

INTERNATIONAL HUMANITARIAN LAW IN ASIA REGIONAL CONFERENCE ON GENERATING RESPECT FOR THE LAW

Event Report
27-28 April 2017

Event Report

**INTERNATIONAL HUMANITARIAN LAW IN
ASIA
REGIONAL CONFERENCE ON GENERATING RESPECT
FOR THE LAW**

**27-28 April 2017
Singapore**

Co-organised by:

Centre for Non-Traditional Security Studies (NTS Centre),
S. Rajaratnam School of international Studies (RSIS); and
International Committee of the Red Cross (ICRC)

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This report summarises the proceedings of the conference as interpreted by the rapporteurs and editor of NTS Centre, RSIS. This report adheres to a variation of the Chatham House Rule.

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EXECUTIVE SUMMARY

The following report is a summary of presentations and discussions at the sixth regional International Humanitarian Law (IHL) Conference with the theme of “Generating Respect for the Law in Asia”. The conference was held from 27 to 28 April 2017 at the Copthorne King’s Hotel by the Centre for Non-Traditional Security Studies (NTS Centre) at the S. Rajaratnam School of International Studies, Nanyang Technological University, in partnership with the International Committee of the Red Cross (ICRC).

The two-day conference provided an opportunity for various legal experts including academics and policymakers from the Asia-Pacific region to have an intellectual debate on generating respect for IHL in Asia.

Session 1 of the conference focused on the humanitarian challenges in Asia, the implementation of an international criminal legal framework in the region and the International Fact-Finding Commission (IHFFC). After the session, participants were divided into two working groups to discuss the definition of IHL and how to ensure respect for IHL in Asia. The last session in Day 1 examined the updated commentaries to the Geneva Conventions of 1949.

During Session 3 on Day 2, the implementation, regulation and challenges faced as a result of the emergence of new weapons and warfare was discussed in detail. In Session 4 four presenters presented on the methods for generating respect for IHL. They discussed about the national IHL committees and its role in generating respect for IHL, regulating private military and security companies and the United Nations Security Council Resolution 1325 on women, peace and security in Asia. During the final session of the conference, IHL was discussed in context to the challenges of contemporary armed conflict. Four presenters presented on the Common Article 1 of the 1949 Geneva Conventions, the protection of persons deprived of their liberty, Internally Displaced Persons (IDPs), refugees and forced migration and the challenges to strengthening respect for IHL.

WELCOME REMARKS

Welcome remarks were made by Mr Benjamin William Jeyaraj, Singapore Red Cross, Ambassafor Thomas Kupfer, Ambassador of Switzerland in Singapore and Ms Isabelle Barras, Head of Regional Delegation for Malaysia, Singapore and Brunei, ICRC. Ambassador Ong Keng Yong, Executive Deputy Chairman, and Director, Institute of Defence and Strategic Studies (IDSS), RSIS Singapore delivered the keynote address.

Mr William stressed the importance of IHL, in particular with the increasing complexity of armed conflict, growing number of non-state parties and new technologies like cyberwarfare. He stated the importance to ensure that the application of IHL is not static, but pragmatic and practical for the body of law to remain relevant. He pointed out that countries like Singapore which are not engaged in conflict, the relevance of IHL can become distant, and there is a danger of the people becoming complacent and unable to comprehend the pain of those affected. As such, it is important for the people to be conscious and well informed and to be inculcated with knowledge of IHL and humanitarian principles.

H.E. Thomas Kupfer, reiterated Switzerland's commitment towards generating respect for IHL. Geneva is a center for humanitarian law and action, while Switzerland is depositary state of the Geneva Conventions and has been very engaged in its promotion. In particular, Switzerland is leading on the process on deliberating the regulation of private military companies, which started in 2005 and which was discussed later in the program.





THE ENDURING IMPORTANCE OF INTERNATIONAL HUMANITARIAN LAW IN ASIA TODAY

We face a time when humanitarian issues are increasingly complex and when the link between military intervention and humanitarian assistance in armed conflicts becomes a common feature. The protection of victims in armed conflict situations, asylum, irregular migration and refugee protection issues constitute growing challenges for governments and institutions alike. In short, when human security and state security are considered a priority on all political and humanitarian agendas, the humanitarian role and potential remain considerable. Also, recent tragic developments relating to the war against terrorism and the consequent difficulty of considering organised terrorist groups as parties will pose new and highly intricate legal and other challenges particularly related to IHL.

