiayuan Diplomatic
Compound 9 Jianguomenwai
Dajie, Beijing 100600, China

Mr François Bugnion

Director for International Law
and Cooperation within the
Movement
International Committee of the
Red Cross
19, Avenue de la Paix
CH–1202, Geneva,
Switzerland

Mr Kavi Chongkittavorn

Assistant Group Editor
Nation Multimedia Group
Public Co., Ltd. 44 Moo 10
Bangna-Trad Rd. (Km. 4.5)
Bangna, Bangkok 10260,
Thailand

**Maj. Gen. General Bambang
Darmono**

Specialized Staff for Welfare
to the Indonesian Armed
Forces Commander
Indonesian Armed Forces

Maj. Gen. Fan Yinhu

Secretary-General of the
General Political Department
Chinese People's Liberation
Army

Mr Aleardo Ferretti

Delegate to the Armed
and Security Forces ICRC
Regional Delegation for East
Asia B4-2 Qijiayuan Diplomatic
Compound 9 Jianguomenwai
Dajie, Beijing 100600, China

**Wing Commander Ian
Henderson**

Deputy Director Military
Justice – Policy
RG Casey BLDG, 3-176
Barton ACT 2600, Australia

Mr Jeffrey Chan Wah Teck
Chairman, Legal Committee
Chairman, Int'l Services
Committee Singapore Red
Cross Society
18 Sennett Lane, Singapore
466909

Mr Jean-Philippe Lavoyer
Head of the Legal Division
International Committee of
the Red Cross 19, Avenue de
la Paix CH-1202, Geneva,
Switzerland

Maj. Gen. Liu Jiaxin
President of Xi'an Political
Academy Chinese People's
Liberation Army

Dr. Raul Pangalangan
Dean and Professor of Law
Malcom Hall, University of the
Philippines Diliman, Quezon
City, Philippines 1101

Professor Marco Sassoli
Faculté de Droit, Université
de Genève 102 bd. Carl-Vogt
1211 Genève 4, Switzerland

Mr François Sénéchaud
Head of Unit for Relations with
Armed and Security Forces
Communication Department
International Committee of

the Red Cross 19, Avenue de
la Paix CH-1202, Geneva,
Switzerland

Dr. Shin Kak-Soo
Deputy Permanent
Representative The Korean
Mission to the United Nations
335 East 45th Street, New
York, NY 10017

Mr Terence Taylor
President and Executive
Director The Int'l Institute for
Strategic Studies – US
1747 Pennsylvania Ave NW
(7th Floor) Washington DC
20006, U.S.A.

Maj. Gen. Yu Zhengshan
Professor of Xi'an Political
Academy Chinese People's
Liberation Army

S. Col. Zhang Gongxian
Chief of the Secretariat of the
General Office The General
Political Department Chinese
People's Liberation Army

Dr. Zhu Wen-qi
Professor of Law
Law School, Renmin
University Beijing 100872,
China

PREFACE

The Asia Pacific regional seminar *The Law of Armed Conflict Today: Realities, Perspectives and Training* was held at the Xi'an Political Academy of the Chinese People's Liberation Army (PLA) from 7 to 9 June 2004. The event was jointly organised by the General Office of the General Political Department (GPD) of the PLA and the Regional Delegation for East Asia of the International Committee of the Red Cross (ICRC). The seminar was attended by thirty-four representatives from the national armed forces of nineteen countries of the region. The keynote speeches were presented by ten guest experts and scholars. The seminar aimed at fostering the exchange and cooperation in dissemination and promotion of the Law of Armed Conflict (LoAC) among the countries in the region. Moreover, it provided a platform for thorough and meaningful discussions on the challenges facing the LoAC in today's reality.

The seminar was structured around three main topics:

1. Instruction and training of the Law of Armed Conflict among military forces of countries in the Asia Pacific region

The exchange of relevant experience was one of the important issues of the seminar. Both the participating representatives and scholars had an in-depth discussion on the above topic. Over the years, the ICRC Regional Delegation for East Asia has spared no efforts in the instruction and training of the LoAC in the region with remarkable achievements, and its relevant experience and practices were shared during the various sessions. Col. Zhang Gongxian, Chief of the Secretariat of the General Office of the GPD, introduced the PLA's work in this field, while Maj.-Gen. Liu Jiaxin, President of the Xi'an Political Academy, introduced the academy's approach to LoAC instruction and education. Representatives from Indonesia, Singapore, Mongolia and Laos also shared their experiences in the respective military forces.

2. Challenges for the Law of Armed Conflict

The emergence of Information Warfare blurs the distinction between military objectives and civilian objects, between peacetime and

EN

wartime, and obscures the borderline between the levels of strategy, operations and tactics, between the front and the rear. All these pose challenges to the traditional principles of the LoAC. During the discussion on weapons control, some scholars suggested that the prime issues for the control of conventional weapons encompass the disposal of explosive remnants of war, the prohibition of anti-personnel mines (Ottawa Convention), the limitation of cluster bombs and other indiscriminate weapons as well as the legitimacy of non-lethal weapons, such as blinding laser weapons. Due to its prevalence and gravity, the issue of anti-personnel mines was a focus of debate among scholars and representatives. Some scholars also believed that the norms applicable to non-international armed conflict were far from sufficient. In particular, it was absolutely not easy to ensure respect for the LoAC among insurgent groups or non-state entities.

