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THAI RED CROSS SOCIETY

20 Years Commemorative Book
Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law
2003-2023

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Department of Treaties and Legal Affairs
Ministry of Foreign Affairs
Kingdom of Thailand

20 Years Commemorative Book: Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law, 2003–2023

Published by
The Department of Treaties and Legal Affairs,
Ministry of Foreign Affairs, Bangkok, Thailand 10400
Email: saraban0800@mfa.go.th

ISBN 978-616-341-137-2

Cover and layout design by
189 Communications Intelligence Company Limited.
46/117 Moo 4, Chaengwattana 32, Bang Talad, Pakkred, Nonthaburi, Thailand 11120
Phone: +6682 552 2826 Email: 189comm.intelligence@gmail.com
FB: 189 Communications Intelligence

Photo credits
Thai Red Cross Society
International Committee of the Red Cross (ICRC), Bangkok Regional Delegation
Shutterstock

Printed by
ID All Digital Printing.
52 Soi Eakachai 69, Bangbon, Bangkok, Thailand 10150
Phone: +662 899 5429-35 Mobile: +6663 789 3624, +6681 571 6880 Fax: +662 416 4097
Email: office2@ideol-print.com Website: IDEOL-Print.com

Publication is available at https://treaties.mfa.go.th/th/content/lihlebook

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Foreword

It is with great pride and profound gratitude that I present this compilation of the ten remarks delivered during the prestigious Princess Maha Chakri Sirindhorn Lecture Series on International Humanitarian Law between the year of 2003-2023. Each piece illuminates the importance of upholding and advancing humanitarian law, and together, they embody profound wisdom and insights, extensive experiences, and collective knowledge of the most notable experts in this field. This anthology stands as a testament to the enduring legacy of these lectures and their invaluable boons to interested students and professionals in the years to come.

Since 2003, the Lecture Series, co-hosted by the Ministry of Foreign Affairs and the Thai Red Cross Society, have gained recognition as a forum for fostering and deepening the understanding of the multi-faceted challenges facing International Humanitarian Law. Each lecturer, renowned and recognized in their field of work has eloquently touched upon a vast array of topics on contemporary issues that arise in our rapidly changing world, particularly in the unique regional context of Asia and beyond. They highlighted the delicate balance between the exigencies of warfare on the one hand, and the laws of humanity on the other. The compilation of these lectures represents the sustained endeavour of the Kingdom of Thailand in promoting the world community that upholds the principles of international law that protects the dignity and rights of all individuals.

For the past two decades, the lectures have explored the intricacies of violence and armed conflicts, examined some area-specific case studies, while recognizing the vital role played by international agencies and mechanisms such as the International

Criminal Court and the work of International Commissions of Inquiry in addressing violations of humanitarian law. The lectures have addressed contemporary challenges to humanitarian action, emphasizing, inter alia, the significance of women in securing peace and security, as well as drawing valuable lessons from country-specific situation.

As we embark on an insightful exploration of the pressing issues surrounding international humanitarian law, it is my hope that this book will serve as a comprehensive repository of knowledge, which is the objective of the Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law to promote and disseminate international humanitarian law to a wide-ranging audience, be they civil servants, military personnel, parliamentarians, diplomats, academics, students, and any other interested parties.

May this body of work kindle profound conversations, foster transformative ideas, and ultimately contribute to a world where compassion and justice prevail, and prove wrong the writing on the wall of the Imperial War Museum in London that "Only the dead have seen the end of war."

Don Pramudwinai
Deputy Prime Minister and Minister of Foreign Affairs
of the Kingdom of Thailand
21 August 2023

Foreword

The Thai Red Cross Society was founded 130 years ago amidst the Franco-Siamese Conflict. With the principle of humanity at the heart of its foundation, its purpose was to safeguard life, health, and the respect for every individual. As a member of the International Red Cross and Red Crescent Movement, the Thai Red Cross Society has been providing humanitarian assistance to those in need during crises, including natural disasters, health emergencies, and times of conflict. Our operations are guided by the Fundamental Principles of the International Red Cross and Red Crescent Movement, which share a common goal with International Humanitarian Law (IHL) - the protection of human dignity and the alleviation of human suffering.

As part of the International Red Cross and Red Crescent Movement, one of the Thai Red Cross Society's important tasks is to promote awareness and understanding of IHL. In 2000, the International Humanitarian Studies Programme was established to foster study and research on IHL, focusing on the four Geneva Conventions of 1949, their two Additional Protocols of 1977, the Fundamental Red Cross and Red Crescent Principles, and human rights.

The work of creating a deeper understanding of IHL has been undertaken by the Princess Maha Chakri Sirindhorn Lecture Series on International Humanitarian Law. The inaugural Lecture was held on 16 September 2003, commemorating Her Royal Highness's 48th Birthday Anniversary. Since then, the Lecture Series has been co-hosted every two years by the Thai Red Cross Society and the Ministry of Foreign Affairs, with the gracious presence of Her Royal Highness Princess Maha Chakri Sirindhorn. The Lecture Series has covered a broad range of topics, including an overview of IHL, challenges in its implementation in the contemporary world, and area-specific situations like Northern Ireland,

Syria, and Aceh. It has featured distinguished academics, practitioners, high-level politicians, and attracted a diverse audience comprising ministers, government officials, diplomats, judges, lawyers, military personnel, academics, and representatives from international and non-governmental organizations.

As we commemorate the tenth Lecture of the Series, I wish to express my warm appreciation to the Ministry of Foreign Affairs for its unwavering commitment to organizing the Lecture Series over the past two decades. I am confident that this publication will serve as a valuable resource for teaching and promoting understanding of international humanitarian law, both at the national and international levels. It would also stand as a symbol of Thailand's dedication to the promotion of IHL and its commitment to protecting human dignity in the face of adversity. Through continued efforts and cooperation, we can bring hope and assistance to those in need, and make a lasting impact on the lives of countless individuals across the world.

With deep gratitude to all who have contributed to the success of the Lecture Series, may this commitment to promoting understanding and respect for IHL endure and inspire generations to come.

Tej Bunnag
Secretary General of Thai Red Cross Society
21 August 2023

International Humanitarian Law and Thailand: A Brief History

When one refers to "international humanitarian law" (IHL) as the rules that govern the way in which warfare is conducted *(ius in bello)*, some may wonder how the concept of humanitarianism can be found in the conduct of war. This sentiment is perfectly understandable since war is inherently violent, leading to the loss of lives, segregation and destruction. The fact that wars will continue to be waged as long as conflicts cannot be permanently eliminated from human civilization is well recognized, and it was thus agreed among states that an international commitment is needed to strike a balance between military necessity and humanity. The 1868 St. Petersburg Declaration, for example, explicitly recognized the need to strike such a balance, seeking to "fix the technical limits at which the necessities of war ought to yield to the requirements of humanity."

This article to the 20 Years Commemorative Book: Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law, 2003-2023, provides a brief history of how the laws and customs of war evolved into modern IHL as we know today and Thailand's role in promoting IHL.

The Emergence of the Modern IHL

Despite its quite recent coinage (academics and lawyers started using the term "international humanitarian law" in the 1970s during the birth of the four Geneva Conventions), the concept of rules or codes which one can consider as IHL began in the 18th century when modern statehood emerged. European states introduced compulsory military service systems leading to the deployment of mass armies. At the same time, it resulted in frequent war periods. Due to military technological development in the 19th century, warfare became more and more brutal and noticeable during the Crimean War (1853-1856) which led to approximately 500,000 casualties.

During the same period, the legal codification movement gained traction due to increased complexity of societies and changing conditions. The first modern civil and criminal codes emerged in Europe, for instance, the Criminal Code of Austria was completed in 1803 while France introduced its Civil Code in 1804. Also, in the field of international law including the laws applicable to armed conflict, there was growing recognition that unwritten customs and laws should be turned into a comprehensive set of codified rules. Such codified rules first came into existence in the United States at a time when the U.S. was divided by civil war. President Abraham Lincoln, issued the "General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field", which became known as the "Lieber Code", in 1863, to establish the rules

for military operations carried out by the Union against the Confederates. The Lieber Code consists of 157 provisions made up of both general principles and detailed rules. Importantly, it addressed the banning of certain means and methods of warfare such as the use of poison and torture as well as the "Protection of persons, and especially of women, of religion, the arts and sciences - Punishment of crimes against the inhabitants of hostile countries". While the Lieber Code was a domestically binding instrument, it became an inspiration for military manuals of other states as well as international agreements in the 19th century.

Meanwhile in Europe, Russia under the rule of Tsar Alexander II played an active role in solidifying international commitment to bring war under the rule of law. Despite advancement in its military technologies, it recognized that such improvements could cause greater suffering in comparison to conventional munitions. Tsar Alexander II thus convened an international conference in St. Petersburg culminating in the "Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles", also known as the "Declaration of Saint Petersburg", which was adopted by 17 states in 1868. The Declaration prohibited the use of explosive projectiles weighing less than 400 grams and, more importantly, it is considered to be the first instrument to specify what was to become one of the most fundamental principles of modern IHL; that is, "the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy." Additionally, the Declaration recognizes that "the progress of civilization should have the effect of alleviating as much as possible the calamities of war".

Six years later, Russia also took steps to conclude an international agreement on laws and customs of war. The draft agreement (also known as the "Brussels Declaration") was proposed and adopted in a conference of 15 European states in Brussels in 1874 but did not achieve the status of a legally binding instrument. The Institute of International Law, a private association based in Belgium led by Gustave Moynier who was also the President of the Red Cross, nevertheless, continued the project. After working on and developing ideas from the Declaration, Moynier's draft "Laws of War on Land" was issued at Oxford in 1880, later known as the "Oxford Manual".

At the end of the 19th century, there were two separate branches of IHL, namely "Hague Law" which was developed by states and "Geneva Law" developed by individuals. While states focused on limiting specific means and methods of warfare, individuals played an active role in pushing for the protection of the people who do not take part in the fighting (civilians, medics and aid workers, etc.).

In 1899, during which time Europe was engaged in an arms race, Russia under the reign of Tsar Nicholas II called for a Peace Conference, later to be known as "The First Hague Peace Conference". The Russian side announced that the purpose of the Conference was to strive for "the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and, above all, of limiting the progressive development of existing armaments". "Hague Law" or "The Hague Conventions" refers to a series of conventions adopted and ratified in the First and Second Peace Conferences convened in The Hague in 1899 and 1907 respectively. They codified laws and customs of war which particularly rely on the principles

derived from the Lieber Code, Brussels Declaration and the Oxford Manual. The Conventions preliminarily address the law of armed conflict in a strict sense, namely the rules that belligerents were to comply with during hostilities and the rules involving the limitation of specific weapons used in war. The Third Conference was scheduled for 1915 but failed due to the outbreak of the First World War in 1914.

"Geneva Law" refers to the "Geneva Conventions" developed by the "International Committee of the Red Cross" (ICRC) upon the initiative of Henry Dunant, the founding father of the ICRC who was a Swiss businessman born in Geneva. In 1859, with the intention to obtain a permit in order to operate his wheat mill business in Algeria (which was under French colonization), Dunant travelled to northern Italy to visit Napoleon III who was commanding the Franco-Sardinian troops in the war against the Austrians, later to be known as the "Battle of Solferino". During his journey, Dunant witnessed how a great number of dead and injured soldiers were suffering on the field, along roadsides, and in churches due to lack of sufficient care. On 24 June 1859, having witnessed the poor condition of nearly 40,000 dead and wounded soldiers after the battle in Solferino, the young businessman abandoned his original mission and decided to take care of the soldiers and encouraged villagers to help all those in agony regardless of which side they had fought for.

After returning to Geneva, Dunant wrote "A Memory of Solferino" in 1862 with the purpose of sharing the horrors of war. The book suggested all states should establish an organization made up of volunteers which provide neutral and impartial help to the sick, wounded soldiers as well as, victims of war. Dunant's idea led to the foundation of the Red Cross in 1863 which later adopted the title "International Committee of the Red Cross". The organization expanded globally by 1967. Additionally, Dunant viewed that an international legal instrument was needed to be developed to guarantee the neutrality of the organization along with the effective protection of victims, civilians, and medical facilities in the field or those affected by armed conflict. With Moynier's assistance, Dunant instigated the drafting and adoption of the "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" paving the way for the 20th century of Geneva Conventions. The Convention was revised and updated subsequently in 1906, 1929, 1949 and 1977. In particular, a number of innovative provisions were added in 1929 such as those concerning prohibition of reprisals and collective penalties against prisoners of war (POWs) and the recognition of POWs' work by which states are obliged to "assume entire responsibility for the maintenance, care, treatment and the payment of the wages of POWs working for private individuals".

During the Second World War (1939-1945), IHL was heavily challenged due to war crimes committed on both soldiers and civilians such as in humane treatment of POWs, aerial bombardment of civilian populations and genocide. In the year of war's end (1945), military and civilian deaths were estimated to be at around 50 million. The international community took the lessons from the wartime experience and made efforts to improve the existing rules. Finally, the series of the Geneva Conventions of 1949 was adopted, comprising of "Convention (I) for the Amelioration

of the Condition of the Wounded and Sick in Armed Forces in the Field", "Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea", "Convention (III) relative to the Treatment of Prisoners of War" and "Convention (IV) relative to the Protection of Civilian Persons in Time of War". According to Common Article 1, *"[t]he High Contracting Parties undertake to respect and to ensure respect for the present convention in all circumstances"* which means IHL will be applicable to states' activities in all operational domains, regardless of the nature or origin of the armed conflict. Common Article 2 states explicitly that IHL applies *"to all cases of declared war or of any other armed conflict [...] even if the state of war is not recognized by one of them"* in order to prevent states from avoiding the application of IHL by not declaring war or refusing to acknowledge the existence of an armed conflict especially since war and the use of force had been outlawed by the Charter of the United Nations in 1945. Last but not least, Common Article 3 guarantees a minimum standard of humane and non-discriminatory treatment of those who do not take part in hostilities.

In 1977, the Hague Conventions and Geneva Conventions were merged together through the adoption of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I, also known as Additional Protocol I), which includes provisions regulating means and methods of warfare. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II, also known as Additional Protocol II) was adopted in the same year. It was developed to deal with changing forms of armed conflict in the late 20th century, particularly the so-called "asymmetric conflict" which usually is non-international in nature.

By considering Dunant's dedication and advocacy, it can be said that the Geneva Conventions portray an inspiring example of an individual's initiative that was able to garner lasting international commitment to maintain humanity even in the theatre of war. In the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts convened in Geneva in 1974 to discuss the two additional protocols to the Geneva Conventions, Dunant's achievement was recognized in the Director-General of the United Nations Office at Geneva's opening remarks as follows:

"In 1949, 64 states were represented by delegates or observers; today the number of states has more than doubled. The presence here of representatives of many new countries - most of them Members of the United Nations - is the highest tribute that may be paid to the permanency and universality of the foundations of the movement first conceived by Henry Dunant more than a century ago."

An Overview of Thailand's Engagement with IHL

Although modern IHL may originate from the West, the norm of humanity in armed conflict, which underpins IHL, has deep roots in other regions of the world including Asia. Evidence of the application of humanitarian treatment of those who can be considered in the modern time as prisoners of war can also be found in ancient Siam, which has become

Thailand in the modern day. For example, during the Sukhothai Period of Siam, the *"Pho Khun Ram Khamhaeng Inscription"* or the Stone Inscription of King Ram Khamhaeng the Great (1279 - 1298) states that *"If the King captures enemy or army leader, (the King) does not kill or beat them."*

The Kingdom of Thailand has engaged with the codification of modern IHL since its very beginning. In 1895, Thailand, then Siam, acceded to the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, a year after its adoption. Furthermore, in 1899, Siam along with three other Asia Pacific states (China, Japan and Persia) was among the 26 states that participated in the Hague International Peace Conference and then became party to 1899 Hague Convention II on the Laws and Customs of War on Land, 1899 Hague Declaration IV (2) concerning Asphyxiating Gases and 1899 Hague Declaration IV (3) concerning Expanding Bullets; and subsequently, the 1907 Hague Convention No. III relative to the Opening of Hostilities, 1907 Hague Convention No. IV Respecting the Laws and Customs of War on Land, 1907 Hague Convention No. V Respecting the Rights and Duties of Neutral Power and Person in case of War on Land, 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1954 Hague Convention for the Protection of Cultural Property on the Event of Armed Conflict and the four 1949 Geneva Conventions.

That engagement has continued to more recent times with Thailand's ratification of, amongst others, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling

of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1989 Convention on the Rights of the Child, 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the 2017 Treaty on the Prohibition of Nuclear Weapons.

Besides becoming party to relevant treaties, Thailand established the Red Unalom Society of Siam on 26 April 1893, later to become the Thai Red Cross Society, which was inspired by the International Red Cross in Switzerland. The Thai Red Cross Society was accepted as a member of the International Committee of the Red Cross (ICRC) in 1920, as well as the League of the Red Cross, later International Federation of Red Cross and Red Crescent Societies (IFRC), in 1921. The establishment of the Thai Red Cross Society is a milestone in the country's development in terms of public health and humanitarian assistance among other national modernisation projects during the reign of His Majesty the King Chulalongkorn (1868 - 1910) such as abolition of slavery and reforms in public administration, education, transportation and the military.

Regarding the 1949 Geneva Conventions, Thailand did not enter any reservations or declarations. Moreover, Thailand has implemented the 1949 Geneva Conventions into domestic law through issuance of the "Announcement on the Application of the Convention Relative to the Protection of War Victims B.E. 2498 (1955)" which also translated the 1949 Geneva Conventions into Thai language. This was followed by the enactment of the "Geneva Convention on Prisoners of War Implementation Act B.E. 2498 (1955)" and the "Red Cross Society Act B.E. 2499 (1956)".

In terms of humanitarian aid assistance, Thailand, in 1950, sent groups of doctors and nurses from the Thai Red Cross Society to provide medical services during the Korean War to all soldiers regardless of their affiliation or status as prisoners of war. To applaud the excellence of their work, the members of the medical teams were awarded the United Nations Service Medal (Korea). A Thai doctor and nurse were also awarded the "Medal of Freedom" from the US President.

Moreover, Thailand places importance on maintaining peace, stability and security with neighbouring countries and thus far has completed demining 95 percent of contaminated areas in the border of Thailand with its neighbouring countries and destroyed all anti-personnel mines in its stockpile since 24 April 2003 as a party to the 1998 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Furthermore, Thailand provides shelter to displaced persons from across the border as humanitarian aid.

Beyond its borders, Thailand also contributes to peacebuilding and conflict prevention activities of the United Nations. Thailand has been a troop-contributing country to United Nations peacekeeping operations since 1958. To date, Thai service men and women have served in over twenty missions including in Lebanon, Namibia, Iraq, South Africa, Sierra Leone, Sudan and Nepal.

Thailand's Contribution to the Progressive Development of IHL

From the perspective of international lawyers, the development of IHL is remarkable in many respects. In particular, the law of war was the first branch of international law to be codified and has become one of the most comprehensively regulated branches of international law. Most aspects of the protection of victims of armed conflicts and of the conduct of armed hostilities have been dealt with in detailed provisions. Moreover, the Geneva Conventions of 1949 have attained universal recognition.

The early development of modern IHL could be seen through the framework of the theory of norm emergence. According to this theory, new concepts for international norms or international law emerge through a "norm entrepreneur". A norm entrepreneur can be a person, group of persons, institution, or state that has strong convictions about appropriate or desirable behaviour in their communities and take actions to achieve social change. A prime example of a norm entrepreneur would be Henry Dunant in relation to prevailing norms that medical personnel and those wounded in war be treated as neutrals and non-combatants.

After norm entrepreneurs have persuaded a critical mass of states to adopt new norms, this is the crucial stage that triggers a "norm cascade" where more and more states subsequently adopt the new norms resulting eventually in widespread recognition and acceptance of the norm. From this perspective, Thailand's early ratification of the Geneva Conventions as well as the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction would have contributed to initiating the norm cascade which is believed to operate by way of a combination of pressure for conformity and the desire of states to enhance international legitimization.

The Inception of the "The Princess Maha Chakri Sirindhorn Lecture" Series

The mere setting of norms does not ensure implementation and compliance especially where there is a lack of an effective international enforcement mechanism. Therefore, IHL needs to be understood by government officials, non-state actors and individuals alike. That is why promoting better understanding of IHL is so crucial for local legitimization and support. To this end, the Thai Red Cross Society and Ministry of Foreign Affairs launched "The Princess Maha Chakri Sirindhorn Lecture" in 2003. Her Royal Highness Princess Maha Chakri Sirindhorn, as Executive Vice President of the Thai Red Cross Society, has graciously presided over the Lecture since 2003. Attendees are comprised of public officials, experts and practitioners in the humanitarian field, members of the diplomatic corps, representatives of international organizations and non-governmental organizations, academics, professors and students from various universities, and cadets from Royal Thai Army schools and the Royal Police Cadet Academy.