It is not easy today to fight for the respect and the implementation of humanitarian law in conflict situations. There are opposing ideas concerning the interpretation of IHL, and there is no respect for fundamental human rights and humanitarian rules in armed conflict situations. The basic international treaties - the four Geneva Conventions and two Additional Protocols - are in danger. What can we do if reality includes flagrant violations of basic humanitarian rules? The issues and preoccupations of today's international community often present fundamentally different challenges from those when the United Nations was founded in 1945. It is evident that new realities have generated new expectations and necessities for action and new standards of conduct in national and international affairs.

Most scholars engaged in analysing present-day conflicts are of the opinion that the rules on the conduct of hostilities and on the protection of persons laid down in the principal treaties of international humanitarian law meet the basic needs of individuals and peoples caught up in the maelstrom of today's wars but are by no means perfect. It is believed that these rules will be just as pertinent in the wars of tomorrow, since the fundamental values which need to be safeguarded are timeless. Yet, IHL is not static. This body of norms, like all others, is constantly subject to refinement, change and development. The very first contemporary international humanitarian law treaty, the Geneva Convention of 1864, aimed to ensure that wounded soldiers, regardless of the party to which they belonged, were not left to die on the battlefield, but were protected and cared for. Today, the four Geneva Conventions and their Additional Protocols are the backbone of a complex web of humanitarian law treaties aimed at limiting the effects of violence in armed conflict.

Indeed no body of law can lay claim to perfection. Any attempt to re-evaluate its appropriateness can only take place after it has been determined that it is the law that is lacking and not the political will to apply it. *Pacta sunt servanda* is an age-old and basic tenet of international law, which means that existing international obligations must be fulfilled in good faith. This principle requires that attempts to resolve ongoing challenges within an existing legal framework be made before calls for change are issued. Any other course of action would risk depriving the law of its very *raison d'être* - which is to facilitate the predictable and orderly conduct of international relations.

NIAC and IAC

To what extent is the distinction between international and non-international armed conflicts still relevant given the complexity of some of today's armed conflicts (overlapping and penetration of different types of conflict in one region)? There are rules for international armed conflicts between States and rules for internal armed conflicts between state and non-state actors. But what about a situation, which looks at a conflict with a coalition of States with a transnationally acting non-state actor, using methods of terrorism? Should the scope of application of international humanitarian law be extended to this type of situation or to situations in a grey area between internal (internationalised or not) armed conflicts and police actions? If the scope of application of international humanitarian law is expanded to cover new situations, it will permit the prosecution of persons having violated the law, but it will also require them to be granted all the rights and protections foreseen by this body of law. This might be one of our greatest challenges in respecting and implementing international humanitarian law today.

IHL and Asia

The respect for the rules of war during armed conflict is an imperative and a regional approach to the enforcement of IHL is the best way forward to realize this goal. The proximity of regional arrangements to events involving violations of IHL will help to ensure timely action is taken and to lower the cost involved in bringing perpetrators to justice. Such arrangements are better placed to make full and effective use of local knowledge and expertise in pursuing investigations and prosecutions. Their permanent presence will contribute to a more holistic approach to the enforcement of IHL. Even though it has not ridden itself completely from sources of conflicts and tension, Southeast Asia has enjoyed a rather long period of peace and stability. ASEAN has played a pivotal role in shaping and contributing to regional security. Hence ASEAN would naturally serve as the platform of

choice for any substantive deliberation on the enforcement on IHL in the region.

The ASEAN Regional Forum (ARF) serves as a good platform to conduct discussions on the feasibility of a regional mechanism for the enforcement of IHL. As a forum for security dialogue, ASEAN envisioned the ARF to ultimately address inter alia approaches to conflict resolution too. Understandably, this is a sensitive issue to many in the region as it is perceived to undermine the norm of non-interference and respect for state sovereignty. Hence any discussions on a regional arrangement to implement IHL norms should take into consideration sensitivities of the Member states.

Improving respect for IHL

First, and quite simply, respect can be improved by spreading the knowledge of the rules – both to authorities and combatants but also to civil society. The potential of civil society in restraining the actions of authorities and combatants should not be underestimated. It is therefore essential to renew training and dissemination efforts to expand the knowledge of and commitment to IHL. In this respect, we cannot fail to commend the activities of our co-host, the International Committee of the Red Cross for its commitment to the dissemination of international humanitarian law. Secondly, respect during times of armed conflict can be improved by the adoption of preliminary steps by national authorities in times of peace. In addition to ratifying the relevant conventions, States must be encouraged to adopt national measures for the application of IHL. The ICRC's Advisory Service encourages the formation and supports the work of national committees that have been tasked with incorporating international humanitarian law in national legislation.