3. War on Terror and the Law of Armed Conflict

As for the issue on the war against terrorism, most representatives, experts and scholars believed that it has become an important form of warfare. However, war on terror could hardly justify the disregard of international law, since the existing International Humanitarian Law applies to all conflicts, including the war on terror. Whether or not military interventions on humanitarian grounds would curtail State sovereignty was also a hotly debated issue. Participants also discussed other relevant issues, such as the particular role of the States in the international implementation mechanism of the LoAC, the cooperation between States and the ICRC, the functions of the International Fact Finding Commission and the operation of the International Criminal Court.

Peace and development are the two main topics in the world today. However, the international situation which is marked by constant local disturbances and repeated regional armed conflicts, is unlikely to see significant change for the better in the near future. So the LoAC will still play a crucial role in regulating means and methods of warfare as well as the implementation of humanitarian protection. With time evolving and the rapid development of science and technology, various new situations and problems emerge frequently, and the LoAC will encounter severe challenges in terms of theory, practice and training. Hence, it is imperative to further consolidate communication and

exchange among all countries in the above-mentioned areas of LoAC. This seminar provided a platform for mutual learning and exchange among all governments and scholars. Holding such an event on a more regular basis will boost constant innovation and development of the LoAC, and thus further regulate means and methods of warfare, and implement humanitarian protection.

The PLA and the ICRC attached great importance to this event. Maj.-Gen. Fan Yinhua, Secretary General of the GPD, made a presentation on The Challenges for the Law of Armed Conflict Today and the Stance of the Chinese People's Liberation Army to voice the position of the Chinese military forces towards the LoAC. Lt.-Gen. Jean Abt, a member of the Committee of the ICRC, and Mr. François Bugnion, Director for International Law and Cooperation within the Movement of the ICRC, took the floor as guest speakers. Gen. Tang Tianbiao, Deputy Director of the GPD of the PLA, met all the participants in Beijing and invited them for an official banquet. The all-round arrangements and quality in terms of service and logistics provided by the Xi'an Political Academy ensured the event's successful outcome.

This collection of papers gives evidence of the fruitful research and arduous work by the participating experts and scholars, representing the latest findings on the Law of Armed Conflict. The translation, compilation and publication of the texts aim to best reflect and share the opinions of all contributors, and to trigger a widespread and lasting impact of this event. Special thanks are extended to all the experts, particularly Maj.-Gen. Yu Zhengshan, Professor of the Law of Armed Conflict Institute, Xi'an Political Academy of the PLA; Mr. Denis Allistone, Head of the ICRC Regional Delegation for East Asia, and Mr Ferretti, ICRC Delegate to the Armed and Security Forces. They have all devoted great efforts to the translation and proofreading of this publication.

General Office of the General Political Department
Chinese People's Liberation Army
Beijing, 15 August 2006

FOREWORD

The present publication brings together the contributions presented by military experts from China and different countries of Asia and the Pacific as well as by representatives of the International Committee of the Red Cross (ICRC) during the joint regional seminar held in Xi'an in June 2004. The contributions bear testimony to the fact that International Humanitarian Law (IHL), perhaps more than ever before, has become an object of serious reflection in military as well as in governmental circles. This publication coincides with the 10th year of cooperation between the Chinese People's Liberation Army (PLA) and the ICRC in the dissemination of IHL.

Whilst the relevance and applicability of IHL has been questioned and its unqualified implementation encounters opposition in some quarters, there are many, in military and humanitarian circles alike, who are committed to ensuring that IHL is taught, known and fully respected. This publication brings together the insights and expert knowledge of some of those who are dedicated to play their part in fulfilling this urgent obligation.

We hope this book will be greeted favourably by the participants of the Xi'an regional seminar and that it will attract the attention of military personnel in charge of training, and of legal experts and advisers. As these proceedings should also be interesting for a larger audience, such as officers in charge of peacekeeping operations and military commanders, we have decided to publish these proceedings in English as well as in Chinese. We hope this publication will contribute to further the fruitful cooperation between the ICRC and the PLA, and we believe that it reflects the pledge of the Chinese government to disseminate IHL among the armed forces. Pledge 226: quote *For the years 2004-2007, The Government of the People's Republic of China hereby pledges: (...) - to promote and strengthen the dissemination of international humanitarian law in China, including education of international humanitarian law in the army; (...)*.