Since its commencement in 2003, 10 Lectures have been organized once every two years.[1] The lecturers are highly esteemed experts and practitioners in IHL in various specialisations. The topics and lecturers are as follows:

1. "Contemporary Challenges in International Humanitarian Law" by Professor Daniel Thürer of University of Zurich and ICRC member, on 16 September 2003. This lecture highlighted the challenges in IHL particularly in relation to international terrorism and the prosecution of individuals who violate IHL.
2. "Human Security in Asia" by H.E. Dr. Sadako Ogata, former Head of the United Nations High Commissioner for Refugees, on 16 June 2005. The lecture focused on human security in the context of Asia and the role of government actors as well as private and community actors in the reduction of conflicts.
3. "International Humanitarian Law: Recent International Developments, Regional Momentum and Opportunities for the Kingdom of Thailand" by Professor Jacques Forster, former Vice-president of ICRC, on 25 June 2007. This lecture's contents covered the basic principles of IHL and the opportunities to develop IHL for Thailand and Southeast Asian states.
4. "Violence and Armed Conflicts: Challenges of Prevention, Protection and Reconciliation in International Law - the Case of Northern Ireland" by General Sir Mike Jackson, International Adviser of ICRC, and H.E. Mr. David Andrews, President of the Irish Red Cross Society, on 15 February 2009. This lecture used the conflict in Northern Ireland as a case study and discussed the challenges of prevention, protection and reconciliation in international law as well as violations of IHL.

[1] Except for the 10th lecture which was postponed due to the COVID-19 pandemic, causing a hiatus of four years.

5. "The International Criminal Court: an Indispensable Mechanism for Prosecution of Violations of International Humanitarian Law" by Justice Richard Joseph Goldstone, Eminent Judge of the Supreme Court of South Africa, on 13 June 2011. This lecture centred on the role of the International Criminal Court especially on war crimes and crimes against humanity.
6. "International Commissions of Inquiry, Humanitarian Law: The United Nations, Syria and Beyond" by Professor Vitit Muntarbhorn of Chulalongkorn University, on 19 June 2013. Professor Vitit shared his experience in working for the United Nations as Chairman of the Independent International Commission of Inquiry on Ivory Coast and as a Commissioner of the Independent International Commission of Inquiry on the Syrian Arab Republic.
7. "Contemporary Challenges to Humanitarian Action" by H.E. Mr. Peter Maurer, President of ICRC, on 25 June 2015. This lecture provided an overview of the dynamic and complexity of IHL arising from novel weapons, new technology, migration, disappeared persons and their family as well as the role of ICRC at the international and regional levels.
8. "The Role of Women in Securing Peace, Justice, and Well-being" by H.E. Ms. Elisabeth Rehn, former United Nations Under-Secretary-General, on 25 June 2017. This lecture highlighted women's role in respect of humanitarian assistance activities for peace building such as participation in United Nations peacekeeping operations.
9. "Aceh Peace Process (1999 – 2005) : Keys to Final Solution" by H.E. Dr. Hassan Wirajuda, former Minister of Foreign Affairs of the Republic

of Indonesia, on 25 June 2019. This lecture focused on the root cause of conflict in Aceh and the lessons learnt.

10. "The Prevention of Arbitrary Displacement and the Protection of the Human Rights of Those Displaced Persons under International Human Rights and Humanitarian Law" by Ms. Cecilia Jimenez–Damary, attorney and former United Nations Special Rapporteur on the human rights of internally displaced persons, on 30 August 2023. This lecture focused on the concept of arbitrary displacement and its situation and challenges in terms of IHL and human rights law from the perspective of the lecturer as a practitioner in these two fields.

In conclusion, the universally recognized principles of IHL form part of the common values of the international community. Compliance with them is essential for peaceful relations among states as violations of fundamental humanitarian principles inevitably affect other states and provoke reactions and possible reprisals by them. As long as armed conflicts cannot be avoided, the respect for IHL must therefore continue to be promoted. In addition, IHL must develop in order to maintain its relevance to new situations. Thailand certainly can be counted upon to promote IHL, and to engage constructively in its development including in emerging areas that may be relevant to IHL such as outer space and cyberspace. ❖

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Contemporary Challenges in International Humanitarian Law

Delivered at the Inaugural Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 16 September 2003 in Bangkok, Thailand
by

Professor Dr. Daniel Thürer

Professor Dr. Daniel Thürer is Professor Emeritus of international, comparative constitutional, and European law at University of Zurich. He is a former member of the International Committee of the Red Cross (ICRC) and a member of the Institut de Droit International. Professor Dr. Thürer was the president of the German Society of International Law. His academic activities have involved various universities, including Zurich, Heidelberg, and Harvard Law School. He is also a member of OSCE Court of Arbitration and Conciliation, and an honorary member of the Executive Committee of the International Commission of Jurists.

Professor Dr. Thürer holds his Ph.D. (Dr.iur.) from University of Zurich and, in recognition of his contributions, he was awarded an honorary degree in political science from University of St. Gallen in 2001. He has published extensively in the fields of international, European, and public law.

Your Royal Highness Princess Maha Chakri Sirindhorn,
Your Royal Highness Princess Astrid of Belgium,
Your Royal Highness Prince Lorenz of Belgium,
The Secretary-General of the Thai Red Cross Society,
Excellencies,
Distinguished Guests,
Ladies and Gentlemen,

It is my great honour to address you on such an undeniably topical and important theme as contemporary challenges in international humanitarian law. I would like to take the opportunity of this address to review the obligations that international humanitarian law (IHL) prescribes in armed conflict and in peace, to discuss the place of the International Committee of the Red Cross (ICRC) in IHL and lastly, to examine the role of IHL in contemporary armed conflicts.

In treating each of these topics, I would like to emphasize that IHL remains adequate to deal with the armed conflicts of the 21st century. It is true that some recent developments (especially the so-called war on terrorism) have put into question the rules of IHL, prompting claims that IHL is out of date and inapplicable to contemporary conflicts. However, I strongly believe, as an international lawyer and a ICRC Member, that a solid basis of doctrine and management exists today in IHL. What is needed in times of challenge such as these is a strong, clear message from concerned observers - be they states, private citizens, international governmental and non-governmental organizations - that the law be properly implemented and its overriding principle - humanity for all - be fully observed.

IHL Obligations in Armed Conflicts

International humanitarian law serves two basic functions in times of armed conflict. First, it places limits on the conduct of hostilities and second, it determines the treatment to be accorded to persons who do not take part, or who no longer take part, in hostilities and who find themselves in the power of the enemy. The words "in the power of the enemy" may refer to prisoners of war, civilian detainees, internees or the general population subject to occupation.

The ICRC has recently embarked upon a public education campaign under the slogan "even wars have limits". This is not just the expression of a wish. It is a reflection of several of the long-standing, fundamental principles and rules of humanitarian law applicable to both the conduct of hostilities and the treatment of persons in the power of the enemy.

As concerns the conduct of hostilities, it has long been understood that the purpose of hostilities is not to wreak maximum death and destruction upon your enemy. It is to inflict only that minimum of harm that is reasonable and necessary to disable your enemy from continuing hostilities.

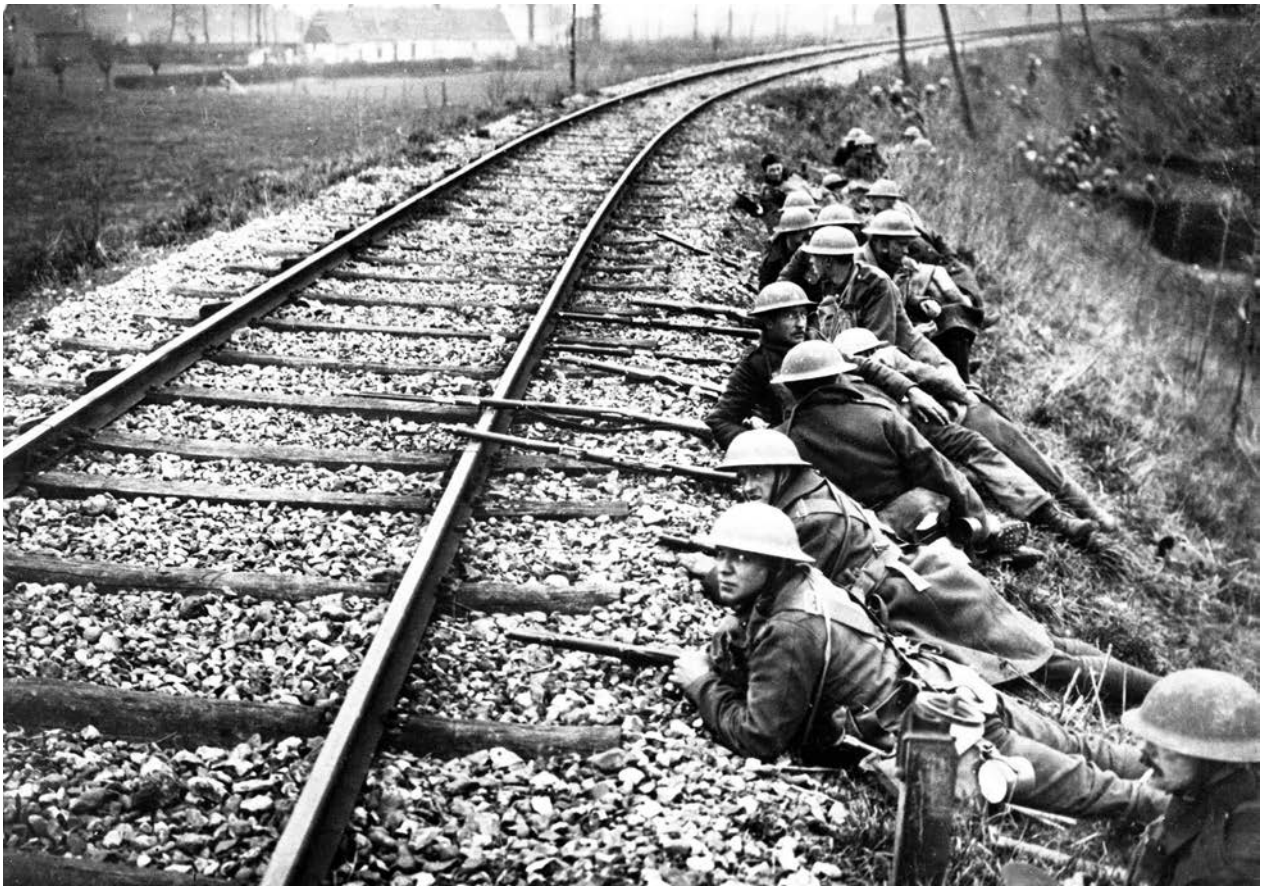
Another organizing principle of humanitarian law, again reflecting the concept that wars have limits, is the principle of distinction. The principle of distinction requires combatants to restrict their targeting to legitimate military objectives, to take precautionary measures to avoid harm to civilians and civilian objects and to refrain from attacks causing disproportionate harm to civilian objects, even if those attacks have a legitimate objective. Chemical and biological weapons are two examples of means of warfare that are prohibited precisely because they cause excessive and potentially indiscriminate injury.

The concept "even wars have limits" is also reflected in the many rules of humanitarian law that protect persons who do not, or who no longer, take part in hostilities and who find themselves in the power of the enemy. The four Geneva Conventions contain detailed rules for the protection of such persons, in particular, sick and injured soldiers and sailors, prisoners of war and civilians.

The specific rules applicable to any particular armed conflict may vary according to the international or non-international nature of the conflict and the instruments binding upon the parties to the conflict. The fundamental principles underlying the rules are nevertheless universal. They apply to the conduct of all armed conflicts and to the treatment of all persons in the power of the enemy all over the world.

IHL Obligations in Times of Peace

It is perhaps obvious that in times of war, States must be aware of the ability to discharge their humanitarian law obligations. But why should this body of law - as expressed in the Geneva Conventions of 1949, their Additional Protocols of 1977 and in other international instruments - be of interest in times of peace?



First, humanitarian law contains certain obligations that must be, and can best be, implemented in peacetime. Among these is the obligation to educate military personnel about the principles of humanitarian law and the rules that give them meaning in practice. A second reason, related to but distinct from the purposes of education, is the requirement to implement the international rules and norms of humanitarian law into national legislation. A third reason concerns the existence of State-to-State obligations. Article 1 common to each of the four Geneva Conventions and Article 1 of Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts make explicit States' obligation to respect the provisions of the Geneva Conventions. In addition to mandating respect, Common Article 1 reflects the solemn undertaking of States to "ensure respect" for the provisions of the Conventions and the Additional Protocol. Whatever the detailed content of the obligation to ensure respect may be, the obligation clearly refers to the duty of States at war or at peace to undertake proactive measures designed to increase compliance with humanitarian law, within and beyond their borders. The ever-increasing interconnectedness of our world gives rise to an ever-increasing urgency that the content of States' obligation to ensure respect be defined and be implemented in times of peace, as well as in times of conflict. Any conflict today, be it in Cambodia or Kosovo, Indonesia or Israel, affects the people of Thailand.

Government officials, representatives of civil society, students, and business people - everyone has a stake in these matters. Indeed, the very interests of State and personal security, of the political relationships of a State to its citizenry and of economic and social well-being are directly linked to the success or failure of peacetime efforts to educate people about, and to ensure the enforceability of, IHL.

The History and Role of the ICRC

This brings us to the role of the International Committee of the Red Cross and its relationship to humanitarian law. Since its founding in 1863, the ICRC and humanitarian law have been inseparable. The Geneva Conventions and their Additional Protocols contain the international community's mandate to the ICRC to provide protection and assistance to persons affected by international armed conflict. In non-international armed conflict, the ICRC possesses a right of initiative to provide protection and assistance.

As the custodian of humanitarian law, the ICRC monitors its application by parties to conflict through its delegates in the field. For example, delegates observe whether or not the civilian population is properly protected from hostilities. They visit prisoners of war and other detainees to determine whether or not they are being treated in accordance with the provisions of the Third Geneva Convention and other relevant laws. They determine whether or not the population in occupied territory is receiving adequate care. Where belligerents fall short of their obligations, the ICRC is there to remind them.

Like States, the ICRC has humanitarian law related tasks in times of peace as in times of conflict. For instance, it provides technical advice to States in connection with ratification and national implementation of humanitarian law, and it strives to disseminate humanitarian law, particularly among the armed forces. As the promoter of humanitarian law, the ICRC contributes to its development and to that end, prepares for the work of the Diplomatic Conferences empowered to adopt new texts. This is how the Geneva Conventions and Additional Protocols came into being. A year after its founding, for example, the ICRC drafted the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.

The ICRC does not bear these responsibilities alone. Although it is at the origin of, and is the focal point for, armed conflict issues within the International Red Cross and Red Crescent Movement, the ICRC is merely one component of the wider Movement. The International Federation and the National Red Cross and Red Crescent Societies together with the ICRC make up the Movement. States also play an important and direct role in the quadrennial international conference of the Movement, the 28th of which is to take place in December 2003.

The operating principles of the International Red Cross and Red Crescent Movement are humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Although all components of the Movement are bound by the principles of independence and neutrality, cooperation among States, National Societies, the Federation and the ICRC is crucial to the Movement's ability to undertake humanitarian action. Thus, I am especially pleased to note the history of excellent cooperation between the ICRC and Thailand, not the least example of which is the large Thai/Cambodian border operation undertaken in the 1980s to bring humanitarian relief. Likewise, I note with great appreciation the outstanding cooperative relations between the ICRC and the Thai Red Cross. The ICRC wishes to express its special gratitude to the Thai Red Cross for its demonstrated commitment to the promotion and understanding of humanitarian law issues in Thailand, as evidenced by this very meeting among other things. We are equally grateful for the fundraising efforts of the Thai Red Cross and the generosity of the Thai Government, as shown by the recent contribution to the ICRC's Emergency Appeal for Iraq.

The Role of International Humanitarian Law in Contemporary Armed Conflicts

A. Humanitarian Law as a Tool to Break the Cycle of Violence

Having spoken about the general, interrelated roles of humanitarian law and the ICRC, I hope to have provided sufficient background to discuss a topic much in the news and in the minds of those interested in humanitarian law today, namely the role of humanitarian law in contemporary armed conflicts.

I would like to begin my remarks in this regard with a question: How can respect for the rules of war contribute to the goal of peaceful coexistence among peoples? I have already stated that the law of armed conflict Tacitly accepts the fact of armed conflict. The Geneva Conventions and their Additional Protocols, *inter alia*, regulate merely the conduct of hostilities and the treatment of persons in the power of the enemy.

It is no accident, however, that the law of armed conflict is also known as international humanitarian law, since its function and all its myriad provisions are designed with one goal in mind, namely minimizing human suffering. In 140 years of working in the field to protect and assist victims of war and other forms of violence, the ICRC has learned much about the sources of human suffering. One lesson is that conflict begets conflict. Atrocities visited upon civilian populations not only exact their

obvious toll on the victims, they also impede reconciliation and fan lust for retribution and revenge. Where the perpetrators of war crimes enjoy impunity, today's victims are that much more likely both to continue to be victimized and to become tomorrow's perpetrators.

The ICRC's experience also leads us to the conclusion that respect for humanitarian law in both international and internal conflicts contributes mightily to the chances of breaking the cycle of violence. Where parties to conflict respect the immunity of the civilian population from attack, and where perpetrators are brought to justice - in other words, where the rule of law applicable in war is respected, the need felt for subsequent resort to force and the ability of demagogues to fuel and prey upon residual anger and frustration are considerably diminished.

B. The Additional Protocols, the International Criminal Court and Other Instruments of International Humanitarian Law

For these reasons, the ICRC urges States to consider becoming parties to humanitarian law instruments to which they do not already belong. The 'first among equals' may be the 1977 Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts. AP I elaborates protections for both civilians and the conduct of hostilities, primarily in response to technological advances in the means and methods of warfare. In connection with AP I, the ICRC recalls with satisfaction the pledge that Thailand made at the 27th International Conference of the Red Cross and Red Crescent Movement to accelerate its consideration as to whether to become a State Party to the Additional Protocol. The ICRC encourages Thailand to continue its efforts in that regard.

The ICRC also urges States to consider becoming parties to the 1977 Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts. AP II elaborates the rather basic provisions of Article 3 common to the Geneva Conventions, specifically applicable in non-international armed conflict, by adding to the protections available to the civilian population without according any legal status to rebel forces. These measures, when enforced, not only prevent unnecessary suffering during the conflict but also aid in reconciliation thereafter.

> “The [International Committee of the Red Cross (ICRC)] commends Thailand for its strong commitment to the elimination of anti-personnel landmines [...]”

The 1998 Rome Statute establishing the International Criminal Court is another instrument that upholds and enforces the values, principles and rules of humanitarian law. The ICC has the potential to become a powerful tool in the struggle to put an end to impunity for the most serious crimes of all: genocide, crimes against humanity, war crimes and once a definition is agreed upon, the crime of waging aggressive war. While respecting the sovereign primacy of States to prosecute crimes that occur within their own borders or that are committed by or against their nationals, the ICC stands ready to act when States are either unwilling or unable to do so. The Rome Statute more than adequately reflects the fundamental rights to a fair trial to which accused persons are entitled and contains formidable protections against unfounded or politically motivated prosecutions. By repressing and discouraging the commission of serious crimes of concern to the entire international community, the ICC, like other instruments of international humanitarian law, will help to bring justice and dignity to perpetrators and victims alike. In doing so, the ICC, like other instruments, will discourage the cycles of retribution and revenge and encourage the process of reconciliation that is a prerequisite to durable peace. For these reasons, the ICRC urges States to ratify the Rome Statute.

In 1980, the Convention on Certain Conventional Weapons (CCW), with its three Protocols, was adopted. CCW has become the cornerstone of humanitarian law regarding the prohibition or restriction of weapons. We hope Thailand will soon become a party to the treaties that it has not yet adhered to.

In the last decade, several other important treaties have been adopted:

In 1993, the Chemical Weapons Convention;

In 1995, the prohibition of blinding laser weapons (through the Fourth Protocol to the CCW); and in 1996, an amendment of Protocol II to the CCW;

In 1999, a new Protocol reinforcing the protection of cultural property (new Protocol to the 1954 Convention);

In 2000, the strengthening of the protection of children against recruitment into armed forces or armed groups;

And of course, in 1997, the Ottawa Treaty banning anti-personnel mines.

The ICRC commends Thailand for its strong commitment to the elimination of anti-personnel landmines, as evidenced by its hosting this week of the Fifth Meeting of the States Parties to this Convention, in which close to 500 delegates from all over the world are participating. Thailand was among the first forty States to ratify the Convention, thereby triggering its entry into force on March 1, 1999. Earlier this year, Thailand completed the destruction of its over 50,000 stockpiled anti-personnel mines as required by Article 4 of the Convention. It is also the ICRC's understanding that Thailand is drawing up legislation to provide for penal sanctions for violations of the Convention, as required by Article 9 of the Convention. We congratulate Thailand on the great strides that it made not only in implementing

the Convention but also in promoting adherence to the treaty in Asia. It is our hope that other States on the continent- which is, after all, the most mine-affected in the world - will follow Thailand's lead and commit to the total elimination of these indiscriminate weapons by joining the Convention.

C. The Adequacy of International Humanitarian Law to Deal with the Conflicts of the 21st Century

When considering the role of humanitarian law in 21st century conflicts, perhaps no topic is more controversial than the role of humanitarian law in the fight against terrorism. It is therefore important to know what the law of armed conflict has to say about terrorism and human rights, and if I may be so bold, what the ICRC has to say about what the law of armed conflict has to say about terrorism and human rights.

A few basic points must first be mentioned:

- International humanitarian law applies only during and to armed conflict;

- Other legal regimes such as domestic and international criminal and human rights law also apply during armed conflict, though sometimes to a limited extent;

- Terrorism and the "war on terror" are at times manifested in armed conflict, at other times not; and

- There are good reasons involving the global balance between state and personal security, human rights and civil liberties for this division of legal labor between humanitarian law and other laws.