Thirdly, the mobilisation of all those who can contribute, through their influence and action, to a better respect of the law remains a crucial activity for all of us here today. Generating respect for IHL does not only have to sit with governments. It is something that all, governments, international organisations and even media, can undertake. We should take advantage of this age of social media and constantly evolving technology to increase education on IHL for all. Last, but by no means least, recalling the very first article of the Geneva Conventions and the First Additional Protocol that States Parties undertook to “respect and ensure respect” for their provisions in all circumstances. In particular, States not involved in an ongoing armed conflict should take appropriate legal and diplomatic means when dealing with States bearing responsibility for violations of humanitarian law with a view to terminating such violations. IHL calls upon States collectively to ensure respect for IHL and to undertake to act together or individually, with

the United Nations and in conformity of the UN Charter, in situations where there are serious violations of IHL. This collective duty to ensure respect for IHL is contained in Article 89 of Additional Protocol 1.

Conclusion

It is evident that a more intensive debate on International Humanitarian Law is urgently needed, particularly the most important aspects, which concern the conduct of hostilities and protection of civilian populations. To conclude, it is important to think about how this responsibility to “ensure respect” for international humanitarian law can be effectively applied in practice. Finding ways in which the international community can discharge this obligation is one of the major challenges facing humanitarian law in the years ahead. It is a challenge that must be addressed if humanitarian law is to continue to serve its very purpose.



GENERATING RESPECT FOR IHL



Asia is a region with underlying humanitarian challenges despite the promises of growth. It is relatively peaceful, marred by historical past of genocide, ethnic cleansing, violence for independence and post-colonial experiences of political transition. Impending global conflicts and changing technological trends are beginning to threaten national

institutions which were supposed to provide for international security, safety and justice. Not only have they fundamentally challenged the nature of warfare, they also raise questions on the compliance of IHL and International Human rights law. These changes weaken the boundaries of the application of IHL and places the state in a situation where it needs to engage non-state actors.

Institutions in the region need to be active in assisting the state in providing security to their citizens in times of conflict and to uphold international law. Regional institutions such as the Association of the Southeast Asia Nations (ASEAN) provides entry points focusing on security, defence and human rights, through frameworks and working groups such as the ASEAN Intergovernmental Commission on Human Rights. Increased engagement and trust building between institutions in the region can encourage ASEAN Member States to take on more ownership in their service of international law, and for NGOs to be engaged in providing different kinds of security for citizens involved in conflicts.

Conflicts covered under IHL can include both International Armed Conflicts (IAC) and Non-International Armed Conflicts (NIAC). It excludes international disturbances, riots, isolated or sporadic acts of violence. To protect and strengthen the people with respect to International Law, emblems protected under IHL such as the Red Cross, Red Crescent and Red Crystal emblems should only be authorised for use in times of armed conflicts. This can prevent misuse of the emblems with the intent of appealing to the good faith of an adversary and to deceive that the person using it is entitled to receive protection under IHL. Appropriate steps such as controls and penalties regarding the use of such emblems should be put in place and disseminated widely among the armed forces, police, government agencies and civilian population. Mechanisms such as the International Humanitarian Fact finding

commission (IHFFC) and Commission of Inquiry (COI) can also help to generate more respect for IHL.

Although the IHFFC has never been called into action in 26 years, many COIs were established and given the mandate to identify and to ensure accountability from those responsible for the violations of international human rights law and IHL and take the appropriate states to task. These includes countries such as Palestine, Lebanon, Darfur, Libya, Cote D'Ivoire, and Syria, where the COIs have helped to construct cooperative relations with international organizations maintaining peace and stability by resolving disputes between the states on alleged violations of IHL.



WORKING GROUP A: GENERATING RESPECT FOR IHL

The ICRC defines international humanitarian law as, ‘a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the ‘law of war’ or the ‘law of armed conflict.’



What does respect for IHL mean?

It was highlighted that there was a relationship and differences between the notions of respect and compliance of IHL. The term “respect” had a broader meaning including a variety of trainings, dissemination; and “compliance” represented a more flexible and dynamic process of the implementation of IHL. From the practical point of view participants agreed that talking about respect for existing norms of IHL was a useful and strategic tool as the common language of diplomacy.

Apart from legislation and training, what more can States do to ensure respect for IHL?

It was proposed that a wide variety of tools are required to ensure greater compliance with IHL. These included ensuring that military manuals and military exercises implement IHL at a tactical level. Also, it was opined that disseminating information about IHL to the general public was important to raise awareness and ownership. It was suggested that to disseminate information on IHL to the public and armed groups, simplifying the essence of IHL by using pictures was an effective way to do so. When information is disseminated through media journalists, at times it leads to an inaccurate picture being painted of IHL. This is because IHL is interpreted and understood differently by different actors.