The establishing of an ICRC regional delegation in the Chinese capital should provide an excellent opportunity to deepen and broaden

our cooperation with the armed forces in China, as well as with the other armed forces in the region. In such a vast area, and in these potentially critical times, our cooperation, which does not aim to substitute the efforts and commitments made by the armed forces, but rather to support them, has considerable room for development. If this publication helps us towards this goal, it will have served its main purpose. The ICRC regional delegation wishes to express its heartfelt appreciation to the General Political Department (GPD) of the PLA and the Xi'an Political Academy for their precious and warm support in the organisation of this important regional event. For the undersigned, who had the privilege to witness the first steps of our cooperation with the PLA's GPD in 1991, it is a pleasure to emphasize this personally in this short foreword.

Denis Allistone,
Head of Regional Delegation
ICRC Beijing

INTRODUCTION

This publication contains the papers presented at the regional seminar *The Law of Armed Conflict Today: Realities, Perspectives and Training* held in Xi'an, China from 07-09 June 2004. The event was organized jointly by the General Political Department of the Chinese People's Liberation Army (PLA) and the Regional Delegation for East Asia of the International Committee of the Red Cross (ICRC). Attending the seminar were thirty-four senior officers representing nineteen countries of the region, viz., Australia; Brunei; Cambodia; China; East Timor; Fiji; Indonesia; Laos; Malaysia; Mongolia; Myanmar; New Zealand; Papua New Guinea; Philippines; Singapore; South Korea; Thailand; Tonga; and Vietnam. Eleven prominent experts from the region, the PLA and the ICRC took the floor as guest speakers.

The aims of this regional military gathering were:

- to promote the knowledge of international humanitarian law (IHL) and to highlight efforts related to its practical implementation and instruction;
- to provide a regional setting for the discussion of IHL issues and thus create a common awareness among the military of the importance of IHL in today's strategic environment;
- to further consolidate lines of communication on pertinent information regarding IHL among decision makers in charge of military training, so as to anchor the institutionalisation of its instruction among the armed forces of the Asia-Pacific region.

The seminar was structured along four main themes: *IHL Today*, *IHL in Modern Armed Conflicts*, *IHL Implementation*, and *IHL Training*; with topics ranging from the conduct of hostilities, terrorism, the International Red Cross and Red Crescent Conference, and the International Criminal Court. Each morning and afternoon sessions saw a chairperson directing the interventions of the guest-speakers and chairing a panel discussion on the topics presented. The floor was then opened for discussions. The seminar saw a good interaction between the various guest speakers and the participants during the panel discussions, and most of the burning IHL questions standing for

debate found cognisant and comprehensive answers. The last day of the event saw representatives from five countries presenting their IHL military training programmes, namely: China, Cambodia, Malaysia, Mongolia and Singapore. The Swiss, Canadian and Indian Defense Attachés came to witness the presentations during this final session on *IHL Training*.

The presentations in this book focus on the differing aspects of IHL – also referred to as the Law of war (LOW) or the Law of armed conflict (LOAC), its implementation and challenges as well as its implication for the armed forces in terms of training and command responsibility. The decision to publish the collection of papers presented stems from the desire to continue the positive momentum that was created by this event. Indeed, it was felt that the texts represent an interesting collection of opinions by legal experts, policy-makers and military authorities and that scholars in China and abroad could benefit from them. This is also the reason why it was decided to produce a bilingual version in Chinese and English of all the papers. It is hoped that this work will therefore become a valuable reference tool on IHL for military and civilian scholars alike.

As the person in charge of organizing the event and on behalf of the ICRC, I would like to express my gratitude to the military authorities of the participating countries for their attendance, to their respective defence attachés, and diplomats here in Beijing who were instrumental in ensuring their presence. The overall support of the seminar by the General Political Department (GPD) of the PLA in Beijing and the facilities and logistics provided by its political Academy in Xi'an ensured the event's successful outcome. In particular, special thanks are to be extended to Gen. Tang Tianbiao, who graciously hosted the official dinner organized for the participants at the Great Hall of the People in Beijing, marking the closing ceremony of the event with an unforgettable celebration. Special thanks go also to Maj. Gen. Fan Yinhua, Secretary General of the GPD, S. Col. Zhang Gongxian, Chief of the Secretariat of the General Office of the GPD, Maj. Gen. Liu Jiaxin, President of the Political Academy and Col Liu Yujian our Liaison Officer with the GPD. Our sincere thanks go to the contributors, who in the true spirit of the Red Cross, voluntarily came to present their papers and to examine topics with the participants that are at the very essence of mankind and civilisation in times of armed

conflict and violence. Their knowledge and expertise have bolstered the relentless efforts of the ICRC in promoting further the knowledge of IHL within the armed forces and its application in protecting the victims of armed conflict.

Aleardo Ferretti
ICRC Delegate
to the Armed and Security Forces
Beijing, PRC

Editor's note:

The views and opinions expressed in this book are those of the individual authors and do not necessarily represent the policies of the ICRC or the organizations and/or governments with which the authors may be affiliated. Each author has given permission to have his/her papers, contributions and addresses published. Due to the obvious lack of standardisation in the written form of a number of terms, particular stylistic conventions have been adopted for overall consistency. Abbreviations/ acronyms are generally used after the first mention of specific terms.