The debate about whether international humanitarian law protects war victims adequately is not new but has certainly intensified since the end of the Cold War, as the number of internal armed conflicts, often fuelled by religious and ethnic differences and characterized by shocking brutality, has increased. There have also been conflicts in which State structures disintegrate to a point where "warlords" are able to take the fate of entire populations into their hands. All too often, civilians become the very targets of the war and are not just "collateral damage".

The debate took on another dimension after September 11, 2001. The attacks were followed by the announcement of a "war" upon the perpetrators and terrorism more generally. This situation has led to some uncertainty about the status of humanitarian law, which has been exacerbated by assertions that it is not applicable to or adequate in the effort to combat terrorism and even that it constitutes an obstacle to justice.

One complication in the discussion about the role of humanitarian law in relation to terrorism is that there exists no single, universally accepted definition of the term "terrorism." A second complication lies in the fact that while the existence of international armed conflict may be relatively easy to determine, the same cannot be said for internal armed conflict. Internal armed conflict must be distinguished from lesser forms of violence (such as sporadic riots and other internal disturbances), which may lead to good-faith differences about whether one or more terrorist acts or a State's response to them amounts to armed conflict.

While terrorism can occur within armed conflict, armed conflict can equally be a component within a larger context of terrorism or counter-terrorism. Some observers suggest that the attacks of September 11 were acts of war in a larger terrorist campaign. Likewise, armed conflict can be a component of efforts to combat terrorism, as witnessed, for example, in the US-led military intervention in Afghanistan.

The recent campaigns in Afghanistan and Iraq undoubtedly qualify as international armed conflicts. The legal qualification of other incidents of violence, detention and trial is, however, much less clear. One view is that the "war against terrorism" started well before September 11, 2001 and continues today. (On this view, it comprises attacks on the World Trade Center about ten years ago, on the American embassies in Nairobi and Dar-Es-Salaam, on the "USS Cole" in Yemen, in Karachi, on a hotel in Mombasa, in Bali and more recently, in Riyadh and in Casablanca. In Yemen, an American drone launched a missile that killed alleged AI Qaeda members.) All these events are allegedly linked and are part of a protracted "global war". As such, they would form part of an international armed conflict, to which humanitarian law would apply. Many other observers consider this definition of armed conflict to be too sweeping.

The quality of this debate has probably suffered from a misunderstanding of the role of humanitarian law in the fight against terrorism. Because of the tendency to equate the notion of "war against terrorism" with "armed conflict", humanitarian law has been expected to provide answers to situations that fall outside its scope of application. And all too often, confusion has arisen between the rules governing when force may be used, which are contained in

> "...Clearly, the main problem today is not a lack of rules but a lack of political will to implement and respect existing rules."

the UN Charter - the jus ad bellum - and the rules that apply once an armed conflict has started, i.e. the jus in bello, whether the use of force was legal or not. It should be recalled that violations of humanitarian law as such can never be the basis for the use of force and that even an alleged "just war" would not be exempt from the application of humanitarian law.

The proposition that the so-called "war against terrorism" constitutes an armed conflict raises several difficult challenges. Clearly, the "war against terrorism" does not fit well into the existing categories of armed conflict. This alleged "war" meets neither of the two criteria to qualify as an international armed conflict, as it is not between States nor a war of national liberation. The recently coined notion "war against terrorism" has properly been compared to the "war on poverty" and the "war on drugs". It is so widely used and broad as to lack any real significance, more a slogan than a legal term. The notion of "armed conflict", on the other hand, has taken more than a hundred years to develop and has a more definite meaning. It is certainly important and useful to discuss these issues, but before changing this doctrinal cornerstone of humanitarian law, the advantages and shortcomings of such a change should be very carefully analyzed. Under existing humanitarian law, it is hard to view the "global war against terrorism" as a "global armed conflict". Humanitarian law currently applies when the level of force used amounts to an armed conflict. This approach limits the scope of humanitarian law to those situations that it is intended to regulate. As was indicated previously, that level of force was reached in the military operations in Afghanistan and Iraq.

Finally, those who would apply the notion of armed conflict to all aspects of the fight against terrorism should bear in mind that all parties to a conflict have the same rights and duties under international humanitarian law.

All these complicating factors, and indeed the lack of fit between much of the so-called "war on terror" and the provisions of humanitarian law, have nurtured a misbegotten view that the laws of war must be reformulated to embrace the conflicts of the 21st century. It is the ICRC's firm belief that humanitarian law, while not perfect, is sufficient to deal with today's armed conflicts. Attempts to alter its content significantly in response to the perceived novelties of "new conflicts" carry the risk of upsetting a finely tuned balance that humanitarian law strikes among the interests of personal security, State security, and individual rights and liberties. Humanitarian law is not designed to deal with all the exigencies of terrorism and the efforts to combat it, but it is adequate to deal with them when they amount to armed conflict.

Parenthetically, there is little evidence that domestic and international laws and institutions of crime and punishment are not up to the task when terrorism and the fight against it do not amount to armed conflict. Police and judicial cooperation among States and domestic law enforcement are usually much better adapted and more efficient in such cases. Indeed, terrorist acts are first and foremost crimes. Several international conventions have been adopted over the years to respond to international terrorist crimes.

Meanwhile, there are powerful reasons to conclude that application of humanitarian law in circumstances that do not amount to armed conflict would do more harm than good. While the purposes of humanitarian law are humanitarian, it is also true that death and destruction, detention without judicial review and trials with lower standards of rights are permitted, albeit within defined limits, in situations of armed conflict. Accordingly, the determination that a particular situation is subject to the law of armed conflict can have decidedly un-humanitarian consequences.

The Geneva Conventions and their Additional Protocols did not anticipate September 11, 2001. And yet, the balance struck between humanitarian law and other legal regimes is probably more valid today than ever before. Civil rights, judicial guarantees, human rights and the rule of law are not impediments to human security. They are, in fact, ultimate repositories. Humanitarian law is in particular a bulwark of human security in armed conflict.

The power of humanitarian law to protect and assist victims lies in the limitation of its application to true conditions of armed conflict. Below that threshold, other legal regimes applicable should, and do, apply. To apply the laws of armed conflict, and thereby displace domestic and international criminal and human rights law, in situations below that threshold would diminish the human rights and civil liberties protecting us all. We owe it to ourselves and to future generations not to take such radical measures unless and until the legal mechanisms otherwise applicable in peacetime have proven unsuited to the task.

This does not mean that in the eyes of the ICRC all will be well as long as humanitarian law is not mistakenly applied to circumstances in which it does not belong. I previously mentioned the increasing number of internal armed conflicts, often fuelled by religious and ethnic differences and characterized by shocking brutality; conflicts in which State structures disintegrate to a point where "warlords" are able to take the fate of entire populations into their hands; conflicts in which all too often civilians became the very targets of the war, not just its unintended victims. As a result of its activities in the field, the ICRC speaks from grim experience when it asserts that these are the conflicts that present the greatest challenges for humanitarian law. Rather than applying humanitarian law to circumstances in which it does not belong, these challenges concern the lack of respect for humanitarian law to circumstances in which it does belong to situations of armed conflict.

Implementation of and respect for the law are always challenges. Implementation of humanitarian law must occur in three phases, which may overlap. First, States should ratify the relevant treaties and, where necessary, enact national laws and regulations to implement them nationally. They must also teach the law,

in particular to their armed forces. Second, States - and organized armed groups in internal armed conflicts - must apply the law in armed conflict. The obligation to apply the law is not, however, limited to the parties to the conflict. It includes other States, which must respect and also ensure respect for the Geneva Conventions and their Additional Protocols. States' unreadiness to contribute to ensuring the respect for humanitarian law, for example, by denouncing violations or exerting pressure on the parties to a conflict, is regrettable. Third, States have an obligation to pursue and prosecute anyone suspected of having committed grave breaches of the Geneva Conventions and the Additional Protocols.

Clearly, the main problem today is not a lack of rules but a lack of political will to implement and respect existing rules. Accordingly, the ICRC's ongoing efforts to ameliorate human suffering will focus on the requirement of parties to a conflict to implement available law, to respect applicable law and to ensure respect therefore.

Thank you. ❖

Human Security in Asia

Delivered at the Second Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 16 June 2005 in Bangkok, Thailand
by

H.E. Dr. Sadako Ogata

H.E. Dr. Sadako Ogata was the first President of the Japan International Cooperation Agency (JICA), serving from October 2003 to March 2012. She co-chaired the UN Commission on Human Security from its establishment in 2001 until 2003. During her time at the Commission, she was also appointed the Special Representative of the Prime Minister of Japan on Afghanistan Assistance and co-chaired the International Conference on Reconstruction Assistance to Afghanistan in January 2002 in Tokyo, Japan. Prior to her role at JICA and UN Commission on Human Security, H.E. Dr. Ogata was the United Nations High Commissioner for Refugees (UNHCR) from 1991 to 2000, and the Independent Expert of the United Nations Commission on Human Rights on the Human Rights Situation in Myanmar, in 1990. She received a Ph.D. in Political Science from the University of California at Berkeley in 1963. She held an M.A. in International Relations from Georgetown University in Washington, D.C. and a B.A. from the University of the Sacred Heart in Tokyo.

Her Royal Highness Princess Maha Chakri Sirindhorn,

Excellencies,

Ladies and gentlemen,

I am honored to have this opportunity to be in Bangkok and to present the second Lecture inaugurated by Her Royal Highness Princess Maha Chakri Sirindhorn. Before proceeding to deliver my statement, let me express my deep sympathies for all the victims of the tsunami that wiped out villages and homes. Although you have proven your resilience and effectiveness through the recovery, the pain of losing your loved ones will linger on for a long time.

The title of this lecture series is international humanitarian law. Today, I would like to address the issue of "human security" as an integral approach to reinforce the role of international humanitarian law in meeting the requirements of today's world.

We live in a globalizing world where the sources of insecurity seem to be rapidly expanding. Today, money, goods, information and people move fast across borders. Diseases, such as SARS, bird flu and HIV/AIDS as well as weapons of mass destruction - nuclear or chemical - threaten people within and across borders. A threat in one country quickly affects its neighbors. Not even the strongest states can totally meet the multiple security needs of their people.

Of course, globalization has had positive effects on people's lives. The increasing openness in trade, investments and information flows has contributed to a remarkable rate of economic growth in the world, particularly in Asia. At the same time, however, the rising interdependence has meant that the region has become more vulnerable to adverse developments elsewhere. The financial crisis in 1997 brought this reality painfully home.

The impact of this crisis was particularly harsh on the weakest strata of society, in spite of the fact that many countries in Asia had been experiencing rapid economic growth. Asian societies known for their traditional strong family and communal ties were not able to ride through the difficulties and were devastatingly affected. Confronted with critical situations in neighboring countries, then Prime Minister of Japan Keizo Obuchi looked for ways to protect people from having their survival threatened or dignity impaired.

Initially, he sought ways to establish social safety nets to offset sudden economic downturns. Eventually he began to argue in favor of a longer-term comprehensive strategy to deal with a variety of threats on people's fundamental existence, livelihood and dignity. In his speech in Hanoi on 16 December 1998, Obuchi introduced the idea of "human security," and stated that all governments in Asia must collectively engage in innovative reforms to uphold people's existence against all threats, be they environmental degradation, proliferation of diseases or organized crime. He particularly emphasized the crucial role to be played by civil society and non-governmental organizations in such all out efforts.

Indeed, toward the end of the 20th century, there emerged new forms of conflict and social crises that threatened the lives of the people worldwide. At the time, I was serving as UN High Commissioner for Refugees, grappling with the challenges of providing protection and solutions to refugees, internally displaced people and other victims of conflict. In the decade following the end of the Cold War, the nature of war shifted from inter-state to intra-state conflicts. The sources of insecurity became largely internal, with ethnic, religious and political groups fighting over contested rights and resources with vengeance. There were brutal conflicts in Bosnia-Herzegovina, Kosovo, Chechnya, Sierra Leone and genocide in Rwanda, to name a few. The international community, however, was short on effective tools to deal with the myriads of these claims.

> “[...] there was a need for a different kind of approach to security, one that focused on the security of human beings.
> [...] The security debate, then, must begin by addressing the comprehensive security needs that reflect the aspirations of people.”

Traditionally, security threats were assumed to emanate from external sources. States were held responsible to ensure the security of their boundaries, people, institutions and values. States built powerful military structures to defend themselves and people were presumably assured of their security by the shields of the state. Territorial boundaries were considered inviolable, and external interference in internal affairs of sovereign states was not acceptable. But in internal conflict situations, people were victimized by the power of the state or caught in violence between groups within the state. Humanitarian agencies, such as UNHCR, were to provide emergency assistance and protection staying close to the victims. While the challenges fell on humanitarian agencies to protect the civilians caught in conflict, the need for political, military and development measures to protect these people became increasingly evident.

I eventually came to realize that there was a need for a different kind of approach to security, one that focused on the security of human beings. People had to be at the central focus, rather than the state. In fact, threats confronting people and communities in the globalizing world do not only emanate from external sources, but are also varied in nature and could not be defined by borders. The security debate, then, must begin by addressing the comprehensive security needs that reflect the aspirations of people.

The 2000 UN Millennium Summit provided the opportunity to launch a broadened concept of security. The Secretary-General declared that people should be assured of “freedom from want” and “freedom from fear”, thus addressing the challenges of responding to economic and social needs, as well as political and military threats. Responding also to this UN declaration, Japan, under Prime Minister Mori who succeeded late Prime Minister Obuchi, announced its commitment to promote human security. In so doing, Japan came up with two major initiatives: one was the establishment of the UN Trust Fund for Human Security, and the other was the setting up of the Commission on Human Security. The Commission was mandated “to develop the concept of human security as an operational tool for policy formulation and implementation.”

I was invited to co-chair the Commission on Human Security, together with Nobel Prize economist Amartya Sen. The Commission focused on the security of people who are under critical and pervasive threats, victims of conflict, refugees and displaced persons, and people living in abject poverty facing hunger and disease. The question of long-term inequalities among groups was also identified as a key factor that led to violence and eventually to humanitarian and political crises. After two years of research, the report, "Human Security Now!" was published and has been translated into six languages.

I would like to recognize the special contribution made by Thailand. You provided Surin Pitsuwan to take part in the Commission's work. You invited the Commission to meet in Bangkok and hold a session with a large number of NGOs. In fact, Thailand has taken the lead in the promotion of "human security" as it is the only government that has a Ministry of Social Development and Human Security. You will be chairing the Human Security Network the coming year, and I look forward to your leadership of this important inter-governmental set up.

Let me now turn to the actual work of the Commission. After two years of concentrated efforts, the Commission proposed a framework of action that promoted the protection and empowerment of people. Rather than viewing people solely as passive recipients of assistance, support or protection by the state, the Commission regarded people as active contributors who

can determine their own fate and that of their community. By empowering people through education, social mobilization and participation in public life, they can cope better with threats confronting them in daily life. This implies a "bottom-up" approach. Strengthening the security of people refers not only to respecting the civil and political rights of people but also to their economic, social and cultural rights. Without access to basic education, health services or jobs, for example, the ability to participate in public life would remain limited.

This focus on "bottom-up" approach does not lend irrelevant the notion of state security. Rather, the Commission regarded the protective role of the state as vital in ensuring human security. Protection means improving law and order and strengthening judicial institutions so that state systems and authorities can better serve the people. Ensuring access to their basic human needs is a responsibility of a well-functioning state. The strengthening of effective state functions implies a "top-down" approach.

The Commission's approach was therefore two-pronged: top-down and bottom-up. Efficient and effective administrative capacity is vital for human security. Education and training are key to empowerment. Access to water, schools and health facilities is fundamental, but what is important is for the communities to build their capacity to manage these facilities on their own and gain self-reliance. While people protected may exercise choices, only those empowered can make better choices and actively prevent and mitigate the impact of sudden down-turns and insecurities. As Amartya Sen insisted, only when people achieve freedom from want and fear, can they attain human dignity and take hold of our collective future.

To promote human security, Japan has recently incorporated this concept in its official development aid policy. Japan International Cooperation Agency (JICA), to which I am now serving as president, has begun to strengthen programs from the human security perspective. In a water project in Senegal, for example, I observed that JICA not only deals with the project as pure infrastructure construction but also uses the occasion to train the community to maintain the facilities. In the course of implementation, the villagers themselves gained basic mechanical skills and came up with the idea of having women in charge of financial management to maintain the water system themselves.

Japan traditionally had incorporated aspects of human security promotion in its economic development policies, although it did not consciously place it in a "human security" context. In providing development assistance in Asia, Japan had stressed self-reliance and ownership, building the capacity of people. Here in Thailand, for example, a technical school was started in 1960, with JICA's assistance. With the support of Japanese Official Development Assistance (ODA), the tiny school with 23 students eventually grew into a major technical institute producing thousands of engineers annually. Throughout the decades that followed, many graduates of King Mongkut's Institute of Technology at Ladkrabang (KMITL) have contributed directly to the development of Thailand in the field of telecommunication and electronics. JICA continues to support the Institute, promoting exchange of skills and friendship between Thai and Japanese engineers.

As Japan extended development assistance to Asian countries since the 1950s, many of the Asian countries have experienced remarkable growth. Today, having overcome the financial crisis of the late 1990s, the region for the most part is stable and showing rapid advancement, both economically and socially. With Thailand being in the lead, many of the ODA recipient countries in Asia are growing into partners and, in turn, helping countries in other parts of the world. We must continue to work in partnership on ways to promote stability and prosperity beyond the region.

The concept of human security has had some influence on the planning and implementation of international action. The experience of Afghanistan illustrates how the protection-empowerment framework can be relevant in the post-conflict peacebuilding process. Having suffered more than 20 years of conflict and persistent drought, Afghanistan ranked the lowest in the world by any measure of development. Since the interim government was established in December 2001, the international community made major efforts to rebuild the country through a series of reconstruction conferences that quickly and successfully mobilized resources. While governing capacities were strengthened at the state level, reconstruction of schools, health facilities and water supply advanced at community levels. While the Afghan army and police were being trained, 3.8 million refugees returned home and five million children, including girls, went back to school. The humanitarian and development agencies collaborated to realize a seamless transition, while the Afghan government was keen to exercise ownership.

Japan, too, is playing an important role in helping Afghanistan. It is taking the lead in DDR (disarmament, demobilization and reintegration). Facilitating former combatants to lay down arms and to be reintegrated into civilian society is a difficult, but important step in peacebuilding. Japan is also contributing to reconstructing main highways, as well as building schools and providing other development assistance at the community level. Japan's assistance to Afghanistan is an experience of how a civilian power, such as Japan, can contribute to the peace and development of a post-conflict country largely through non-military means. Working closely with the Afghans and

other donors, reconstruction of Afghanistan is an experience of how international efforts can be mobilized to protect the people and communities through state-building. It can also guide the process in Iraq, Sudan and many others to come.

But how do we promote human security when there is a sudden economic, social or environmental down-turn? How do we begin to address a rapidly deteriorating security situation and prevent it from developing into a full-fledged conflict? How can we protect civilians in the midst of an on-going conflict, such as in the Darfur region of the Sudan? These are questions yet to be answered. The question of intervention is a highly debated issue, but what is most urgently required is to plan and strengthen national and international capacity to prevent the aggravation of the situation through combined means of humanitarian aid, human rights observations, and police and peacekeeping presence. Humanitarian aid is a vital tool for protecting civilian victims and for minimizing their suffering and saving their lives, but it cannot be left to carry on the responsibility alone. It has to be followed up by a rapid extension of development assistance.

In Africa, I am happy to note some positive signs of regional and international initiatives. Last year, I had the opportunity to visit the African Union as a member of the group chaired by Khun Anand, who was entrusted by the Secretary-General to seek ways to assess and strengthen UN capacity in dealing with peace and security. The report of this High-level Panel on Threats, Approaches and Change will form the core of the forthcoming Plenary Meeting of the General Assembly in September.

> “[…]We may not be able to prevent earthquakes, but there is so much we can do to prepare and minimize the impact of future disasters.”

Following the meeting with the African Union (AU) leaders, I made a three-week trip to four countries in Africa. I was quite impressed with their determination to take on Darfur and other crises. For example, the AU is sending protection troops to Sudan to monitor the cease-fire in Darfur. African countries are also discussing how to set up regional rapid reaction forces that can quickly be deployed in crisis situations, without having to wait for the slow deployment of international peacekeepers. Of course, their resources are limited and the challenges are insurmountable. But I believe it is time that the international community supports these initiatives in Africa, whose peace and stability are not unrelated to us all.

The AU Charter, in fact, clearly refers to human security in its chapter on Peace and Security. In Europe, too, a human security doctrine is being proposed before the European Union, which attempts to organize a civil and military combined force that would not threaten but complement the state to protect its people from severe physical insecurity. These are encouraging developments in regional initiatives which must be supported by the international community and possibly emulated in other regions of the world. Although regionally diverse, I hope that creative and practical initiatives would also arise from Asia to collectively promote human security in the region and beyond.

Asia has experienced sudden down-turns in economic and social areas in the past. The region was also hit recently by a devastating tsunami - a tragedy caused by a natural, environmental threat that could strike again anytime. How can we shield people or make people more resilient in the face of such a sudden and unexpected threat? What human security ultimately aims to achieve is to empower people to better their lives in general, but also to minimize the impact of inevitable threats.