However, some challenges were identified. This includes the tendency among some military officials and lawyers to invoke IHL to either justify their own military operations or criticise other operations of foreign countries, also known as the “lawfare” or “legal warfare” strategy. In contrast, those promoting IHL do not use it enough to criticise actions of certain states

and non-state actors. There is also some confusion between IHL and International Human Rights Law (IHRL). To overcome these challenges in terms of respect for IHL it was suggested that there would be a need to persuade and familiarize state officials and armed groups with the relevance of IHL by linking it to the protection of civilians in peacekeeping, and in disaster relief. This would give them a clear image of why IHL is important even in peacetime. Hence, it is important to ensure that information on IHL is accurately transferred to all parties. One of the scenarios that was highlighted was that civilians from relatively peaceful parts of the world could also risk being involved in armed conflict when they study abroad. For instance, during the Yemen crisis students from Malaysia and Indonesia had to be evacuated from the country immediately. It was also opined that information on IHL has to be disseminated to industries involved in weapons manufacturing, particularly given the obligations under the Arms Trade Treaty in recent times.

How can the ICRC support your government's objective on international law and humanitarian affairs?

It was suggested that ICRC needs to be sensitive to ongoing internal politics and dilemmas in certain states and needs to build trust in its relationships before criticising an individual state. However, ICRC's core values of neutrality, independence, impartiality and bilateral confidential dialogue were recognised by all as a way of building and maintaining the trust. This is particularly significant in detention operations, where ICRC assists states to meet their obligations under international law by such confidential representations.

What implementation has your country achieved and what are your IHL priorities for the next two years?

There were a range of issues which states will be working on to better regulate IHL domestically. They are, national legislation, IHL competitions, assisting other countries in implementing IHL, developing national IHL committees and the national pledges that were made at the 32nd International Conference of the Red Cross and Red Crescent. Additionally, it was raised that there were several regional forums in Asia where IHL could be addressed as well, such as the Shangri-La Dialogue, ASEAN Meetings and ASEAN Regional Forum.

WORKING GROUP B: ENSURING RESPECT FOR IHL IN ASIA

Common Article 1 to the four Geneva Conventions lays down an obligation to respect and ensure respect for the Conventions in all circumstances. The article has been expanded exponentially and now addresses positive and negative obligations, including on other states over which they would have some influence.

Does Asia require different strategies for ensuring respect for IHL?

It was shared that ensuring respect should not just be at the strategic global level, but also on the individual level. However, most regions require specific strategies for IHL obligations, despite their universal obligations. Some regions have more armed conflict. By virtue that regions are different, then a different strategy is needed for Asia. We also need to understand how IHL would work in Asia with its fundamental principles of non-intervention and sovereignty. There is definitely a perceived clash between principles especially for the Asia-Pacific region, and principles of non-intervention and respecting sovereignty.

Each state in Asia has many differences; internal issues within states are already different with some being torn by conflicts, while others are stable. Therefore the experience faced by each state is different. Perhaps those with relevant experience would have more respect for IHL. Strategies should therefore focus more on each state's unique and relevant experience to generate respect for IHL. Hence, IHL should be made relevant not just in an Asian context but also taking into account the cultural, political systems within Asia. It is not helpful to talk about Asia as a single unit, there is a



need to acknowledge those differences within the region - historical, cultural and ideological.

There is also a need for further analysis on the source of problematic issues that would be contextual. For example, the differences in countries at different stages of development and democratic processes, would therefore have different degrees of openness for engagement with other actors and civil society. These different experiences generally illustrated gradual processes in these countries. There was also discussion on whether there should be strategies within groups within a state. This would help focus on issues relating to non-state actors as well. However, the question remains unanswered over who would be responsible for strategies for non-state actors. It was agreed that it would depend largely on how open the system is regarding non-state actors. Some steps that could allow IHL to be more effectively implemented on the ground would be by creating awareness on the topic, addressing it through ASEAN, generating experience from sending peacekeeping troops to volatile regions to gain field experience on IHL, and determining how to communicate IHL to leaders in a delicate manner.

How can countries support each other in ensuring respect for IHL?