When the tsunami hit the Asian coasts in December last year, within two days, JICA deployed emergency medical teams to the affected countries. As the emergency teams worked in shifts, JICA sent survey teams to establish reconstruction programs to begin longer-term work on rehabilitation and reconstruction of communities. To support the empowerment of people and communities, JICA held workshops to exchange disaster relief and reconstruction experiences and is currently working also with Thailand and other countries in the region to set up an early warning system. We may not be able to prevent earthquakes, but there is so much we can do to prepare and minimize the impact of future disasters. The key is to enlighten and empower the communities, while setting up systems to effectively minimize the risks and their impact.

Another way to begin promoting human security in Asia may be to participate in the Human Security Trust Fund, established at the United Nations. Its aim is to promote multi-sector aid projects in line with human security. The Trust Fund was initially set up by Japan, as mentioned earlier, and has funded community development projects in Afghanistan and refugee integration projects in Zambia, among others. I hope that other donors, especially countries from Asia, can join in the efforts to promote concrete activities.

Lastly, promoting human security is not only the concern of governments. Private businesses and civil society play a major role in strengthening the power of people and communities. Investments and trade not only enhance the global economy, but also strengthen and empower people, as proven in many Asian countries. Above all, human security is an action-oriented concept. It leads the way to build a secure world, by mobilizing the broadest participation of people and communities. Helping people in remote countries toward self-sufficiency can nurture indispensable trust and partnerships in this globalizing world. In fact, it opens the door to the advancement of humanitarian law and order.

Thank you ❖

International Humanitarian Law: Recent International Developments, Regional Momentum and Opportunities for the Kingdom of Thailand

Delivered at the Third Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 25 June 2007 in Bangkok, Thailand
by

Professor Jacques Forster

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Professor Forster has an extensive publication record covering topics related to North-South relations, international development cooperation, and humanitarian issues.

Your Royal Highness,
Mr. Secretary General,
Excellencies,
Distinguished Guests,
Ladies and Gentlemen,

It is a great honour for me to deliver this lecture and I would like to express my gratitude to HRH Princess Maha Chakri Sirindhorn for commitment to promote international humanitarian law. I will start by reviewing the main objectives of international humanitarian law and its history up to the 1977 Additional Protocols, the 30th anniversary of which we have just celebrated. I will then highlight a few more recent developments, some from the last decade and others unfolding today. Finally, I will say a few words on the role that Thailand is playing or could play in this.

Development of International Humanitarian Law - Goals and Principles

Allow me to begin by recalling the purpose served by international humanitarian law, or IHL for short. The idea on which IHL is based is a very simple but compelling one. It is that certain actions are not permitted, even in wartime. To put it in more legal terms, as expressed by Article 35 of Additional Protocol I: "the right of the Parties to the conflict to choose methods or means of warfare is not unlimited". This reflects an acknowledgement of our common humanity and the need to respect the dignity of every individual human being. It is on the basis of this recognition that IHL has been developed and codified overtime. It pursues its aim by means of two complementary approaches. The first is to protect certain categories of people who are not - or are no longer - taking part in the hostilities. The second is to restrict the methods and means of warfare allowed, which is of benefit to all, civilians and combatants alike.

Humanitarian law does not call into question the lawfulness of war itself, nor that of any particular conflict. It aims to limit the suffering that war can cause. It has been carefully crafted to strike a balance between the legitimate security needs of States and the protection of human life and basic rights. IHL has its roots in the universal idea that some degree of humanity must be preserved even in the midst of war. For example, in Thai history during the era of King Ramkamhaeng the Great in the late 13th century, the Ramkhamhaeng stele included a prohibition on ill-treatment of prisoners of war and as well as prohibition of summary punishment of prisoners of war without trial. International humanitarian law simply expresses this principle in modern and universal legal terms.

"Geneva Law" and "The Hague Law"

As a result of the work of Henry Dunant and his fellow founding fathers of the International Committee of the Red Cross, the very first "Geneva Convention" was adopted in 1864. Its purpose was to ensure that wounded soldiers - regardless of which side they were on - would not be left to die on the battlefield but would be protected and cared for. This pioneering treaty laid the foundation for what is known today as "Geneva law", that is, the rules governing what happens to persons who have ceased to fight or have fallen into the power of the adversary. It has been developed through subsequent treaties, and led to the four Geneva Conventions of 1949 which protect the wounded, sick and shipwrecked in armed forces in the field and at sea, as well as prisoners of war and civilians.

It is noteworthy that the 1949 Geneva Conventions achieved universality following the accession of Nauru and of Montenegro in 2006. This universality is unique among modern treaties. The fact that all States are today bound by the Geneva Conventions reflects the commitment of the international community as a whole to respecting and to ensuring respect for IHL in all circumstances. The universality of these important instruments represents a powerful argument against those who claim that IHL is no longer adequate to deal with modern armed conflicts. On the contrary, as we will see, the principles of IHL remain as relevant as ever.

The evolution of Geneva law is paralleled by the development of the law governing the conduct of hostilities commonly referred as "The Hague law". It deals with the means and methods used to wage war. The landmark treaties adopted in 1899 and in 1907 in The Hague form the basis of this body of law. Further prohibitions on chemical and biological weapons were adopted later, as was the 1954 Convention for the protection of cultural property in the event of armed conflict.

The Additional Protocols of 1977

It was the adoption in 1977 of Protocols I and II additional to the 1949 Geneva Conventions that, in a sense, merged Geneva law and The Hague law into one entity that forms the core of today's IHL. The two Additional Protocols provide a crucial legal framework for protecting civilians in armed conflict. This year marks the 30th anniversary of the Additional Protocols' adoption and their importance deserves special mention. This lecture is an opportunity to reflect on the past, consider the present and contemplate the future.

The major achievement of Additional Protocol I was to put into writing, and therefore reaffirm and clarify, several core principles regarding the conduct of hostilities. The most central one, from which in a sense all the others derive, is the principle of distinction. This principle requires the parties to an armed conflict to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. I think there is no need for me to emphasize the crucial importance this principle retains 30 years on. Unfortunately, this principle is all too often violated in some of today's conflicts, when one or several parties either launch indiscriminate attacks on or, even worse, deliberately target the civilian population with the aim of instilling terror among the people. Another central principle enshrined in Additional Protocol I is the principle of proportionality, according to which attacks are lawful only if the incidental civilian casualties and damage are not excessive in relation to the concrete and direct military advantage anticipated. Another is the principle of precaution according to which the military commander preparing or carrying out an attack has the obligation to choose tactics, methods and weapons that minimize the risk of civilian casualties. I do not think anyone today would dare call these principles inadequate.

Additional Protocol I also confers special protection on certain categories of people made particularly vulnerable by conflict. Children, for example, are entitled to respect and the warring parties have the obligation to provide them with the help and the care they need. Similarly, Additional Protocol I stipulates that women must be protected against rape and

forced prostitution, and that the special needs of pregnant women or nursing mothers must be given absolute priority.

Among many other innovative rules, I would like to mention briefly the responsibility of commanders laid down in Article 87 of Additional Protocol I. The military commander is in charge of planning and carrying out operations with troops he has trained and is leading. It is therefore his duty to ensure that those troops are familiar with their obligations under IHL, that IHL is implemented, and that any violations are repressed.

Additional Protocol I represented a step forward in adapting the law to new demands. Additional Protocol II - which supplements Article 3 common to all four Geneva Conventions - was the first international treaty devoted exclusively to the protection of persons affected by non-international armed conflicts. This is particularly relevant in our times, as these constitute the majority of today's conflicts. Article 3 common to the Geneva Conventions remains a cornerstone of protection as it embodies, in the words of the International Court of Justice, the "elementary considerations of humanity". In several respects it is supplemented, or set out in greater detail, by Additional Protocol II, which includes rules on fundamental guarantees for all those not involved in the fighting, on the treatment of persons deprived of their liberty and on judicial guarantees for individuals subject to penal prosecution. This Protocol first gave legal expression to a notion that is widely accepted today - that the right of the warring parties to choose methods or means of warfare is not unlimited, even in non-international armed conflicts. And this is true for all parties, by which I mean both States and non-State armed groups.

Indeed, one very particular aspect of the law of war governing non-international armed conflict is that it applies equally to both categories of belligerent.

IHL has sometimes been criticized for being a creation of the Western world. I mentioned earlier that the values enshrined in IHL treaties were common to all cultures and civilizations long before the codification process started in the second half of the nineteenth century. Moreover, at the time of adoption of these two Additional Protocols in 1977, the world was already emerging from the colonization period, and States from all regions were represented during the negotiations. The Protocols therefore exemplify the multicultural acceptance of the principles they enshrine. What remains to be achieved in this regard is the universal adoption of these essential instruments. Protocol I has been ratified or acceded to by 167 States to date; Protocol II by 163.

Today, many of the rules set out in these Protocols are considered to be customary, meaning that they apply to international and non-international armed conflicts alike. This was the conclusion of a study carried out under ICRC auspices and published in 2005. In the several years needed for the study's completion, researchers carried out an extensive review of State practice in more than 40 countries. They examined military manuals, IHL implementation on the battlefield, court decisions and government policies. When we say that these rules are customary, we mean that they are also binding on States not yet party to the Protocols, as well as on any non-State armed groups that might operate in those countries.

Several States in the ASEAN regions are currently considering accession to one or both Protocols. This is an encouraging sign that these treaties are moving towards universality. Thailand became party to the four Geneva Conventions of 1949 very early on, in December 1954. In a year when we are celebrating the 30th anniversary of the Protocols' adoption, a year that will also see the 30th International Conference of the Red Cross and Red Crescent, I would like to take the opportunity of my presence here to encourage the Kingdom of Thailand to continue working towards the fulfilment of the pledge it made at previous International Conferences of the Red Cross and Red Crescent "to pursue the efforts to become party to the 1977 Additional Protocol I of the 1949 Geneva Conventions."

"[...] the values enshrined in IHL treaties were common to all cultures and civilizations long before the codification process started in the second half of the nineteenth century."


INTERNATIONAL COMMITTEE

While recognizing the importance of becoming party to these fundamental instruments, we should nevertheless not forget that international humanitarian law treaties are all too often breached on today's battlefields. As the continuing suffering of civilians in particular shows us, the world is still far from universal application and respect for the law of war. Improving compliance is one of the main challenges faced by the ICRC. We have a constant presence in more than 80 countries, through more than 230 offices. This network enables us to be on the spot when it counts, to know the day-to-day situation of the people most seriously affected by conflict. Whenever we learn of a violation of IHL from a first-hand source, we draw the attention of the party concerned to its obligations. Through confidential dialogue, we encourage the authorities to prevent its recurrence. We endeavor to develop such dialogue with all relevant groups - not always an easy task. In the Darfur region of Sudan, for example, the opposition has been rapidly fragmenting and there are now around 20 identifiable armed groups. Still, the primary responsibility for complying with IHL lies with the States which have accepted that law, as well as with armed opposition groups in the case of non-international conflicts. Yet, more often than not, the warring parties lack the necessary political will to turn the law into concrete action, to adopt the legal framework and necessary procedures and to take the measures to prevent, as well as investigate and punish, any violations.

Recent Developments in International Humanitarian Law

I would like to highlight four specific recent developments in IHL, and will start with international criminal jurisdiction.

As pointed out earlier, IHL is much too often violated in present-day conflicts. People blowing themselves up in the middle of crowds, recruitment of minors, ill-treatment of detainees, forcing detainees to do dangerous tasks, fighters launching attacks from the cover of civilian objects, failure to take the required precautions in attacks, and disproportionately destructive attacks when the target is located among civilians - these are but a few of the violations that the ICRC witnesses daily. Most of the time, these violations go unpunished: neither the perpetrators nor their superiors must answer for the deed. But the past 15 years, we have seen promising developments in criminal jurisdiction for serious violations of IHL. To begin with, a number of ad hoc criminal tribunals for specific countries have been established, either international like the ones for the former Yugoslavia and for Rwanda, or of a mixed nature like the ones for Sierra Leone and for Cambodia. In addition, States agreed to the creation of the International Criminal Court in 1998. This raised hopes that the struggle against impunity would be given renewed impetus. As you probably know, in January this year, the Court's first case has been referred for trial. Finally, we have seen that States are more prepared than previously to exercise extraterritorial jurisdiction in order to prosecute and punish serious violations of humanitarian law. One must hope that, with time, this will lead to greater respect for IHL.

The Convention Against Enforced Disappearances

Another very encouraging development is the adoption, in December 2006, of the Convention against enforced disappearances. Enforced disappearance already constituted a violation of various norms of IHL and of human rights, both in international and non-international armed conflicts. However, this treaty is the first that explicitly prohibits enforced disappearance as such. Enforced disappearance is defined, in short, as abducting a person or depriving him of his liberty, followed by the denial that one has any knowledge of the whereabouts or fate of that person. It is the denial aspect that merits special mention, as it denies the abducted person's very existence. Leaving families with no news of the condition and whereabouts of their loved ones not only places them in a situation of cruel uncertainty, it is a violation of their right to that information.

The prohibition of enforced disappearance, like all rules of humanitarian law, allows no exceptions. No war, no State of emergency, no national security imperative can justify enforced disappearance. Just as no State, group or individual is above the law, so no person can be placed outside the law, and enforced disappearance tries to do just that. Once a person has been caused to disappear, it is often too late. It is beforehand that one must act to prevent disappearance - in the ICRC's case through its visits to places of detention. It is for these reasons that

the Convention is so important. These obligations, which already existed for example under the Third and Fourth Geneva Conventions, respectively regarding prisoners of war and civilian internees, have now been codified in a treaty applicable at all times for all categories of detainees. These obligations are critical to preventing persons from being caused to simply disappear. In fact, the ICRC has systematized the use of these tools - I mean registering the detainees visited, individually following up that registration on later visits and informing the detainees' families of their whereabouts - as part of its standard modalities when visiting every place of detention for three decades. Like the disappearance Convention itself, ICRC procedures in this area were developed as a response to disappearances in Latin America in the 1970s. We know how long and hard these countries had to struggle to come to terms with that period, and in particular with the anger and grief of the relatives of people who had disappeared. By explicitly outlawing enforced disappearance, the Convention will, in addition to preventing great suffering for the persons concerned and for their families, help diminish the long-term consequences of the conflict for the society in which it occurs.

Unfortunately, preventive measures will not always suffice, hence the importance of the punitive framework erected by the Convention. It places an obligation on States to make enforced disappearance an offence under their national criminal law and to bring offenders to justice. Such a system of individual responsibility and punishment, coupled with the political will to implement the Convention, is vital if this instrument is to be effective. I encourage the Kingdom of Thailand to give positive consideration to the ratification of this treaty.

The Ottawa Convention

This year is also the 10th anniversary of the adoption of the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, also called the Ottawa Convention. The Kingdom of Thailand was among the very first nations in this region to become party to this convention, which has gained adherence rapidly and today has 153 States Parties. The Ottawa Convention provides a comprehensive framework through its prohibition on all use of anti-personnel mines, its clearance and stockpile commitments and provisions for victim assistance. In this respect, it is a unique instrument that both bans a weapon and requires States to take measures for the care, rehabilitation and socio-economic reintegration of the victims of that weapon.

Ten years on, we have to say that the Ottawa Convention has been a resounding success. It has had an impressive effect on the worldwide use, transfer and production of anti-personnel mines. Firstly, there has been a major decrease in the use of anti-personnel mines around the globe and, even if 40 countries remain outside of the Ottawa Convention, the use of this weapon has been truly stigmatized. Secondly, there has been a significant decrease in the production of anti-personnel mines and the international trade has virtually ceased, with many States that are not bound by the Convention nevertheless having export moratoriums in place (including China, India, Pakistan, Russia and the USA). In effect, a de facto global ban on the export of anti-personnel mines is in force today. Thirdly, over 38 million anti-personnel mines have been destroyed by the States party to the Convention. However, the real impact of the Ottawa Convention will be measured in terms of its success in containing

the epidemic of death and injury caused by anti-personnel mines. In this regard, ICRC field delegates have observed that, where the Convention is being fully implemented - in Yemen and Bosnia for example - the annual number of new mine victims has fallen dramatically, in some cases by more than 60%.

However, significant challenges remain ahead. One of them is to meet mine-clearance obligations, which require each State Party to the Convention to completely clear all areas containing anti-personnel mines within 10 years after the treaty's entry into force for that State. The recent meetings of the Convention standing committees that took place in April in Geneva painted an alarming picture in this regard. More than half of the States Parties that have a deadline in 2009 or 2010, among them Thailand, have indicated that an extension of the clearance deadline would probably be required. I think it is crucial for the credibility of the Ottawa Convention that mine-affected States, and States Parties in a position to assist them, make all possible efforts to achieve mine clearance within the agreed deadlines.

> "[The] fundamental aim [of the international humanitarian law], shared by all civilizations and peoples, is to ensure that people are treated with humanity even in the midst of war."

Explosive Remnants of War and Cluster Munitions

Large numbers of civilians are killed or injured each year by the "explosive remnants of war". These are unexploded artillery shells, hand grenades, mortars, cluster sub munitions, rockets and other explosive ordnance that remain after the end of an armed conflict. Like anti-personnel mines, the presence of these weapons has serious consequences for civilians and their communities. The Protocol on explosive remnants of war (the fifth protocol to the 1980 Convention on conventional weapons) was concluded in 2003 to help address this problem. It is unusually ambitious since it has implications for all explosive munitions used or stored by armed forces and commits the States bound by it to dealing with all explosive ordnance they leave after conflicts. It also obliges States to assist victims. Along with the Ottawa Convention, the Protocol on explosive remnants of war is an important element in the efforts to minimize death, injury and suffering in war-torn areas. This Protocol entered into force in November 2006, and the ICRC encourages all States which have not yet done so to adhere to it.

With their specific characteristics, cluster munitions constitute a special case: they may be used in massive quantities, they are unreliable, and there is a high risk of indiscriminate effects when the sub munitions do not detonate as intended, particularly if used in populated areas. The tragic history of their use in recent decades and their severe and long-lasting costs for the victims and communities amply demonstrate the problem. Cluster munitions clearly require urgent action, and in November 2006, the ICRC called on all States to take the following steps at national level:

- Immediately end the use of inaccurate and unreliable cluster munitions;

- Prohibit the targeting by cluster munitions of any military objective located in a populated area, and

- Eliminate stocks of inaccurate and unreliable cluster munitions and, pending their destruction, refrain from transferring such weapons to other countries.

The ICRC welcomes the Oslo Declaration, endorsed by 46 States last February, now joined by around 30 more States following the recent

Lima Conference. This Declaration calls for the negotiation and adoption by the end of 2008 of an international instrument regulating the use of cluster munitions. It also urges all States to participate actively in the negotiation of a new instrument of international humanitarian law which could incorporate such measures at the international level. To contribute to this debate, the ICRC organized in April this year, a meeting of experts on cluster munitions, bringing together representatives of producer States, of States that have been affected by their use and of organizations involved in mine-clearance, among others. It represented a unique possibility to assess the diverging opinions and to attempt to understand how the very low failure rates advertised by the producers after testing do not match with observations on the battlefield. The ICRC has issued a report on this meeting.

Regional Momentum

It is striking - and, I must say, very heartening - to see the growing interest in issues pertaining to international humanitarian law in Thailand and in the region. I would like to highlight three areas where this appears especially clear.

The first is the recognition that IHL is applicable to peace-keeping and peace-enforcement operations. The Thai armed forces started taking part in UN peace-keeping operations in the early 1990s when a group of Thai military officers participated in an Iraq-Kuwait Observation Mission along the border between those two countries. They have since served in Cambodia, Sierra Leone, Timor Leste, Iraq and Indonesia. These operations have at times involved over 1,500 persons. To supervise them, the Supreme Command Headquarters in Thailand has established a new division called the Division of Operations for Peace.

The applicability of humanitarian law to forces conducting operations under United Nations command and control was reaffirmed in the Bulletin of the UN Secretary-General issued on 6 August 1999 to mark the 50th anniversary of the adoption of the Geneva Conventions of 1949. Under the title Observance by United Nations Forces of International Humanitarian Law, the Bulletin sets out a list of fundamental principles and rules of humanitarian law that are applicable, as a minimum, to UN forces whenever they are engaged as combatants in enforcement action or when acting in self-defense during a peace-keeping operation. However, these rules and principles should not obscure the fact that the troops of a country remain bound at all times, including when carrying out an operation under the UN flag, by all the rules of IHL applicable to their country, be those rules customary rules of IHL or treaty provisions. The State of origin remains responsible for the conduct of its own forces, and its obligation - from the training of troops to the prosecution of violations - remain unchanged.

The ICRC very often works in countries where there are multinational forces deployed. The relevance of international humanitarian law for peace-keeping and peace-enforcement operations is an issue of great importance for the ICRC. Whenever requested, the ICRC is happy to take part in pre-deployment briefing and exercises, or in meetings and other events to promote IHL in the area of operations. Here in Thailand, the ICRC has been involved since 2000 in pre-deployment briefings for five Royal Thai Army Contingents to East Timor. In 2007, the ICRC also conducted a briefing session for officers to be deployed as military observers with the United Nations to Sudan and Nepal.

The ICRC endeavors to ensure that future decision-makers and opinion-leaders are exposed to IHL while at university and so understand its practical relevance and have a thorough knowledge of its basic principles. In Thailand, the ICRC has been working in close conjunction with the academic world for this purpose. We are pleased to note that many Thai universities have incorporated IHL in their curriculum of studies in fields such as international law and human rights. It is heartening to note that the Thai academic community is keen to promote knowledge of this law.