The main actors of the state (e.g. armed forces) would benefit from sharing and teaching in the field about respecting IHL. For example, IHL can be taught during multi-lateral training exercises. However, there is a question about how non-state actors (including terrorists) can be educated about IHL. If non-state actors are unaware about IHL, ensuring respect for IHL during conflict situations involving non-state actors would not necessarily transpire. Some participants suggested strengthening the existence of regional and multi-lateral institutions such as the ASEAN Regional Forum (ARF), ADMM plus to develop it as a venue for discussions and confidence-building on IHL-related matters. But, there is also a limit to what can be discussed when it comes to this region, particularly compliance issues. It is nonetheless most important to ensure that the topic is on the table as it allows us to bring IHL objectives up should there be any conflict-related issues discussed.

Using national IHL bodies, and government-affiliated bodies, to further collaboration between countries on IHL matters is another way it was shared that countries can support each other in ensuring respect for IHL. When one country is well-stocked with expertise, they can help out other countries for the benefit of respecting IHL. Most of the implementing measures are preventative but these bodies have expertise in making a checklist of what is needed in their own country. Hence, they can be useful. Finally, it was proposed that if there are sensitivities about countries supporting each other in ensuring respect for IHL, IHL obligations can be better presented as

preventive measures i.e. offering a country help to prevent IHL violations in the future.

How can the ICRC support your government's objectives on international law and humanitarian affairs?

ICRC can assist by conducting trainings and conferences which allow governments to build institutional knowledge on IHL. They could also conduct training to ensure respect for IHL for countries contributing UN peacekeeping troops.

What mechanisms and themes in Asian regional fora could improve respect for IHL?

Regional fora discussion on topics such as nuclear safety and weaponry, peace and reconciliation, movements of people and migration, protection of vulnerable people and communities and women, peace and security could improve respect for IHL. Tripartite arrangements in ASEAN with ICRC, workshops and training programmes on IHL in collaboration with ICRC, regional WPS indicators, concrete regional cooperation on IHL through AICHR, ASEAN Institute for Peace and Reconciliation and ADMM Plus are ways in which respect for IHL could be improved at a regional level.



UPDATED COMMENTARIES TO THE GENEVA CONVENTIONS OF 1949

The Geneva Convention was adopted in 1949. Soon after the Convention was adopted, the International Committee of the Red Cross (ICRC) released a set of commentaries, providing an opportunity for drafters involved to share their interpretation of their provisions based on their first-hand knowledge of how the negotiation process unfolded. The ICRC Updated Commentaries seeks to capture 60 years of Implementation and Interpretation of IHL and to offer greater clarifications of IHL by providing comprehensive and up-to-date interpretations of the Geneva Convention and the Additional Protocols to reflect current practices and legal interpretations. While the commentaries are not formally submitted to States for comments, it aims to provide key elements for implementing the Geneva Conventions from a practical perspective, which is expected to result in better respect and protection for victims of armed conflict.

Definitions and the interpretation of the Geneva Convention remain a problem for the implementation of the Convention. The Updated Commentaries take this into consideration, and seeks to provide clarification of the Geneva Convention, based on the ordinary meaning of the text, subsequent agreements and practices, including that of Customary International Law. It provides sources such as military manuals and tables and indicates ICRC's interpretations and associated main diverging views, if



any. Such clarifications will help to enhance compliance and respect related to the education and knowledge of the rules within the Geneva Convention.

An example on the problems related to definitions within the Geneva Convention is the lack of definition of the wounded, sick and shipwrecked within the Convention. This has led to discussions on the status of victims of before determining whether to provide protection. However, in light of the essence of the Geneva Convention, the concept of respect and protect should take priority before status determination.

New technologies have also placed parts of the Geneva Convention under ambiguity. Situations such as drone strikes bring about new questions such as how obligations to collect the wounded and sick are fulfilled when there are no troops present on the ground. The use of GPS coordinates in modern times also now allow for the presence of medical facilities could be communicated to other parties.

The methodology for the Updated Commentaries includes research in state practices, case-laws, scholarly publications and ICRC archives. All drafts commentaries were reviewed by the Reading Committee, the Editorial Committee review, and had also undergone peer review by IHL practitioners and scholars around the world. It is available on the ICRC website.



NEW WEAPONS AND WARFARE: IMPLEMENTATION, REGULATION AND CHALLENGES

The Fourth Industrial Revolution has brought about new technologies in the realm of HADR and has blurred the lines between the physical, digital and biological spheres. Perception, processing and cognitive revolution has undergone revolutions, along with the utilisation of better engineering materials with higher performance. Communication in navigation and targeting is now more precise and timely. The military has also utilised these technological advancements to create learning machines, turning Artificial Intelligence (AI) and autonomy into an advantage by being able to respond to attacks immediately. Human-Machine collaborations and Network Enabled Weapons have created new ways for manned and unmanned platforms to operate and to be connected on a learning command to control communications and intelligence.

On top of technology, hybrid warfare has also contributed to the difficulties and challenges of modern warfare. By combining conventional warfare, irregular warfare and cyberwarfare, hybrid warfare can be considered a double-edged sword and can be difficult to coordinate. While it is relatively easy to stir up the masses to oppose the enemy, it is not easy to direct its aroused forces and to oblige it to subordinate itself to the orders of the government. Much has to be taken into consideration in terms of technological advancements and sophistication, legal thresholds, the requirement of attribution, the requirement of command, and the manipulation of legal uncertainties and vulnerabilities. In addition, there are also challenges facing the implementation of the Arms Trade Treaty. There are matters of international concerns, such as the ability of the will of the states, especially in the ability of certain states to ensure human rights.



Despite these changes, it does not necessary mean that there is now better HADR readiness, responses and recovery. Fully utilising technologies in HADR work involves multiple functions, skill sets, strategies and coordination, and can be prohibitively expensive, with limited technological access and legal constraints. More attention needs to be given to the logistics and planning in using technology in HADR work to bring clarity to chaos and to allow prioritisation, tracking and efficient use of resources in data collection and making observations. Communication channels need to be established to enable dissemination of critical information in environments with no or little power and connectivity, and also to enable fast restoration of resources such as water and a distribution of services to affected victims in the disaster area. Challenges remain in relation to policy, where the cost and training needs to be taken into consideration and technological gaps between countries and regions have to be minimized.



METHODS FOR GENERATING RESPECT FOR IHL

The Universal Meeting of the National IHL Committees meets every four years to discuss practical questions related to the implementation of IHL at the national level. It seeks to generate respect for IHL by creating an opportunity and momentum to stimulate the states to create National IHL Committees (NIHLC) and to reaffirm their importance. Serving as advisory bodies to states, NIHLCs are strategically important in addressing humanitarian concerns in the three key areas of cultural property, healthcare and internally displaced persons and migrants.

In Indonesia, the Inter-Ministerial National Committee on IHL (PANTAP) is made up of the Ministry of Law and Human Rights, Ministry of Defense, Ministry of Health, Ministry of Internal Affairs, the National Red Cross, Ministry of Social Affairs, the Indonesia National Armed forces, Ministry of Foreign Affairs, ICRC and universities. Indonesia signed on the Geneva Convention in 1949 and is therefore obliged to respect and ensure IHL in all circumstances. The PANTAP is tasked with translating the Geneva Convention and their addition protocols into Bahasa Indonesia for dissemination and training purposes in order to formulate IHL into their domestic strategic measures.

In Switzerland, the Montreux Document and the International Code of Conduct (ICoC) seeks to regulate Private Military and Security Companies (PMSC) to generate more respect for IHL. Jointly developed by Switzerland and the ICRC, the Montreux Document was adopted in 2008 and focuses on pertinent existing legal obligations and good practices in International Law and IHL on how to control private military companies in military settings.



The document includes an explanation of the responsibilities of the PMSCs and their personnel and offers a route map for states seeking to achieve best practices for state regulations. The ICoC is a multi-stakeholder process initiated by Switzerland and the private sector, targeting the private security industry operating in complex environments. It seeks to set principles and standards based on IHL and Human Rights Law and to provide management and oversight principles in order to achieve improved accountability through independent governance and oversight mechanism.

Last but not least, more respect can be generated for IHL by looking beyond the United Nations Security Council (UNSC) Resolution 1325 on Women, Peace and Security. The UNSC Resolution 1325 places assumptions that women being innately peaceful and are a coalition of network builders. However, by paying more attention to the impact of conflict on women and girls and the role of men and removing these assumptions, a stronger and more convincing WPS agenda can be formulated and regarded by more countries.



IHL AND THE CHALLENGES OF CONTEMPORARY ARMED CONFLICT

Common Article 1 to the four Geneva Conventions lays down an obligation to respect and *ensure* respect for the Conventions in all circumstances. However, this creates room for an ambiguous interpretation of the article, which may now render it more suitable to contemporary armed conflict situations. There are also no IACs that fit the current form of contemporary armed conflict. While the Geneva Convention covers IACs, the legal framework for NIACs remains sparse in comparison, with little scope and specificity related to protections applicable to NIACs. A review of processes have highlighted that NIACs need to be a key focus in areas including the consultation process, groups in detentions, and the process and procedures for internment, detainees and transfers.