In addition to growing general interest in academic circles, the programme known as Exploring Humanitarian Law, EHL in short, specifically designed by the ICRC for young people, has been introduced experimentally in a small number of selected secondary schools in Bangkok and surrounding districts. The interest demonstrated by the Ministry of Education, in particular the Bureau of Academic Affairs and National Standards, to test and further develop the programme within the Thai context reflects the country's commitment to promoting international humanitarian law. In view of future integration of the EHL modules in the secondary school curriculum, the ICRC, in cooperation with the Thai Red Cross, continues to support the Ministry of Education in the development of the EHL programme, with the translation of the teaching tools into Thai, teacher's training and the establishment of a network of EHL trainers in Thailand.

The ICRC has engaged in a dialogue on IHL with Asian regional organizations such as ASEAN and the Shanghai Cooperation Organization. It is important that the commitment by States to respect their obligations under IHL also be reflected in the institutional and legal frameworks established at the multilateral level. In its report on the ASEAN Charter presented at the organization's 12th Summit in Cebu,

the ASEAN Eminent Persons Group recommended that IHL be included among the organization's objectives and principles. The ICRC is in regular contact with the ASEAN High Level Task Force in charge of drafting the Charter in order to facilitate the inclusion of a reference to international humanitarian law in this historic document that will enshrine ASEAN's fundamental principles and values. In the same spirit, the ICRC has engaged in humanitarian diplomacy within a number of regional security mechanisms, such as the ASEAN Regional Forum and the Council for Security Cooperation in Asia Pacific, through both high level and lower-level, less formal contacts. Contemporary security issues such as counter-terrorism policies, disaster management and peace-keeping operations are being discussed in these regional forums. The implications from the humanitarian and legal viewpoints must be kept constantly in mind when developing regional policy recommendations.

Conclusion

War remains what it has always been: a horrifying but recurring phenomenon. There are many challenges in achieving IHL's goals of prompting the warring parties to draw back from wanton cruelty and ruthlessness, and of providing essential protection to those most directly affected by the hostilities. I have discussed the challenge of ensuring respect for IHL on the battlefield. I have also shed light on how IHL has recently moved in the direction of eradicating impunity, and developing new rules adapted to modern weapons and the conduct observed in the heat of battle.

Since its beginnings in the second half of the nineteenth century, IHL has never been static. It has constantly been refined. These developments, some of which I have outlined today, serve to illustrate both its resilience and adaptability. This is because its fundamental aim, shared by all civilizations and peoples, is to ensure that people are treated with humanity even in the midst of war. Respecting IHL helps prevent the abuses that sow hatred. It can help heal trauma between the warring communities once physical peace has been restored, and thus prevent conflict from erupting anew. In addition to being an act of humanity, respecting IHL is an investment in future stability and peace, especially in cases of non-international conflict. The fact that the States - the principal creators of international humanitarian law - have chosen to constantly expand the rules giving expression to the principle of humanity attests to the enduring nature of this common value. As I mentioned earlier, the real challenge facing IHL is not inadequacy but lack of compliance. We must all work toward meeting the obligation laid down in Article 1 common to the four Geneva Conventions, "to respect and to ensure respect" for their provisions "in all circumstances". In other words, all States party to the Geneva Conventions are responsible for their implementation, even in conflicts in which those States are not involved.

Thank you. ❖

Violence and Armed Conflicts: Challenges of Prevention, Protection and Reconciliation in International Law – the Case of Northern Ireland

Delivered at the Fourth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 15 February 2009 in Bangkok, Thailand
by

General Sir Mike Jackson

General Sir Mike Jackson was educated at Stamford School, the Royal Military Academy Sandhurst, and Birmingham University. Commissioned into the Intelligence Corps in 1963, he later transferred to the Parachute Regiment and served in Northern Ireland and Scotland in the 70s. He commanded the 1st Battalion of the Parachute Regiment from 1984 to 1986, involving arctic training in Norway as part of NATO duties.

In his later career, he held various important positions, including commanding the 3rd Division, leading IFOR's Multinational Division in Bosnia, and commanding the ACE Rapid Reaction Corps. He was deployed with APRC HQ as Commander Kosovo Force to Macedonia in 1999 and commanded Kosovo Force in Pristina later in the same year. He also served as Commander in Chief Land Command and eventually became Chief of the General Staff in February 2003, until August 2006. He was Colonel Commandant to the Parachute Regiment from 1998 to 2004, and published his autobiography "Soldier" in September 2007.

H.E. Mr. David Andrews

H.E. Mr. David Andrews was Minister for Foreign Affairs of Ireland from 1992 to 1993 and 1997 to 2000. During the same period, he also held the position of Minister for Defence and Minister for the Marine from 1993 to 1994.

During his tenure as Minister for Foreign Affairs, H.E. Mr. Andrews was the first Foreign Minister from a European country to visit Somalia after the beginning of the civil war and subsequently, initiated the concept of Irish Army involvement in Somalia.

In May 2000, he was appointed Chairman of the Irish Red Cross Society, serving in that capacity until 2009.

"Ireland affirms its devotion to the ideal of peace and friendly cooperation amongst nations founded on international justice and morality". [Article 29 of Irish Constitution]

This excerpt from the Irish Constitution of 1937 demonstrates that from the early days of statehood Ireland was committed to a multilateral approach, respect for international law and the pursuit of peace. These core principles have underpinned our foreign policy throughout the history of the Irish state and continue to do so today.

Our participation in the United Nations and the European Union is an expression of these principles. The establishment of each of these organisations marked crucial moments in human history. Organisations founded on the premise of respect for human rights and the importance of justice, equality and the rule of law; organisations which stand as a global acknowledgement of an obvious truth, that the interests of mankind are best served when countries settle disputes peacefully.

This shift in the international order has not been sufficient to end conflict but it has meant that wars are regarded as the exception to the rule of international order, not its primary determinant. This has focussed attention on the question of how they can be resolved, preferably swiftly and in a just and equitable manner. This is not a simple question - the causes of conflict are diverse and complex and, as a result, the solutions are equally varied and intricate. We, in Ireland, are all too keenly aware of this.

The conflict which ravaged Northern Ireland for over three decades had many elements, and the peace process which finally succeeded in bringing that conflict to an end had even more. I would like to reflect on what we have achieved and on the work still needed to reconcile a long-divided place - so that the move from conflict to peace can be followed by a move to a normal and shared society.

For if the origins of conflicts have many roots, the features of a peaceful society are common - a respect for the rights and dignity of the citizen, a commitment to the rule of law and accountability and opportunity for everyone to develop their full human potential; in sum a fair, equal and inclusive society.

The Peace Process

I will not rehearse the history of the conflict in Northern Ireland except to say that, in the period before the current peace process began, it was a place beset by all of the problems that conflict invariably brings with it. There was violence, division, political stasis, hatred and all of the accompanying difficulties of reduced economic opportunity and educational disadvantage.

Within this were two divergent and competing ideologies - unionists who prefer to continue to support the Union with Great Britain and nationalists who wished to see a sovereign United Ireland.

However, in spite of all the years of darkness and despair, there were still many who nurtured a flame of hope that a just and fair peace was possible and that a way forward could be found. It was that hope and those people who paved Ireland's path to peace.

One of the milestones along the way was the Good Friday Agreement of 1998, a comprehensive lasting foundation for peace after so many years of conflict.

The 1985 Agreement

As a measure of the complexity of resolving a conflict, even one which fell under the guardianship of two stable democratic administrations, the Irish and British Governments only began to formally cooperate in resolving it with the signing of the Anglo-Irish Agreement in 1985.

This Agreement established formal structures for cooperation and an agenda to tackle many of the underlying causes of the conflict, including political arrangements, rights and identity, confidence in the administration of justice and the security forces, cross-border and inter-parliamentary cooperation, and a range of other matters.

Steady, if at times slow, progress on these issues continued in parallel with campaigns of violence. Almost ten years later, through a series of talks and choreographed statements and actions, the 1994 ceasefires were announced. Talks began in earnest, leading to the Good Friday Agreement in 1998.

The Good Friday Agreement 1998

The Good Friday Agreement is truly a significant and historic document; one in which I as the Irish Foreign Minister am proud and privileged to have had a part in creating. It is predicated on a number of fundamental principles. Partnership, equality and mutual respect were not only contained in the aspirational, pre-ambular language of the Agreement but are present in real and tangible ways in the governmental structures established by the Agreement.

The Agreement provides for an institutional framework entirely dependent on the two communities working in a cooperative manner with each other. This denoted clearly a new start - an Assembly and an Executive based on power-sharing between the elected representatives of the unionist and nationalist communities, in order to ensure a governance structure which worked for the benefit of all of the people in Northern Ireland.

There is also a strong human rights focus in the Agreement. The parties to the Agreement specifically dedicated themselves to the achievement of reconciliation, tolerance and mutual trust, and to the protection and vindication of the human rights of all. This dedication permeates the letter and spirit of the Agreement and has served as the engine for the undreamt of progress which we have achieved over the last ten years.

The substantive human rights commitments set out in the Agreement, most of which have been fully implemented at this point, had their roots in international norms. One significant and ongoing outworking of the Agreement in this area is the establishment of the Irish Human Rights Commission and the Northern Ireland Human Rights Commission. These important bodies work individually and jointly in seeking to ensure a shared future of equality, respect and tolerance for all on the island of Ireland.

The text of the Agreement underscores the primacy of dialogue over violence by containing an unequivocal undertaking that commits all parties to exclusively peaceful and democratic means to solve their differences. This reflects in words the extraordinary shift which had taken place in Northern Ireland in the years leading up to the Agreement.

As I said earlier, there are two divergent and competing ideologies in Northern Ireland - nationalist and unionist. A key question was how any Agreement could accommodate these often conflicting viewpoints without compromising the political aspirations of either side. The solution to this conundrum was addressed through the formulation of the principle of consent.

The Agreement recognises the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its constitutional status, whether they prefer to continue to support the Union with Great Britain or a sovereign United Ireland. This acknowledges the current constitutional status of Northern Ireland as part of the United Kingdom while also providing for the possibility of change by peaceful and democratic means. Crucially this meant that the parties to the Agreement did not need to abandon or compromise their deeply held beliefs, while allowing political progress to take place.

An important element of this section of the Agreement is that it explicitly recognised the birthright of all the people of Northern Ireland to identify themselves as Irish or British or both as they may so choose. This last provision is particular welcome as it opens up a new space for the people of Northern Ireland in how they define themselves. This is an increasingly important feature on the island as a whole as we seek to celebrate the diversity of all of our people.

One final point which I wish to highlight is the fact that the Agreement was put to the people of the island of Ireland North and South for their approval, in referenda on the same day, 22 May 1998. The result was a resounding endorsement on both sides of the border which demonstrated without question that this was what the people wanted. There could be no going back. In the difficult times yet to come, political leaders would always have the reassurance that - by working within the Institutions and according to the principles of the Agreement - they were being truly representative of the democratically - expressed wishes of the people.

“[...] the crucial ingredient for the success of the peace process in Northern Ireland is down to one key element: people within communities who worked for peace – one relationship, one meeting at a time.”

The Human Dimension

I have spoken a little about the content of the Agreement but - in my view - the crucial ingredient for the success of the peace process in Northern Ireland is down to one key element: people within communities who worked for peace - one relationship, one meeting at a time.

People at every level within Northern Ireland - and indeed throughout Britain and the island of Ireland as a whole - wanted a positive change; they wanted something better for themselves and for their children. Translating that desire for peace was a challenge - a challenge to patience, to endurance, above all a challenge to a hope for peace so regularly dashed by acts of inhumanity.

Perhaps the most important moves were at community and grassroots level where ordinary people took extraordinary steps to show that a different way was possible.

The women in council estates - who walked across peace lines to speak to the women on the other side. Women who they found were just like them - with the same everyday worries about keeping a home and raising a family. Women who also faced the more fearsome worries associated with Northern Ireland - losing a family member to violence or having their children getting caught up in sectarian strife, or being intimidated for walking through the wrong side of the city.

People like this who decided that they had had enough and who were courageous enough to demonstrate that those who claimed violence was the answer did not represent their wishes or aspirations.

This type of bravery, this vindication of the inherent generosity and empathy which exists within us that I see every day in the work of organisations such as the Red Cross. The work of the International Committee of the Red Cross in seeking to alleviate human suffering in crisis situations all over the world serves as a reminder to us all that we are all connected and we all have a responsibility to each other.

Political Leadership

In Northern Ireland, this spirit of common humanity - the bravery of ordinary people who reached out to the other community - shored up the confidence of political leaders who wanted to make progress and to engage in real negotiation, but who nonetheless needed the reassurance that doing so was what the people wanted.

And what political leadership was needed to bring the Agreement and the talks process to fruition:

• An unprecedented relationship and friendship between the Irish and British Prime Ministers Bertie Ahern and Tony Blair - both young men relatively unfettered by the bonds of history which had for so long held back progress between Britain and Ireland.

• Political leaders in Northern Ireland who took real risks in stepping away from the politics of division; who sought to find a better way for their community by building a better way for all communities. Individuals who saw an opportunity to build a better future and took it - took it and stuck with it even in the times where it was neither popular nor safe nor politically wise to do so. Such actions are what set great leaders apart.

• And there are countless others - church and community leaders, officials in both Governments, former leaders, who laid the groundwork in the decades before by building relationships and trust.

The International Dimension

Ireland and Britain, although the key governmental actors in the Northern Ireland process, could not and did not succeed alone. The international dimension was a crucial one and one which was multifaceted in itself.

Perhaps the most visible and certainly a very significant contributor was the United States of America. The provision of that most ingenious and determined of Talks Chairmen in George Mitchell was backed up by the personal involvement and support of President Clinton and a range of Senators, Congressmen, Governors and business people. I am very pleased that George Mitchell, who played such a central role in the peace process of Northern Ireland, has been appointed to the crucial position of Special Envoy on the Middle East under President Obama.

The engagement of America in Northern Ireland never wavered and, I am pleased to say, continues to this day, through the ongoing support of President Obama and the current Congress, acting in a truly bi-partisan approach in support of peace in Ireland. The newly appointed Secretary of State Hillary Clinton has, of course, a special relationship with Ireland from her visits there as First Lady and I know that this will continue as she takes on her new role.

Other friends such as Finland and Canada provided key personnel to act as external observers and arbitrators around sensitive issues such as the decommissioning of weapons by paramilitaries and the oversight of policing reform. This brought an important level of demonstrably independent expertise at crucial times.

And of course the European Union - itself an organisation born out of a desire to see an end to conflict between neighbours- provided support in financial terms, but also and perhaps more significantly in providing a safe space for Ireland and Britain to engage as equals across a range of issues allowing trust and friendship to develop at both political and official level.

Promoting Mutual Understanding and Reconciliation

"But peace does not rest in the charters and covenants alone. It lies in the hearts and minds of all people. So, let us not rest all our hopes on parchments and on paper; let us strive to build peace, a desire for peace, a willingness to work for peace, in the hearts and minds of all of people. I believe we can."

These are the words of President John F. Kennedy and they resonate very much with me when I think of where Northern Ireland is today. Ten years after the Good Friday Agreement, there is so much to celebrate - there is peace on the streets, the ugly hardware of conflict has been removed from towns and villages, the power-sharing institutions are functioning, and steps are being taken to develop an economy stagnated for too many years by conflict.

However, it is important to understand that a political agreement cannot of itself mend a society that has been broken and bruised for more than a generation. Trust and relationships at political level are vital and important, but long term stability depends on those qualities being mainstreamed in society. A society where separation was the norm for several decades takes time and work to become fully normal, comfortable and at peace with itself. It is this process of healing and normalising that we are engaged in at the moment.

There are a number of elements to this. First is the development and implementation of policies which set the foundations for a shared and inclusive future. This is in the hands of the Northern Ireland Executive who have clearly indicated their commitment to a better Northern Ireland for all. A place where so-called 'peace walls' do not scar the faces of housing estates. A place where protestant and catholic, nationalist and unionist can live together in the same street and where their children can be educated in the same schools.

In order to achieve this, it is also essential to build trust at community level. This is clearly possible and there are many inspiring examples of groups in Northern Ireland who have taken initiatives to work together to demonstrate the advantages and synergies which can be achieved when the people of an area - regardless of religious or political affiliation - work together for the benefit of everyone.

In all of this, it is essential that there is a focus on young people. We all have a responsibility to ensure a better life for our children and this includes not passing to them the burden of the troubles we have suffered. We should all echo the words of Thomas Paine when he said:

"If there must be trouble, let it be in my day, that my child may have peace."

The children of Northern Ireland today have peace. As a result, there are opportunities and possibilities open to them which were undreamt of by previous generations. There is a shared duty on us all to ensure that those possibilities can be realised to the full.

The promotion of trust and understanding is not restricted to Northern Ireland itself - there is a great deal of work ongoing to develop a new kind of relationship between North and South - between Northern Ireland and the Republic of Ireland. There is practical political cooperation in areas such as health, education and transport which brings tangible benefits to all the people of the island.

There is also relationship building of another kind - a rediscovery of relationships - particularly with the unionist community. The celebration of the history of all of the people of Ireland - for example, through the development of key historic and once-divisive sites such as that of the Battle of the Boyne - demonstrates a new dawn where both the catholic and protestant traditions on the island are cherished and honoured.

This is an important signal that times have changed and that history threatens no one.

Ireland and Conflict Resolution

I have outlined for you some of the milestones on the journey of Northern Ireland from conflict to peace. I wish to emphasise that the different paths to our peace cannot be a roadmap for conflict resolution easily transferred or instantly applicable to other conflicts.

But we have learned lessons that may inspire others to embark on their own journeys. We can, I think, make our own distinctive contribution to the collective effort to understanding and resolving conflict. In recognition of that, the Irish Government has taken the decision to establish a conflict resolution unit so that we could make a contribution to peace building in other parts of the world.

In creating our own distinctive contribution to international conflict resolution, we were intent to incorporate the values that have informed Ireland's international role and activities. This includes a belief in the primary role of the UN, in the rule of international law and above all in the essential value of human rights.

We have a long contribution to UN peace-keeping through the contribution and at times sacrifice of our Permanent Defence Forces.

We have a strong civil society and NGO community deeply engaged in developing world, a tradition founded by our missionaries, men and women who worked to alleviate hunger and suffering in some of the most afflicted countries in Africa and the wider world.

As members of the European Union, we believe that the EU can play an increasingly robust role in peacemaking and peacebuilding initiatives.

Through the Northern Ireland peace process, we have learned lessons about the nature of conflict, how to manage negotiations, how to assure the implementation of agreements and how to ensure that the generators of instability and conflict are dismantled.

We have learned that peace making and peace building take years, possibly generations to inoculate against reversions to violence.

"If people are determined to end conflict, then it can happen."

Of course, it is absolutely critical that we only offer those lessons as inspirations to deliberation and discussion by countries afflicted by conflict. Some may resonate and some may not - the choice remains for the country concerned.

Indeed, when we talk about lesson sharing, we do not mean only the lessons of the Northern Ireland conflict. Rather we believe that it is vital that all peacemakers share the lessons they have learned, of which Northern Ireland is but one.

We must encourage the global discussion and exchange of ideas about how to resolve conflict.

Our conflict resolution initiative is modest and realistic. What we may achieve, we will do only in consort and partnership with others. But we hope to make a distinct and distinctive contribution to the global effort to end war, an aim for the twenty first century that is not only noble but achievable.

It is that peace comes from peacemakers, human individuals inspired by hope and belief who in turn inspire others to hope and believe that war is not an inevitable condition, that peace is achievable within the span of a lifetime, a generation.

Conclusion

We do not claim to have the answers to conflict but we can share our story and our experience. I believe that the greatest lesson we have learned on our journey is that complex problems require complex solutions. The fundamental underlying causes of the recourse to violence have to be addressed in all their manifestations. And such solutions have to be within a framework that is manifestly fair and grounded in human rights.

Progress takes time, patience and an unrelenting focus on implementation. This becomes in effect peacebuilding because it helps forge human relationships across the divides of ideology, belief and politics.

We, in Ireland, have not always been conscious of the progress made. Progress can reveal itself in moments. Such a moment came when the leader of the Unionists, Rev. Ian Paisley, formed a government with Martin McGuinness of Sinn Féin in May 2007.

I had my doubts that such a day would ever come to pass. But came it did. It symbolised the journey we had taken and the new future that lay ahead.

And it is why Northern Ireland stands a beacon of hope to all peacemakers.

If people are determined to end conflict, then it can happen. Innovative solutions can be found to age old problems if there is a truly shared desire to live in peace. That is what the people of Northern Ireland proved in 1998. And that is what they continue to prove every single day by continuing to work and live together to achieve a better future for all. ❖

South-East Asia and International Criminal Law

Delivered at the Fifth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 13 June 2011 in Bangkok, Thailand
by

Justice Richard Joseph Goldstone

Justice Richard Joseph Goldstone is a former Justice of the Constitutional Court of South Africa and was the first Chief Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. He was appointed by the Secretary-General of the United Nations to the Independent International Committee, which investigated the Iraq Oil for Food Programme. Among his other professional endeavors, Justice Goldstone served as the chairperson of the Commission of Inquiry regarding Public Violence and Intimidation, known as the Goldstone Commission, and of the International Independent Inquiry on Kosovo. He also was co-chairperson of the International Task Force on Terrorism, which was established by the International Bar Association; director of the American Arbitration Association; a member of the International Group of Advisers of the International Committee of the Red Cross; and national president of the National Institute of Crime Prevention and the Rehabilitation of Offenders (NICRO). He is also a foreign member of the American Academy of Arts and Sciences and an honorary member of the Association of the Bar of the City of New York.