Despite the ambiguity, the best way to ensure IHL is to disseminate the text and to provide training to soldiers before their mission to cultivate the compliance of IHL as their second nature. Imposing sanctions against grave breaches and other serious violations can also help to ensure respect for IHL. The case for respecting IHL is further complicated by new technologies and pressures on states and non-state actors. States need to consider how to apply and strengthen respect for IHL when they are increasingly coming under threats which are more complex than ever. An example of this would be IHL in the cyber arena and in outer space. While most agree that IHL



applies, the question of how to translate and apply the Geneva Convention to these areas remains a discussion.

In exploring the human consequences of law with IHL and the different patterns of migration, it can be noticed that categorizing people as they move from countries to homes are becoming increasingly complex. Internally Displaced Peoples (IDPs), refugees and more generally victims of forced migration are examples of those affected in this area where IHL, international human rights and refugee law intersects. The rules of IHL need to be respected to prevent displacement, direct and indirect attacks on civilians and civilian objects. Existing challenges include the need to address security sector governance in this region as a reform agenda and to identify local civil society groups to establish necessary connections to the global humanitarian system. A regional mechanism needs to be developed to facilitate humanitarian access to populations of concern and to review mandates and capacities at the national level to develop a comprehensive approach to civilian protection to institutionalise IHL further in the regional context.

CONFERENCE PROGRAMME

Thursday, 27 April 2017

8.30 **Registration**

9.00 – 9.30 **Opening Ceremony** – *Benjamin William Jeyaraj, Singapore Red Cross*

- Welcome Remarks – *Thomas Kupfer, Ambassador of Switzerland in Singapore*
- *Isabelle Barras, Head of Regional Delegation for Malaysia, Singapore and Brunei, International Committee of the Red Cross (ICRC)*
- *Ambassador Ong Keng Yong, Executive Deputy Chairman, and Director, Institute of Defence and Strategic Studies (IDSS), S. Rajaratnam School of International Studies (RSIS) Singapore*

9.30 – 10.15 **Keynote address: The Enduring Importance of International Humanitarian Law in Asia Today**

Ambassador Ong Keng Yong, Executive Deputy Chairman, and Director, Institute of Defence and Strategic Studies (IDSS), RSIS

10.15 – 10.45 Morning break

10.45 – 12.30 **Session 1: Generating Respect for IHL**

Chair : Kelisiana Thynne, Regional Legal Adviser, ICRC Kuala Lumpur

- Humanitarian challenges in Asia
 - *Associate Professor Mely Caballero-Anthony, Head, Centre for Non-Traditional Security Studies (NTS Centre), RSIS*

- Generating Respect for IHL in Asia: implementing an international criminal legal framework
– *Assistant Professor Cheah Wui Ling, Faculty of Law, National University of Singapore*
- Generating respect for IHL in Asia through the International Fact-Finding Commission (IHFFC)
– *Professor Shuichi Furuya, IHFFC (government appointee) and Waseda University Law School*
- Reducing attacks on civilians, healthcare workers and facilities: The Philippines' Experience
– *Marivil Valles, Principal Assistant, UN and Other International Organisations, Department of Foreign Affairs (Philippines)*

12.30 – 14.00 Lunch

14.00 – 16.00 **Parallel Working Group A on Generating Respect for IHL**

- **Facilitators** : Assistant Professor Cheah Wui Ling, NUS
- **Rapporteur** : Associate Professor Masahiro Kurosaki, National Defense Academy, Japan

1. What does respect for IHL mean?
2. Apart from legislation and training, what more can States do to ensure respect for IHL?
3. How can the ICRC support your government's objectives on international law and humanitarian affairs?
4. What implementation has your country achieved and what are your IHL priorities for the next two years?

Parallel Working Group B: Ensuring Respect for IHL in Asia

- **Facilitator:** Larry Maybee, Legal Adviser, ICRC Beijing
- **Rapporteur:** Sangeeta Yogendran, Senior Analyst, NTS Centre, RSIS

1. Does Asia require different strategies for ensuring respect for IHL?
2. How can countries support each other in ensuring respect for IHL?
3. How can the ICRC support your government's objectives on international law and humanitarian affairs?
4. What mechanisms and themes in Asian regional fora could improve respect for IHL?