Since his retirement, he has taught at a number of law schools in the United States, the Central European University in Budapest, and Oxford University. In 2016, Justice Goldstone co-founded Integrity Initiatives International, an initiative with an aim to fight against grand corruption, and chaired the Independent Expert Review of the International Criminal Court in 2021.

It is my great privilege and honor to have been invited to deliver the Fifth Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law. I feel particularly honored that HRH Princess Maha Chakri Sirindhorn, Executive Vice President of the Thai Red Cross Society, is co-hosting this event and presiding this morning.

I was delighted to accept the invitation to deliver this address for a number of reasons. The first was that the invitation came from the Red Cross. I have a long association with the International Committee of the Red Cross (ICRC) and served for four years on its International Advisory Board. Since I became involved with international criminal justice, my admiration for the ICRC has grown with each passing year. It has been the guardian of international humanitarian law. Without its efforts during difficult decades of neglect, the exciting developments about which I propose to speak today would not have come about.

Then, for many years my wife and I wished to visit Thailand. Until now we have not had the opportunity to do so. We are so very happy to be in Bangkok and look forward to spending the next few days in your country.

I have read and heard about the impressive and important work that the Thai Red Cross has done and is doing in Thailand. I refer in particular to the crisis that has arisen on the border between Thailand and Cambodia where there are tens of thousands of persons displaced. The Red Cross is without question the most efficient and experienced agency able to facilitate and co-ordinate humanitarian aid to the people in need in this regrettable kind of situation. It deserves the fullest support and encouragement from all of the people of this region. I would also refer to the essential aid brought by the Thai Red Cross to the many victims of floods in the South of Thailand earlier this year.

> “The good work of the Red Cross reminds us that justice is not solely – or even principally – the province of lawyers and judges. As we strive to heal the divisions of mankind, we must never forget the tireless efforts of the Red Cross and others to heal those who need healing in a much more literal sense.”

The good work of the Red Cross reminds us that justice is not solely - or even principally - the province of lawyers and judges. As we strive to heal the divisions of mankind, we must never forget the tireless efforts of the Red Cross and others to heal those who need healing in a much more literal sense. Their perseverance in the face of the urgency of their mission and the magnitude of the task before them deserves our everlasting respect and gratitude.

I have had the good fortune to bear witness to transformative changes in international law. As a young lawyer in South Africa under Apartheid, I saw with my own eyes how a regime might oppress its own people. As the first Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia, I was present at the birth of the modern era of international war crimes tribunals. And most recently, I worked on a United Nations investigation on the Gaza conflict of 2008 and 2009. The evolution of international criminal law in that time has been remarkable.

I propose to consider the importance to the global community of the International Criminal Court, known as the ICC. The ICC represents the culmination of the evolution of international criminal law that I have been fortunate to have witnessed during my life in the law. As one who has participated in some small part in the history that led to its establishment, I believe it is my solemn duty to share with posterity my perspective on that history. The history is long and uneven, with defeats that break our hearts and with successes that hint at humanity’s true and higher nature. The small, tentative, and halting steps we have taken towards a more perfect system of international justice have, over the years, carried us a very long way. Today I add my voice to those who praise the ICC as the world’s best hope for genuine accountability for crimes against humanity.

Let me begin by insisting that the time for international criminal justice is not past. On the contrary, it is dawning. The necessity

of denying impunity to war criminals has never been greater. And that need is growing.

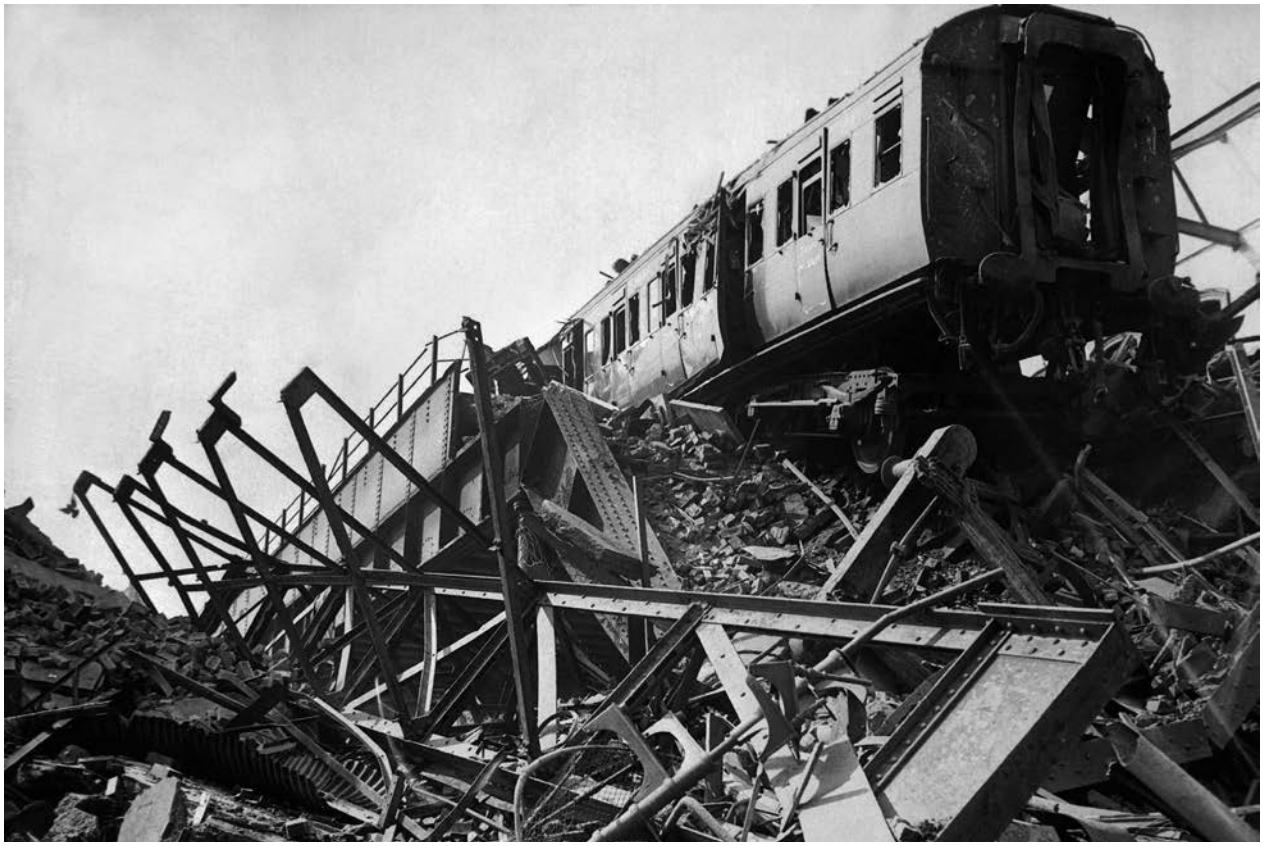
The years since World War II have seen monumental changes in the nature of warfare. During the past 65 years, humanity has been blessedly spared of conflicts of that global magnitude. But as Asia and the world have learned through painful experience with proxy wars, ethnic conflicts, and brutally oppressive regimes, the threat of atrocities has not diminished. Asymmetric warfare, terrorism, and urban warfare provide chilling opportunities for savage abuses. We need only open a newspaper or turn on a television to witness the voices from around the world crying out for justice. As members of the international community committed to peace for all of humanity and to justice for all of our brothers and sisters, we must dedicate ourselves anew to the rule of law in all corners of the planet we share.

To appreciate the importance of the ICC and its role in international justice going forward, it is crucial to understand the history that led to its establishment. The laws of armed conflict have an ancient heritage and were largely based on reciprocity. These laws are not a purely Western tradition. References to them can be found in Chinese and Indian writings of some 2,000 years ago, demonstrating their universal moral foundation. Simply put, the idea was that if my enemy spares the lives of my civilians and non-combatants, I will act in a similar fashion in respect of those of my enemy.

Reciprocity was only the beginning of the legal restraints on warfare. Since the end of the nineteenth century a large and impressive body of laws has been designed to restrain armies from attacking civilians without military justification. At the very heart of those laws lies the principle of proportionality. In armed

conflicts, civilians are to be protected unless the military advantage is such that the loss of civilian lives is proportionate to that advantage. A war crime is committed if civilians are attacked disproportionately. This proportionality test has become a part of customary international law and is not contested by any State. The comparison is frequently a difficult one to make and especially in the heat of battle. But that is what the law requires. In times of war, a margin of appreciation is given to the armed forces. Thus, in the absence of intent or a high degree of negligence it is assumed that the military action was proportionate.

The laws of war were originally designed to bind Governments and not to visit criminality on any individuals. There was thus no basis upon which individuals could be made amenable to the criminal law. It follows that there was no criminal court to consider any such charges. This changed dramatically with the prosecution of the major Nazi war leaders in the Nuremberg trials. There are important legacies of Nuremberg. They form the foundation of modern international criminal law. Perhaps the most important is the recognition of a new species of crime - crimes against humanity. The idea is that some crimes are so egregious and so shocking to the minds of all decent people that they are regarded as having been committed against all of humankind. It follows that these crimes, today often called "atrocity crimes", have an international character. Persons who are suspected of committing them can therefore be brought before the courts of any country whose laws recognize them as falling within the jurisdiction



of their own domestic crimes. There is universal jurisdiction for such international crimes. Until Nuremberg such jurisdiction was recognized, out of necessity, only for piracy.

The first appearance of universal jurisdiction in an international treaty is to be found in the 1949 Geneva Conventions. The most serious violations of those conventions are designated "grave breaches". Every nation in the world has now ratified the Geneva Conventions and all are obliged to bring before their criminal courts any person suspected of having committed a grave breach. If such nation is unable or unwilling to do so, it is obliged to deliver such person to a nation, with jurisdiction over the alleged crime or crimes that is willing and able to do so. In effect, the Geneva Conventions provide for universal jurisdiction in an attempt to deny violators a safe haven. I might add that the Geneva Conventions are the first and thus far the only international agreement to receive universal ratification. The credit for this remarkable achievement must go to the International Committee of the Red Cross.

The Geneva Conventions' use of universal jurisdiction was followed in the 1975 Apartheid Convention and the 1984 Torture Convention. The first-named convention declared Apartheid in South Africa to be a crime against humanity. It was effectively ignored and regrettably no attempt was ever made to use its criminal sanctions against those responsible for the crimes of Apartheid. If it had been taken seriously by the Western nations, Apartheid might well have ended at least a decade earlier.

It was the Torture Convention that ushered in the effective use of universal jurisdiction that has substantially changed the situation of many persons suspected of having committed war crimes. This change is manifest in the request from a Spanish court in 1999 addressed to the authorities of the United Kingdom requesting the arrest and transfer to Spain of General Pinochet, the former military dictator of Chile. His presence was sought to face prosecution for crimes committed by his regime almost twenty years earlier. The highest court of England held that the request was a valid one. Only his ill health saved Pinochet from being sent for trial in Spain. His exposure to liability would have been impossible - and indeed unthinkable - in the absence of universal jurisdiction. It is also important to note that on his return to Chile, Pinochet's self-granted amnesty was withdrawn by the Chilean Parliament. At the time of his death, he was facing many criminal charges for human rights violations and fraud.

Provision for universal jurisdiction has been uniformly included in the United Nations treaties that have been adopted since the 1970s. They are designed to combat terrorism and to deny safe havens to suspected terrorists.

Since the Pinochet affair other domestic courts have used universal jurisdiction in order to pursue persons suspected of committing international crimes. These include suspected Bosnian war criminals, Rwandan genocidaires, Argentine torturers and the former dictator of Chad, Hassan Habre. In short, it has become a great deal more hazardous for those suspected of committing international crimes to travel abroad. Universal jurisdiction is thus a powerful tool in the implementation of international criminal law.

A second important legacy of the Nuremberg Trials was the recognition of command responsibility. Under this doctrine commanders are held criminally responsible for war crimes committed by those under their command. It is accompanied by the denial of Head of State immunity. These developments play a central role in current prosecutions against Heads of State and their political and military leaders.

It may come as a surprise that, according to a recent study, between January 1990 and May 2008, in domestic and international courts, 67 Heads of State or Heads of Government from 43 nations have been formally charged or indicted on serious criminal offences. The charges

are evenly divided between human rights violations and corruption crimes and some leaders faced both charges.

The importance of command responsibility cannot be overstated - no longer can those ultimately responsible for the decision to commit atrocities be shielded from punishment merely because they did not commit the physical act. If they were in a position to prevent the commission of war crimes and failed to do so, they are deemed guilty themselves of having committed them. So, too, if they fail to take appropriate steps to punish those under their command after the commission of war crimes. These forms of criminal liability reflect our deepest feeling of where the moral responsibility for war crimes ultimately resides.

Universal jurisdiction in domestic courts, along with command responsibility for heads of state, imposed some accountability on the perpetrators of atrocities. But the most important and dramatic development in international criminal law in the last two decades has been the establishment of international criminal courts. After what was regarded in the West as the success of the Nuremberg and Tokyo trials, it was assumed at the end of the 1940s that a permanent international criminal court would be established soon thereafter. This assumption is to be found in express provisions of the Genocide and Apartheid Conventions. However, that endeavor lay dormant during the Cold War. It was revived only in response to the egregious war crimes committed when the Serb Government of Slobodan Milošević and the Bosnian Serb Government of Radovan Karadžić attempted to ethnically cleanse parts of the former Yugoslavia of all non-Serb inhabitants.

In 1994, the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY). It did so under powers conferred by Chapter VII of the Charter of the United Nations that authorizes it to pass peremptory resolutions that are binding on all Member States. It may only do so when it has determined that a particular situation constitutes a threat to international peace and security and that the measure is designed to remove that threat. In the case of the former Yugoslavia, the Security Council decided that an international criminal tribunal could assist in removing the threat and assist in the restoration of peace and security. It thus explicitly recognized a direct link between justice and peace. Without making that connection, the Security Council would have lacked jurisdiction to establish the war crimes tribunal.

The Security Council's intervention in the former Yugoslavia was due to a perfect storm of circumstances that awoke the international community from its Cold War slumber. It is highly unlikely that that action by the Security Council would have been taken if the violations were not being perpetrated in Europe and were horrifying to so many people in the Western democracies. Some of those Governments felt compelled by public opinion to take action to stop the carnage. They were not prepared to commit to military action and settled for the establishment of the ICTY.

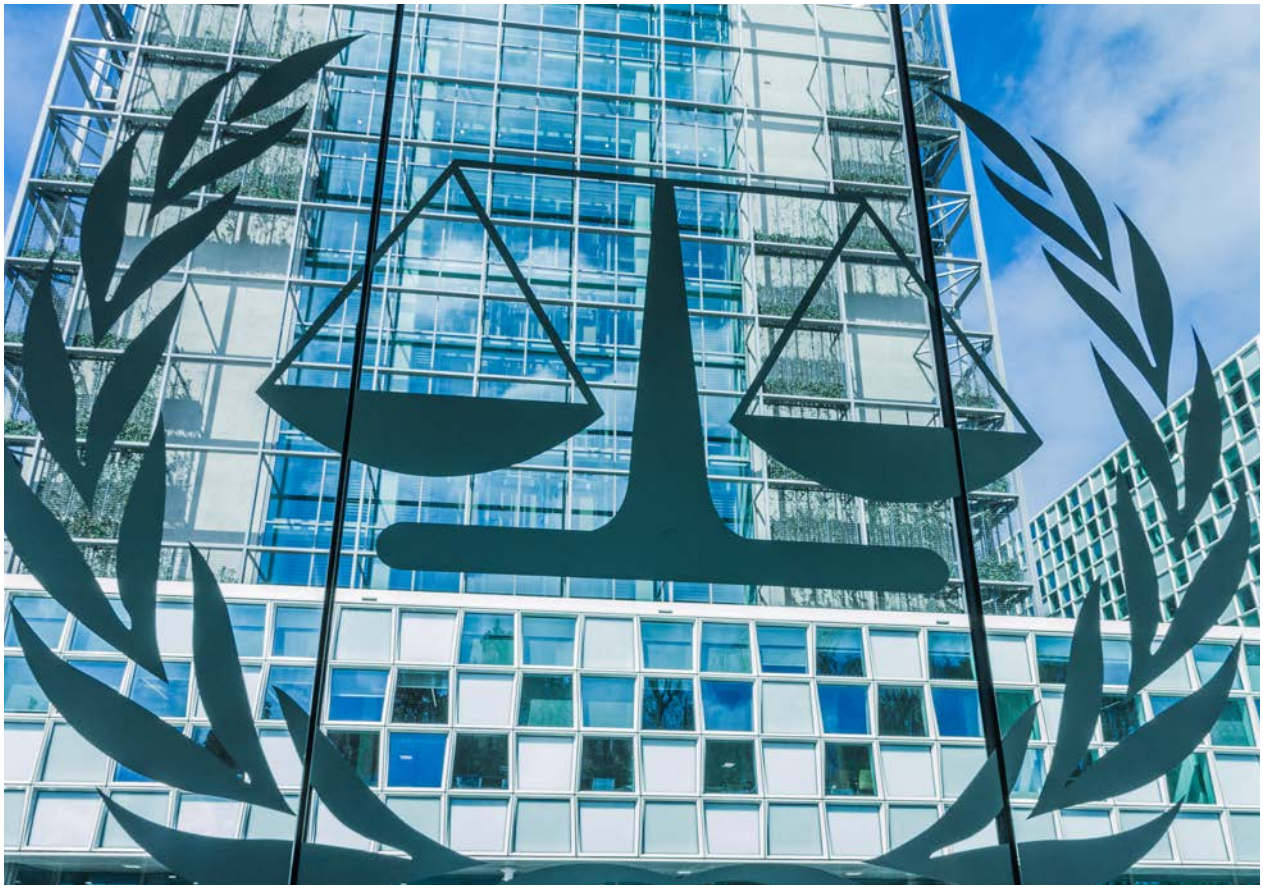
The leaders of Serbia rejected the legality of and justification for the ICTY. They regarded it as representing an act of discrimination against their people. This complaint by the Serb leadership came to my attention soon after my appointment as the first Chief Prosecutor of the ICTY. I decided that it was appropriate to pay a courtesy visit to the three major capitals of the former Yugoslavia: Belgrade, Zagreb and Sarajevo. My first meeting was with the Serb Minister of Justice. He expressed his Government's strongest objection to the Tribunal and criticized what he called the biased role of the United States in having the Security Council establish it. He pointed out that the United Nations had not considered setting up a criminal tribunal in the face of the awful crimes committed in Asia, the Middle East and elsewhere in Europe. He referred in that regard to atrocities committed by the regimes of Pol Pot and Saddam Hussein. "Why was the first such tribunal established to put Serbs on trial?" This was, he asserted, an unacceptable act of discrimination and partiality.

Of course, he had a point. The only response I could make (with more confidence than I felt) was that if the ICTY was the first and last such criminal tribunal then that would indeed be unacceptable. It would be treating the former Yugoslavia as an exceptional case. But, if others were to follow, then Serbia had no good reason to complain because it happened to be the first. Little did I know that scarcely more than a year later the Security Council would establish a second *ad hoc* tribunal, the International Criminal Tribunal for Rwanda; and that mixed domestic/international criminal tribunals would follow for East Timor, Sierra Leone, and Lebanon. Most important of all, the ICC followed not many years later. In retrospect, then, my answer to the Serb Minister of Justice was vindicated. The ICTY was not selective punishment, but rather the very beginning of a new era in the history of international criminal law. That new era is that of the ICC.

Allow me now address the establishment of the ICC. The ICC builds on the foundation of the international criminal tribunals that were established in the 1990s. However, it also represents a fundamental improvement on the model of international criminal justice those tribunals reflected. The tribunals of the 1990s owed their very existence to political decisions by the United Nations. In other words, those tribunals were established not solely with regard to the seriousness of the crimes committed, but also for political reasons. Other humanitarian crises that escaped scrutiny under the system of *ad hoc* tribunals were overlooked not necessarily because the atrocities were less heinous, but because of the crass political realities of international relations. In essence, that was the complaint I heard from the Serb Government. The ICC operates on a fundamentally different basis - prosecution is not contingent on an extraordinary moment of political will by the Security Council.

A number of nations decided in the second half of the 1990s that a permanent international criminal court was necessary to replace the system of *ad hoc* tribunals. The result was a Diplomatic Conference called by the Secretary-General of the United Nations, Kofi Annan. It was held in Rome in June/July 1998. To the surprise of all, plenipotentiaries from some 148 nations were present and on 17 July 1998, 120 of them voted in favor of the Rome Treaty. There were only seven against (including the United States of America). An unusually high threshold of 60 nations was set on ratifying the Treaty before it would come into operation. Again, to the surprise of all, that took less than four years. The Treaty came into operation on 1 July 2002. Today, 115 nations have ratified the Treaty with a number in the pipeline including Egypt, the Philippines and Tunisia. The Treaty has been signed but not yet ratified by Thailand.

It is interesting to have a look at the ratifications by UN region: Africa - 31; North Africa/Middle East - 1 (Jordan); Americas - 27; Asia/Pacific Islands - 14; Europe/CIS - 42. There was active participation of many Asian and Pacific Governments at the Rome Conference, meetings of the Preparatory Commission and Assembly of States Parties. There is also current representation at the International Criminal Court (ICC) by Judge Sang-Hyun Song of the Republic of Korea and Judge Fumiko Saiga of Japan. Nonetheless, the Asian region remains significantly underrepresented at the ICC. To date, only 14 States, including Australia, Afghanistan, Bangladesh, Cambodia, Cook



Islands, Fiji, Japan, Marshall Islands, Mongolia, Nauru, New Zealand, the Republic of Korea, Samoa and Timor-Leste have become States Parties to the ICC.

The legitimacy of the ICC depends in part on the limits of its scope. I would like to emphasize that only the most serious international crimes fall within the jurisdiction of the ICC. The crimes are genocide, crimes against humanity, war crimes and aggression. Only crimes committed after 1 July 2002 fall within the jurisdiction of the Court. In the case of nations ratifying the Rome Treaty after the date the Court became operative, the Treaty becomes effective with regard to them only prospectively, that is, from the date of such ratification.

An important recent change in the jurisdiction of the ICC is the addition of a crime of aggression. At the first ICC Review Conference held in the middle of 2010 in Kampala, Uganda, the parties agreed by consensus on a definition of the crime. An "act of aggression" is committed by military action by a State against the territory of another State or an attack by the armed forces of a State on the land, sea or air forces of another State. The crime of aggression is defined to include the planning, preparation or execution by someone who holds control over the political or military action of a State of an act of aggression. By its character, gravity and scale it must constitute a manifest violation of the Charter of the United Nations. In short, the crime of aggression can only be committed by someone in a leadership position and only if there is a manifest violation of the prohibition on the use of force contained in the Charter of the United Nations. Under Article 52 of the United Nations Charter, legitimate self-defense would not constitute aggression. This crime

of aggression will not fall within the jurisdiction of the ICC until 2017 and then only after at least 30 States ratify these provisions. And, even then, individual States will be entitled to opt out of the provisions.

In respect of personal jurisdiction, the ICC may exercise its jurisdiction against nationals of States that have ratified the Rome Treaty or nationals of any State for crimes alleged to have been committed in a country that has ratified the Treaty. In addition, the Security Council of the United Nations may refer a situation to the ICC under its peremptory Charter provisions and that may include the nationals of any member of the United Nations. It is in that way that the ICC has jurisdiction over nationals of Sudan and Libya even though neither country has ratified the Rome Treaty.

The other limit on the jurisdiction of the ICC comes about by reason of what is called complementarity. In effect, this makes the ICC a court of last and not first resort. It is designed to ensure that whenever possible suspected war criminals are investigated and tried by the courts of the suspect's own nation. This has a number of advantages. One is that in order to exercise the rights of complementarity, nations are encouraged to promulgate laws that make international crimes part of their own domestic criminal law. In the absence of such legislation it would not be able to launch such an investigation or prosecution. Another is that alleged criminals would be tried under the laws of their own nation. It follows that nationals of countries willing and able to conduct good faith investigations and prosecutions of their own nationals preclude the ICC from exercising its jurisdiction over them.

But if domestic courts are unable or unwilling to investigate a case, the ICC may step into the breach. Cases may come before the ICC in the following ways: by a situation being referred to the Court by the Government of a State Party; by a reference from the Security Council acting under its peremptory powers under the Charter of the United Nations; or by the prosecutor acting under his own powers. The prosecutor may only initiate an investigation using his own powers in cases in which the ICC has jurisdiction and then only with the approval of a pre-trial chamber of the Court. That the Security Council retains authority to initiate cases ensures a measure of political accountability - a global consensus that grave crimes have been committed will not be frustrated. That the prosecutor can initiate an investigation independently ensures that such extraordinary consensus, which may be lacking for any number of political reasons, may not be necessary for justice to be pursued.

It must be recognized that the Security Council is very much a political body and it will act under its peremptory Chapter VII powers only in cases where a permanent member does not exercise a veto. It follows that there will be no reference of a situation to the ICC from the Security Council where it is considered by a permanent member to be inconsistent with its interests. It was primarily for this reason that the majority of nations represented at the Rome Diplomatic Conference were not prepared to agree that cases should only be referred to the ICC by the Security Council. There was obviously no objection by any nation to a reference by the Security Council being one of the mechanisms for cases to be referred to the ICC.

Even in cases where the Security Council has referred a situation to the ICC, its political will to ensure that its reference is effective has been disappointing. I refer to the situation in Sudan. That was referred to the ICC on 31 March 2005. Eleven members voted in favor of the resolution. There were four abstentions including the United States. The first two arrest warrants in consequence of this reference were issued in May 2007. Then, in March 2009, a further warrant was issued for the arrest of the President of Sudan, Omar al-Bashir. To this date none of those arrest warrants have been executed. Sudan, even though bound by the Security Council reference to the ICC, is in contemptuous disregard of its international obligations. Mainly because of threats of a veto by China and possibly by Russia, the Security Council has been unable to take appropriate action to ensure that Sudan cooperates with the ICC. The regular reports from the ICC to the Security Council with regard to this situation have not resulted in any meaningful response.

Notwithstanding the failure to bring President Al-Bashir before the ICC, the effect of the arrest warrant has certainly had serious consequences for Al-Bashir. There are now 115 nations that are obliged to arrest him should he visit their shores. It was for this reason, for example, that President Al-Bashir was not invited to attend the 2010 inauguration of President Zuma in South Africa. The South African Government explained to the Sudanese Ambassador to Pretoria that if their Head of State were to visit South Africa, the South African authorities would have no option but to arrest him and transfer him to The Hague. Unfortunately, in recent weeks President Al-Bashir has been allowed to visit three African members of the ICC, Chad, Kenya and Djibouti. Those countries have failed to honour the international obligations they solemnly assumed by ratifying the Rome Treaty. I do hope that the other members of the Treaty will make their voices loudly heard in opposition to this trend.

The prosecutor of the ICC, naturally, is an advocate. He cannot be perceived as disinterested or impartial. The most important individuals for the success of the ICC as an impartial and fair institution are its judges. The 18 judges of the ICC are elected by a two-thirds majority of all the States Parties (known as the Assembly of States Parties). The threshold is thus a high one. Nominees for election must possess competence in criminal law and procedure or in relevant areas of international law. They are required to be persons of high moral character, impartiality and integrity who are eligible for appointment to the highest judicial office in their own country. The Assembly of States Parties, in electing the judges is obliged to have regard to the representation of

the principal legal systems of the world, equitable geographical representation, and a fair representation of female and male judges.

Because of the importance of the role of the judges, the Coalition for the ICC, representing over 2,500 civil society organizations in 150 countries, with the approval of the leadership of the Assembly of States Parties, has set up an Independent Panel on ICC Judicial Elections. It is my privilege to chair this Panel. It consists of five persons, one from each of the United Nations regions. Judge O-Gon Kwon of South Korea represents the Asian and Pacific region. It will be our duty to consider the documents submitted by the nominating Governments and to make a public determination as to whether the nominee is qualified for election as a judge of the ICC. The criteria for qualification are those contained in the Rome Treaty. The ultimate role of the Independent Panel will be to ensure the perception and reality of ICC judges as impartial and fair jurists. Those are crucial prerequisites to the credibility of the institution.

The ICC thus represents a major step forward in the fair, equal, and universal pursuit of justice. Nonetheless, in the wake of the first situations to come before the ICC, other complaints alleging the partiality of international criminal justice have come to the fore. But these complaints lack foundation. Some African nations and the African Union have claimed that the ICC is being used only against African nations. That complaint ignores the fact that only one of the six situations presently before the ICC, relating to African countries, has resulted from an initiative of the Court. Three of them, those relating to Uganda, the Democratic Republic of the Congo and the Central African Republic were referred by their own Governments. Two situations, one in respect of Sudan and one in respect of Libya were referred to the ICC by the Security Council. Only the situation in Kenya arising out of the violent election of 2007 comes before the Court in consequence of the first use by the Prosecutor of his own powers. I might also mention that the Prosecutor is presently examining another ten situations

on four continents. These include Afghanistan, Chad, Colombia, Georgia, Guinea, Honduras, Ivory Coast, South Korea, Nigeria and Palestine. Thus, the ICC's dual system, permitting initiation either by the Security Council or by the Prosecutor under his own power, is coming into its own. There is every indication that investigations and prosecutions at the ICC will reflect the merits of the cases against the alleged perpetrators.

These complaints from the Government of Serbia, the African Union and some of its members thus lack any justification. But they teach an important lesson on the important elements of a just system of international criminal law. In order for any system of justice, whether domestic or international, to earn credibility and to gain acceptance, there has to be both the fact and the perception that the system is fair and equal in its application and that it is not driven by political rather than moral concerns. The principal advantage of the ICC over its *ad hoc* predecessors is that, in virtue of its permanence and its political independence, it is able to achieve this fairness and equality more fully. And this provides it with a firmer moral foundation than any system of international criminal justice that came before.

Perhaps there is an irony in that at the same time it was the success of those earlier criminal tribunals that created the momentum for the ICC. Those successes included:

(a) The demonstration that international criminal courts could hold fair trials;

(b) The substantial and rapid development of the laws of armed conflict and especially in respect of gender-related crimes;

(c) The demonstration that in many cases indictments aided the peace rather than the converse.

(d) The growing evidence of deterrence in some situations.

The last two areas of success warrant consideration.

Many feared that the threat of individual criminal liability would drag out conflicts as leaders refused to surrender in the face of prosecution in the international courts. These fears, it turns out, were unfounded. The role of the ICTY in the end of the war in Yugoslavia is a poignant example of the impact that international law can have in promoting the peaceful resolution of armed conflicts.

It was the agreement reached by the warring parties at Dayton in November 1995 that brought the war in the former Yugoslavia to an end. That meeting could not have taken place if Radovan Karadžić, the Bosnian Serb leader and Commander-in-Chief of the Bosnian Serb Army, had been able to attend it. This was only four months after the Bosnian Serb Army had massacred some 8,000 civilian men and boys at Srebrenica. That was held by both the ICTY and the International Court of Justice to constitute an act of genocide. It would not have been morally or politically possible at that time for the leaders of Bosnia and Herzegovina to attend a meeting with Karadžić. In September 1995, I issued a second indictment against Karadžić and his army chief, Ratko Mladić, based upon events in Srebrenica. That effectively prevented Karadžić from attending the Dayton meeting - he would have been arrested by the United States and transferred to The Hague for trial. He had no option but to accept being represented at Dayton by the President of Serbia, Slobodan Milošević. In effect the indictment facilitated the Dayton meeting and the end of the war in the former Yugoslavia followed from it. This is a clear illustration of justice assisting peace.

I accept that an arrest warrant might have the opposite consequence and make peace negotiations more difficult. But as far as I am aware, that has not happened thus far.

What of deterrence? Ultimately the highest purpose of international criminal law is to ensure that these crimes never happen again. Let us consider the deterrence of attacks on civilians. We have already seen that in a situation of armed conflict, causing civilian casualties in consequence of a proportionate attack on a military target does not constitute a war crime. The questions that arise are thus: were the civilian deaths justified by the importance of the military target and were reasonably sufficient steps taken to ensure that civilian lives were protected?

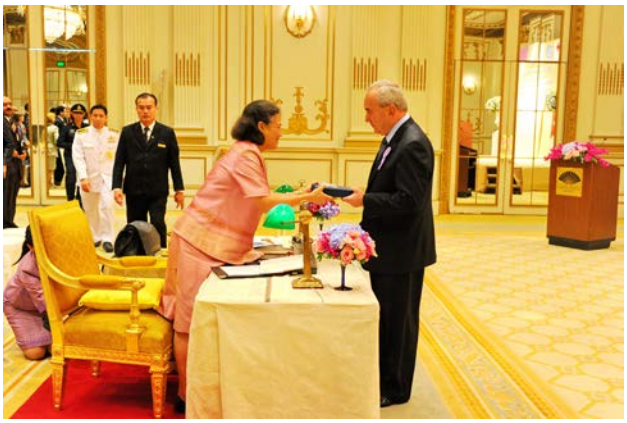
During the twentieth century, deliberate attacks against civilians grew exponentially. According to Mary Kaldor, of the London School of Economics, at the beginning of the century, the ratio of civilian to military casualties was about 85-90%. That means that for every civilian casualty there were about 9 military casualties. In World War II the ratio was about 1:1. (This is hardly surprising if one thinks about the intentional bombing of cities, large and small). During the past 30 years or so the ratio has risen to about 1:9, that is, for every military casualty there are nine civilian casualties. The ratio at the beginning of the twentieth century was completely reversed by the end of that most bloody century. It is in this context that deterrence becomes so important. Of course, deterrence is always difficult to establish. In effect, it requires an examination of what might have happened in the event that there was no international criminal court with relevant jurisdiction. Bearing that in mind, I would like to discuss two situations in which the development of international criminal justice appears to have deterred attacks on innocent civilians.

The first situation involves not a rogue country attacking its own citizens, but instead -perhaps surprisingly - an attack in 1999 by NATO forces against Serbia. The bombing of Serbia arose from the serious human rights violations that were being committed by the army of the then Serbian President, Slobodan Milošević. They were intent on the ethnic cleansing of Kosovo by the expulsion of its majority Albanian population. The NATO powers had repeatedly warned Milošević that if his forces did not desist, military action would be taken to force them to do so. He refused to back down and NATO launched the most intensive bombing campaign since World War II. Over a period of 78 days, NATO aircraft carried out over 38,000 combat missions. The bombs were dropped from a height of over 15,000 feet and so avoiding any NATO casualties. No ground troops were used. The number of Serb civilians killed was approximately 500 and about 6,000 were injured - a remarkably low number having regard to the statistics to which I have just referred. So, while the ratio of casualties was some 6,500:0, it became obvious that the NATO commanders took reasonably effective steps to protect civilians.

As chairman of the Independent International Commission on Kosovo, I was able to discuss this situation with senior military commanders in both the United States and German armies. They confirmed that the reasons for the low number of civilian casualties were firstly, the availability and use of precision ordnance. And secondly, they were well aware and concerned that International Criminal Tribunal for the former Yugoslavia (ICTY) had jurisdiction in respect of war crimes committed anywhere in the former Yugoslavia.

Notwithstanding the comparatively low civilian casualty rate, the Russian Federation and other States requested the Prosecutor of the ICTY to investigate the alleged commission of war crimes by NATO forces - the bombing of the Chinese Embassy and the Serbian Radio and Television building, and the attacks on a convoy of Albanian refugees, on the village of Korisa, and a passenger train as it was crossing a railway bridge.

In respect of the train incident, a United States Defense Department official expressed regret for the loss of life and a similar apology



was forthcoming from the NATO Supreme Commander, General Wesley Clark. There was a fulsome apology from President Clinton to the Chinese Government for the bombing of its embassy. That was followed by payment of compensation in an amount of USD 28 million to the Government and USD 4.5 million to the families of the three Chinese citizens who were killed and fifteen Chinese citizens injured in the attack.

NATO cooperated with the Office of the Prosecutor and furnished a detailed response to each of the incidents. A committee of experts within the Office of the Prosecutor prepared a report in which they advised that there was insufficient evidence to justify an investigation into any individual NATO official. The Chief Prosecutor acted on that advice.

The information furnished by NATO went a long way to establish that precautions were taken to avoid civilian casualties and that those that resulted were not the result of a deliberate policy. The Independent International Commission on Kosovo stated that it was:

"... impressed by the relatively small scale of civilian damage considering the magnitude of the war and its duration. It is further of the view that NATO succeeded better than any air war in history in selective targeting that adhered to the principles of discrimination, proportionality, and necessity, with only relatively minor breaches that were themselves reasonable interpretations of 'military necessity' in the context."

I would emphasize that the cooperation of NATO in the ICTY investigation was crucial to the decision of the Prosecutor. Without it, there can be little doubt that the commission of war crimes by NATO would have been investigated.

I would also mention that the indictment issued by the ICTY against President Milošević during the very time that NATO was bombing his country in no way inhibited him from eventually agreeing to the terms laid down by NATO for a cessation of its military campaign. During the Kosovo Commission, I was informed by the United Nations intermediary, former Prime Minister of Russia, Victor Chernomyrdin and the NATO intermediary, then Prime Minister of Finland, Martti Ahtisaari, that in their dealings with Milošević, the question of the ICTY arrest warrant was not discussed. It was just not on the agenda of Milošević. The indictment might not have had assisted the peace but it certainly did not hinder it.

The second situation illustrating the potential of international criminal law to act as a deterrent is more recent. I refer to the United States action that ended with the killing of the leader of al-Qaeda, Osama bin Laden. The choice facing the Obama Administration was whether to bomb the compound in which the United States had determined Bin Laden was living or to send in a team of so-called Navy Seals to take him "dead or alive". According to President Obama, the choice of the former would have put a substantial number of civilians at risk of death and injury and the choice of the latter involved placing United States troops in mortal danger. The latter means was chosen in order to protect civilians in or near the Bin Laden compound. Of course, one cannot speak with any certainty, but in my view, it is highly likely that prior to the recent development and publicity relating to international criminal law, the protection of civilians would not have been prioritized by the United States' policy makers.

I recognize that there is no shortage of illustrations of international criminal law failing to deter the commission of serious war crimes. Perhaps the most vivid illustration is the 1995 Srebrenica massacre to which I have already

referred. That massacre was carried out under the direct command of Ratko Mladić who was acting on the orders of his civilian Supreme Commander, Radovan Karadžić. The ICTY was then up and running, and both Karadžić and Mladić had been indicted for crimes against humanity committed in the earlier period of the war in the former Yugoslavia. Of course, notwithstanding their indictment, Karadžić and Mladić did not actually believe that one day they might face justice in the international war crimes tribunal. The deterrent effect was absent. For those of us in the Office of the Prosecutor of the ICTY, this was a most disappointing realization. I feel some satisfaction in the knowledge that, after thirteen years in hiding, Karadžić is presently standing trial in The Hague for charges that include the Srebrenica massacre.

One has to recognize that the deterrent effect of a criminal justice system will always be unpredictable. It is no different in a domestic situation. In your country or my own, the crime rate will depend directly on the efficiency of the criminal justice system. The more effective it is the lower will be the crime rate. The converse is also true - in countries with inefficient or ineffective criminal justice the higher the crime rate will become. No matter how efficient the system, some criminals will still anticipate escaping justice and crimes will continue to be perpetrated. And some unbalanced people, sadly, will never be deterred. It is no different, I would suggest, in the international community. If political and military leaders anticipate being brought before a court and facing possible conviction and punishment, this may deter some of them from committing war crimes. It will not deter them all. But, just as the imperfect deterrence of even the most efficient domestic criminal justice systems does not undermine their purpose or legitimacy, the fact that some war criminals will never be deterred should not blind us to the important reality that some war criminals will be deterred. And the many thousands of innocent civilians who are spared as a result must not be forgotten.

The progress of international criminal law has also furthered the application of the recently developed doctrine called the "Responsibility to Protect". This doctrine was born out of egregious examples of nations failing to intervene in the face of the most serious violations of the human rights of innocent civilians by their own Governments. I would refer to the global community standing by when, in the middle of 1994, over 800,000 innocent children, women and men were slaughtered in the Rwandan genocide. It would have taken but a small military force to have effectively prevented much of the killing. There are other examples. One thinks, of course, of the killing fields in Cambodia.

After receiving the report from a high-level panel of experts established by him in the aftermath of the Rwandan genocide, Kofi Annan, then Secretary-General of the United Nations, called upon Governments to embrace the responsibility to protect their own citizens. He made it clear that the primary responsibility rested on the Governments concerned. But if they are unwilling or unable to do so, the responsibility shifted to the international community. He emphasized that in such an event, the international community must use a range of measures designed to protect endangered populations, including diplomatic and humanitarian efforts and, only as a last resort, the use of military force.

Of course, politics will play a determinative role in whether or when this doctrine of Responsibility to Protect will be implemented. There was a signal failure in the case of Burma when Russia and China vetoed a Security Council resolution that would have enabled the Council to become seized of the situation there. Those two nations argued that Burma did not pose a threat to international peace and security in the region and that the internal affairs of Burma did not have a place on the Security Council agenda.

The first time that the United Nations Security Council took active steps under this doctrine of Responsibility to Protect was in respect of the situation in Libya. On 26 February 2011, the Security Council unanimously adopted a resolution referring the Libyan situation to the Prosecutor of the ICC. In accordance with the Rome Statute, the Prosecutor has the responsibility for determining whether to proceed with such an investigation. After a preliminary investigation, the prosecutor determined that there was sufficient evidence to believe that crimes against humanity had been and still were being committed by the regime of Muammar Gaddafi. As he reported to the Security Council at the beginning of May 2011, there was also relevant evidence of the commission of rape, deportation and forcible transfer that constituted war crimes under the Rome Statute. The investigation that followed was directed at those who appeared to bear the highest responsibility for the commission of those war crimes.

Over 10,000 people were reported killed and many more tens of thousands injured. The prosecutor also reported that he intended to seek arrest warrants against three members of the Colonel Gaddafi's Government and that he had evidence to establish that Gaddafi's forces had "systematically" attacked civilians in recent months. He reported to the Security Council that the three appeared to bear the greatest criminal responsibility for crimes against humanity and they included those who gave the orders for the alleged atrocities. Whether or not arrest warrants will be issued depends upon the determination of the judges of the Pre-Trial Chamber of the ICC.