16.00 – 16.30 Afternoon break

16.30 – 17.30 **Session 2: Updated Commentaries to the Geneva Conventions of 1949**

Chair : Associate Professor Mely Caballero-Anthony, NTS Centre, RSIS

- The Update of the Commentaries to the Geneva Conventions of 1949 and highlights of the Update to the First Geneva Convention
 - *Benjamin Charlier, Legal Adviser, International Committee of the Red Cross, ICRC Geneva*
- The relevance of the newly updated Commentary to the Second Geneva Convention on the Wounded, Sick and Shipwrecked in Asia
 - *Larry Maybee, Regional Legal Advisor, ICRC Beijing*

19.00

Welcome Reception



Friday, 28 April 2017

9.00 – 10.30 **Session 3: New Weapons and warfare: implementation, regulation and challenges**

Chair : Larry Maybee, Regional Legal Advisor, ICRC Beijing

- New Technologies in Humanitarian Assistance: Advances and Challenges
 - *Assistant Professor Michael Raska, Military Transformations Programme, IDSS, RSIS.*
- Generating respect for IHL: Challenges of Hybrid Warfare
 - *Dr Hitoshi Nasu, Australian National University*
- Challenges Facing the implementation of the Arms Trade Treaty
 - *Dr Tamara Enomoto, Research Institute for the History of Global Arms Transfer, Meiji University*

10.30 – 11.00 Morning break

11.00 – 12.00 Working group reports

Rapporteurs report back for both working groups

- **Group A and Group B**

12.00 – 14.00 Lunch

14.00 – 15.30 Session 4: Methods for Generating Respect for IHL

Chair : SQNLDR Timothy Wood, Legal Adviser, Defence Legal Services, New Zealand Defence Forces

- Outcome of the 4th Universal Meeting of National IHL Committees
– *Benjamin Charlier, Legal Adviser, ICRC Geneva*
- The role of National IHL Committees in Generating Respect for IHL
– *Indonesian National IHL Committee (TBC)*
- Regulating Private Military and Security Companies: The Montreux Document and the International Code of Conduct
– *Jasna Lazarevic, Diplomatic Attaché, Federal Department of Foreign Affairs, Embassy of Switzerland in Singapore*
- UNSC Resolution 1325: Women, peace and security in Asia
– *Dr Tamara Nair, Research Fellow, NTS Centre, RSIS*

15.30 – 16.00 Afternoon break

16.00 – 17.30 Session 5: IHL and the Challenges of Contemporary Armed Conflict

Chair : Isabelle Barras, Head of Regional Delegation, ICRC Kuala Lumpur

- How to understand Common Article 1 of the 1949 Geneva Conventions
– *Dr. Li Qiang, Associate Professor of the China University of Political Science and Law*

- Strengthening IHL: Protecting Persons Deprived of their Liberty
 - *Richard Rowe, Senior Adviser, Legal Division, Department of Foreign Affairs and Trade, Australia*
- Challenges to Strengthening Respect for IHL
 - *Diwaka Prakash, Assistant Director Legal, International Law Section, Department of Foreign Affairs and Trade, Australia*
- IDPs, Refugees and Forced Migration
 - *Dr Alistair Cook, Coordinator of the HADR Programme and Research Fellow, NTS Centre, RSIS*

17.30 – 17.45 **Closing Remarks**



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ABOUT THE CENTRE FOR NON-TRADITIONAL SECURITY STUDIES

The **Centre for Non-Traditional Security Studies (NTS Centre)** conducts research and produces policy-relevant analyses aimed at furthering awareness and building capacity to address NTS issues and challenges in the Asia-Pacific region and beyond. Non-traditional security (NTS) issues are challenges to the survival and well-being of peoples and states that arise from non-military sources, such as climate change, resource scarcity, infectious diseases, natural disasters, irregular migration, food shortages, people smuggling, drug trafficking and transnational crime. These dangers are transnational in scope, defying unilateral remedies and requiring comprehensive – political, economic and social – responses, as well as the humanitarian use of military force. The NTS Centre addresses knowledge gaps, facilitates discussions and analyses, engages policymakers and contributes to building institutional capacity in the following areas: Humanitarian Aid & Disaster Relief; Food, Health and Energy Security; Climate Change, Environmental Resilience and Sustainable Development; and Peace, Human Security and Development. It brings together myriad NTS stakeholders in regular workshops and roundtable discussions, as well as provides a networking platform for NTS research institutions in the Asia Pacific through the NTS-Asia Consortium.

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The **S. Rajaratnam School of International Studies (RSIS)** is a professional graduate school of international affairs at the Nanyang Technological University, Singapore. RSIS' mission is to develop a community of scholars and policy analysts at the forefront of security studies and international affairs. Its core functions are research, graduate education and networking. It produces cutting-edge research on Asia Pacific Security, Multilateralism and Regionalism, Conflict Studies, Non-Traditional Security, International Political Economy, and Country and Region Studies. RSIS' activities are aimed at assisting policymakers to develop comprehensive approaches to strategic thinking on issues related to security and stability in the Asia Pacific.

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