The Security Council further authorized enforcement action under its peremptory powers conferred by Chapter VII of the United Nation's Charter. It did so after determining that the situation in Libya constituted a threat to international peace and security. The resolution went on to authorize "all necessary measures" (that is, military action) to protect civilians and civilian populated areas under threat of attack and to enforce compliance with a no-fly zone. As the situation in Libya and across the Middle East develops in the coming months, we will witness the next steps in the evolution of international criminal law.

I trust that I have demonstrated this morning the rapid and impressive development of international criminal law and justice during the past 18 years since the establishment of the ICTY. The future of international justice depends upon the ICC and the system under which it operates achieving wide credibility. That is not likely to happen without the full support of the powerful nations of the world - including the United States. Asia (and Thailand in particular) can play an important role in the ICC's future. Asia has begun to reclaim its rightful place as a dynamic force on the world stage. Alongside its economic rise comes

> "True justice must be ordinary and regular, unremarkable and without exception."

the opportunity to be a force for good as well as for prosperity. Thailand and its Asian partners can provide leadership by ratifying the Rome Statute, and showing full support for the ICC in its mission.

I stand before you today not only to praise the ICC for what it has accomplished, but also to issue a call to action for what remains to be done. The nations of Asia must ratify the Rome Statute and become full members in the international pursuit of justice against war criminals. These nations should support the ICC in recognition of their ascendency on the world stage and their increased role in the international order. They should support the ICC because joining the ever-growing international consensus will put much-needed pressure on the most powerful nations to ratify as well. But, fundamentally, the nations of Asia should support the ICC with full force and without reservation simply because it is the right and moral thing to do. There is great diversity across the many peoples of the world, from East to West, in their conceptions of the right and the good, and of justice and the rule of law. The ICC represents a core set of commitments about which there can be no dispute. It is a universal moral vision around which the people of the world can join together in one voice, unified at long last, to proclaim that we are all brothers and sisters on this Earth. And for the first time in history we will not permit our brothers and sisters to be victims of such crimes any longer, wherever they may occur.

The question facing the international community is whether we will have a better world in which all war crimes are credibly and efficiently investigated and those guilty of war crimes are prosecuted and appropriately punished - in other words withdrawing impunity for war criminals. I cannot believe that we would have a better and more peaceful world if we revert to the pre-World War II situation in which war criminals were effectively beyond the reach of justice. If we care about the victims of war crimes and their rightful claims for justice, the solution is an obvious one.

International criminal law will not be fully effective unless and until all the nations of the world are prepared to respect and implement it. If there was universal ratification of the Rome Treaty it would become wholly unnecessary for any domestic court to exercise universal jurisdiction. All alleged war crimes would be amenable to the jurisdiction of the ICC. This gets to the very heart of the ICC's promise, and what it might mean for the rule of law throughout the world. The Nuremberg Trials and the *ad hoc* tribunals of the 1990s were monumental achievements of justice, but they were only a beginning. Their limitations are present in their names: they were *ad hoc* and extraordinary. True justice must be ordinary and regular, unremarkable and without exception. The International Criminal Court, with the support of Thailand, Asia, and the entire brotherhood of nations, might achieve exactly that. ❖

International Commissions of Inquiry, Human Rights and Humanitarian Law: The United Nations, Syria and Beyond (Summary)

Delivered at the Sixth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 19 June 2013 in Bangkok, Thailand
by

Professor Vitit Muntarbhorn

Professor Vitit Muntarbhorn is Professor Emeritus at the Faculty of Law, Chulalongkorn University, Bangkok, Thailand. He has helped the UN in a number of *pro bono* positions, including as the first UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; the first UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea; and the first UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity. He chaired the UN Commission of Inquiry (COI) on Côte d'Ivoire and was a member of the UN COI on Syria. He is currently UN Special Rapporteur on the Situation of Human Rights in Cambodia, under the UN Human Rights Council in Geneva (2021- present). He is the recipient of the 2004 UNESCO Human Rights Education Prize and was bestowed a Knighthood (KBE) in 2018. His latest book is Challenges of International Law in the Asian Region (2021).

The Ministry of Foreign Affairs, Thailand, in cooperation with the Thai Red Cross Society, organized the Sixth Princess Maha Chakri Sirindhorn Lecture on International Humanitarian Law on 16 June 2013 at 9 a.m., at the Mandarin Oriental Hotel, Bangkok. Her Royal Highness graciously presided over the event.

This Lecture was organized to foster and disseminate the study of and research on International Humanitarian Law, otherwise known as the Law of Armed Conflict, Law of War or Regulations applying in times of war, to cover persons not participating in the hostilities or persons who are *hors de combat.* This Law regulates means and methods of warfare with the aim to limit and prevent human suffering when an armed conflict arises. Not only are governments and armed forces bound to comply with these regulations but also all parties to the armed conflict and other concerned parties are bound thereby.

The Lecture titled "International Commissions of Inquiry, Human Rights and Humanitarian Law: the United Nations, Syria and Beyond" was delivered by Professor Vitit Muntarbhorn, Professor of Law, Chulalongkorn University. He lectured on his experiences as a member of United Nations (UN) Commission of Inquiry (COI) on Syrian Arab Republic (2012 - (2016)) and Chairperson of the UN COI on Côte d'Ivoire (Ivory Coast) in 2011.

International COI (on Human Rights and International Humanitarian Law) are established under the UN system. Such Commissions are composed of members who are independent experts, to support the UN in assessing the situation. The assessment includes interviewing those involved in the conduct of hostilities, witnesses and victims; examining the medical evidence, related academic and other research, and reports from the Government; and publishing reports under the UN mandate periodically. Currently, there are a number of COI, for instance, UN COI on Côte d'Ivoire and UN COI on Libya. The UN COI on Syria was established in 2011. Although the recommendations from these COI are not legally binding, they can have key impact, both internationally and domestically, on the administration of justice, which may include prosecution before the International Criminal Court. Therefore, this is an essential topic deserving analysis and study.

The lecture covered the following elements outlined in the accompanying PowerPoint:

1. Ten key issues: context; mandate; methodology/methods of work; facts - "qualifications des faits"; law - "qualifications du droit"; violations - standard of proof; victims, victims' centrality and sensibility; perpetrators; accountability-responsibility for crimes, especially war crimes and crimes against humanity; and follow-up measures.

2. Sample recommendations from a COI report, such as: no military solution; need for comprehensive political process; aim for de-escalation of conflict; call for respect of Human Rights and International Humanitarian Law; accountability; humanitarian access to victims/civilian population needed.

3. Sample recommendations to the international community, such as to support the peace process, restrict arms transfers, and sustain humanitarian funding.

4. Recommendations to all parties to the conflict, such as to reject sectarian rhetoric as a tactic of war, help preserve material evidence of violations, and allow immediate and full humanitarian access by humanitarian organizations to all areas affected by fighting.

> “In international law, there is no ‘jurisdictional vacuum’ for protecting people. It always protects victims, even though violations regrettably take place.”

5. Recommendations to the Government, such as to constructively participate in the peace process, allow COI access to the country, and respect Human Rights and International Humanitarian Law.

6. Recommendations to anti-government armed groups, such as to join in the peace process in a constructive spirit, reject extreme elements and compel all groups to respect Human Rights and International Humanitarian Law.

7. Recommendations to Office of UN High Commissioner for Human Rights (OHCHR), such as to consolidate the presence of OHCHR in the region and to reinforce the protection of civilians through effective inter-agency presence in the country.

8. Recommendations to UN Human Rights Council (HRC), such as to support COI recommendations and access to UN Security Council (SC), and transmit COI reports to UNSC through the UN Secretary-General.

9. Recommendations to UN General Assembly, such as to support the work of COI, inviting it to provide regular update, uphold COI recommendations and exert influence towards a peaceful solution for the concerned country.

10. Recommendations to UNSC, such as to support COI work, enable it to have access to UNSC, facilitate and underpin comprehensive peace process, and commit to ensure accountability of those responsible for violations, including possible referral to international justice, countering impunity.

Participants at the Lecture: those who participated at the lecture included Ministers, diplomats, Members of Parliament, civil servants, representatives from International Organizations, private sector, academic institutions, students from universities, military academies, police academy, and the media. For further information please contact International Relations Department, Office of Administration, Thai Red Cross Society, Tel. 02 256 4037-8. ❖


International
Commissions of Inquiry,
Human Rights and
Humanitarian Law: The
United Nations, Syria and
Beyond


Thank You !

International Commissions of Inquiry, Human Rights and Humanitarian Law: The United Nations, Syria and Beyond

1

Case Study

- Ivory Coast (Cote d'Ivoire), Africa
- Civil war/non-international armed conflict 2011
- Violations such as attacks on civilians, killings, rape, torture, burning of villages/pillage/destruction of property, destruction of religious sites such as churches and mosques
- What happened, Who did what, where, how ?
- Who are we to believe ?

2

- Lack of or indequacy of national process to probe the facts and those responsible for violations
- An international process – Commission of Inquiry (COI)or fact-finding team – might be necessary to provide impartial and independent monitoring and assessment
- Thus COI was set up by the UN Human Rights Council in 2011: short term – work of three months

3

Independent International Commission of Inquiry (COI): Ivory Coast

- Established by the UN Human Rights Council 2011
- Mandated to report on what happened and who did what/who is responsible for the violations ? What violations ? Human rights (violations such as summary/extra-judicial killings/executions, torture in time of war or peace)

4

- international humanitarian law (violations in times of war – civil war and/or international wars(non-international and/or international armed conflicts) – such as failure to distinguish between military and civilian targets; indiscriminate attacks on civilians; destruction of protected sites and objects; use of various prohibited weapons)

5

- The COI reported back to the UN Human Rights Council in June 2013 and found violations, especially by the former Government under (ex) President Gbagbo, and some violations by armed opposition groups
- Parallel investigations by the International Criminal Court (ICC) led to transfer of Mr.Gbagbo to the court (in the Hague) for criminal proceedings/prosecution.

6

International Developments: Commissions of Inquiry (COI)

7

Independent International Commission(s) of Inquiry

- Established by the UN (Human Rights Council, possibly other parts of the UN: SC,GA, Secretary General…)
- Inquiry into:
- What happened
- Who did what
- Who might be accountable/responsible for the violations….

8

- COI set up by the UN HRC
- Other channels, e.g. International Fact Finding Commission under Red Cross-related Treaty/Convention
- Fact finding Commission or COI set up by other actors (national COI, governmental COI).
- This presentation is about COI established by UN, especially UN Human Rights Council

9

Why, what, how, who ?

- If no national process to expose the facts and those responsible for the violations, an international process may be necessary....
- International Commissions of Inquiry.....
- Independent report under the UN umbrella, with independent Commissioners/experts (not UN staff) , supported by UN secretariat....

10

Human Rights and Humanitarian Law

- Human rights – rights advocated at least to/against the State; rights bind all actors
- International standards, such as UN resolutions (e.g. Universal Declaration of Human Rights) , UN treaties/Conventions (such as International Covenant on Civil and Political Rights, Convention against Torture, Convention on the Rights of the Child...).g.
- E.g. prohibition of extra-judicial killings, torture, arbitrary detention, enforced disappearances, violence v women/children

11

– (International) humanitarian law (IHL) – specific international law applying in times of war/armed conflict whether non-international (civil war) or international (international war)

- IHL rules such as:
  - The need to distinguish between military and civilians targets – indiscriminate attacks on the latter are war crimes

12

– the need to protect wounded soldiers/fallen soldiers and prisoners of war

– where a person is accused of a wrongdoing, summary execution of the person is prohibited: thus, the right to be taken to a regularly constituted court/tribunal, even in times of war

13

- Prohibition of use of various weapons, such as chemical weapons, weapons causing unnecessary suffering or superfluous injury
- If the violations are widespread or systematic (backed up by policy) against the civilian population, they may be tantamount to crimes against humanity also.
- Possibly genocide ? The ground of genocide is difficult to prove, as it needs special intent to target/harm a group.

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The UN and COI

- COI set up by the UN HRC in recent years:
  - Ivory Coast (end of war; non-international armed conflict)
  - Libya (war; non-international, then international armed conflict)
  - Syria (since 2011) (war: non-international armed conflict)
  - Recently , Democratic People's Republic of Korea (war in early 1950s, with armistice; since then, longstanding situation of human rights violations)

15

- UN may set up an international COI to monitor a State, even if the latter does not consent
- Rationale: to offer international protection to the population, where the State unwilling or fails to offer national protection

16

Syrian Arab Republic (Syria)

- COI set up in 2011
- Without consent of Government/Syria
- No access to the country, although access to victims such as refugees and neighbouring countries
- Set up by UN HRC and mandate renewed for one year in early 2013
- Latest of COI reports: June 2013

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10 Key Issues re (any) COI

- Context
- Mandate
- Methodology/Methods of work
- Facts: "Qualification des Faits"
- Law: "Qualification du Droit "

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- Violations: standard of proof
- Victims: victim centrality and victim sensibility
- Perpetrators
- Accountability/Responsibility for crimes: especially war crimes and crimes against humanity
- Follow-up Measures

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Context

- Political/legal context – at times, very inflamed
- COI as means to an end: prove a point through investigation, make suggestions to the UN and global community, including the country in question...but COI is not a panacea
- Report to the UN, know what to write and what not to write...
- Mobilise humanitarian action to help victims through credible information and impartial/independent/objective analysis

20

Mandate

- Investigate and report back to UN: HRC, GA, SC ?
- "establish facts and circumstances of violations.."
- Identify those responsible and bring them to justice (all sides!)
- Short term ? Fixed time-frame ? COI on Syria report for every session of UNHRC: now renewed for one year
- Field visits and teamwork – esprit de corps...

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Methodology/Methods of Work

- Established by UN
- Independent commissioners – at least three, 4 in COI on Syria, supported by UN secretariat; pro bono commissioners: independent, objective, impartial
- Prepare report for UN to mobilise
- Field visits, even if no access to country in question; go to neighbouring countries, access refugees etc

22

- Build documentation: data base at UN with record of direct interviews with witnesses, documenting allegations of violations and violators: case by case documentation
- COI/Syria – now nearly 2,000 direct interviews, computerised at UN
- Secretariat team: investigators who carry out continual field visits, document victim/witness testimonies, and collect in UN database

23

- Although COI not a judicial investigation, collects information for possible use in future judicial proceedings at the national or international levels ..what happened, when, who did what, who is in the chain of command/responsibility...
- Use "corroboration" and cross check of information: not use media reports in case of violations but direct testimonies of witnesses, cross-checking with other sources....

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- Access to the victims and be a voice for them

25

Qualification des Faits

- Establish the facts according to the (time-frame) set by the mandate/UN resolution
- Aim for the truth when many other sources are there claiming (many other) truth(s)..."COI is the only game in town"
- If a situation is inconclusive, we say so....
- Be careful with statistics
- Can refer to data from other UN agencies, but not necessarily so, as the COI has its own method of collecting information

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Qualification du Droit

- Which law applies ?
- Human rights, international standards (while not forgetting local law if it complies with international standards ?); Human rights treaties, international customary rules/UN inputs such as UN resolutions
- Regional conventions: e.g. Arab Charter of Human Rights

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- International Humanitarian law
  - 1949 Geneva Conventions (4 Conventions)
  - 1977 Protocols to the 4 Geneva Conventions
  - Other relevant treaties and customary rules, e.g. On prohibition of use of chemical weapons: - 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

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- 1997 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction

- Note: what is the threshold for "qualifying" a situation as a situation of war or armed conflict, to bring into play international humanitarian law ? Intensity of conflict (not just small, isolated incidents).

29

- Even if IHL does not apply, human rights apply.
- In international law, there is no "jurisdictional vacuum" for protecting people. It always protects victims, even though violations regrettably take place.

30

Violations

- List/extent of human rights violations, e.g. massacres, other unlawful killings, arbitrary arrest and detention, hostage taking, enforced disappearance, torture and other forms of illtreatment, sexual violence, violations of children's rights (e.g. use of child soldiers - under 15)

31

- List of humanitarian law violations (overlap with above):
  Unlawful attacks, attacks on protected persons and objects, pillage and destruction of property, illegal weapons, sieges, forced displacement
- Standard of proof ? "Reasonable grounds to believe" that violations have taken place. Not judicial test of proving "beyond all reasonable doubt".

32

- Based on credible, reliable information, direct testimonies of witnesses and corroboration..

33

Victims

- Identify and record, with respect for privacy and victims' protection
- Not raise expectations
- Not reveal their names publicly
- Possible follow up measures to help them, e.g. contact with local UN presence
- Special care with gender and issue of sexual violence against women...cultural sensitivity

34

Perpetrators

- COI covers all sides of conflict, government and non-government
- In Syrian case, violations by the government authorities more intensive and extensive, e.g. use of aerial bombardments on civilian targets by the authorities, while armed opposition groups have no airforce/airpower.

35

- But some violations by armed opposition groups in Syria, e.g. unlawful killings and executing captured soldiers without proper trial by regularly constituted court
- COI gives confidential list of those close to the violations – to the UN High Commissioner for Human Rights to be kept in a safe for possible future use, possibly in criminal proceedings

36

- Why confidential list ?
- We do not reveal the names because the alleged perpetrators have not yet been through "due process of law", e.g. the right to be heard in judicial proceedings/ the right to legal representation....
- COI is not a judicial inquiry but a human rights inquiry....of an initial, preliminary (prima facie) nature.

37

Accountability/responsibility

- State responsibility – to protect human rights, to prevent violations, to ensure remedies
- Individual criminal responsibility:
  - War crimes
  - Crimes against humanity
  - Genocide....
  - Linkage with International Criminal Court Statute

38

- Even where a country such as Syria is not a party to the ICC, individuals can be cross-referred by the UN Security Council to the Court – if the UNSC has the will to do so.
- Not forget possible mechanisms at national, local levels including local courts and truth/reconciliation commissions
- Criminal responsibility might be paralleled by civil liability....

39

Follow-up

- Influence rest of the UN to act, especially UNSC
- Press for humanitarian access by UN to victims even in war situation; enlarge humanitarian space in areas occupied by government and areas occupied by opposition to deliver basic services/necessities, e.g. food, water, medicine, schooling

40

- Mobilise the international community to act…to use the information/COI report well to protect victims and their rights.

41

Syrian situation: 2013

- Escalation
- Sectorianisation
- Radicalisation (extremists from various countries)
- Victimisation (multiplied brutalities)
- Regionalisation/internationalisation – spill-over….. It is about Syria and it is about much more than Syria……..

42

Violations ? Mid 2013

- Government forces and affiliated militia committed murder, torture, rape, forcible displacement, enforced disappearance and other inhumane acts. Many= part of widespread or systematic attacks against civilians and constitute crimes against humanity

43

- War crimes and gross human rights violations also, e.g. summary execution, arbitrary arrest and detention, unlawful attack, attacking protected objects, pillage and destruction of property

44

- Anti-government armed groups also committed war crimes: murder, sentencing and execution without due process, torture, hostage-taking and pillage.
- Endanger civilians by positioning military objectives in civilian areas

45

- The violations and abuses committed by anti-Gov armed groups did not, however, reach the intensity and scale of those committed by Government forces and affiliated militia
- There are reasonable grounds to believe that chemical agents have been used as weapons. The precise agents, delivery systems or perpetrators could not be identified.

46

List of alleged violators

- To date:
- three confidential lists given to the UN High Commissioner for Human Rights
- Covers alleged perpetrators without discrimination…

47

Conclusions/recommendations from COI June 2013 report

- No military solution; need comprehensive political process
- Need de-escalation of conflict
- Call for respect for human rights and humanitarian law
- Accountability
- Humanitarian access to victims/civilian population needed

48

- **Recommendations to international community**: e.g.
- Support peace process
- Restrict arms transfers
- Sustain humanitarian funding

49

- **Recommendations to all parties:**
- Reject sectarian rhetoric as a tactic of war
- Help preserve material evidence of violations
- Allow immediate and full humanitarian access by humanitarian organisations to all areas affected by fighting

50

- **Recommendations to Government of Syria:**
- Constructively participate in peace process
- Allow COI access to the country
- Respect human rights and humanitarian law

51

- **Recommendations to anti-Government armed groups:**
- Join the peace process in a constructive spirit
- Reject extreme elements, and compel all groups to respect human rights and humanitarian law

52

- **Recommendations to OHCHR and UN agencies:**
- Consolidate presence of OHCHR in the region
- Reinforce the protection of civilians through effective inter-agency UN presence in the country

53

- **Recommendations to UN HRC:**
- Support COI recommendations and access to UNSC
- Transmit COI report to UNSC through UN Sec-Gen

54

- **Recommendations to UN GA:**
- Support work of COI, inviting it to provide regular updates
- Uphold COI recommendations and exert influence toward a peaceful solution for the country

55

- **Recommendations to UNSC:**
- Support COI work and enable it to have access to UNSC
- Facilitate and underpin comprehensive peace process
- Commit to ensure the accountability of those responsible for violations including possible referral to international justice

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Contemporary Challenges to Humanitarian Action

Delivered at the Seventh Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 8 June 2015 in Bangkok, Thailand
by

H.E. Mr. Peter Maurer

H.E. Mr. Peter Maurer has been the President of International Committee of the Red Cross (ICRC) from 2012 to 2022. Prior to his career at ICRC, H.E. Mr. Maurer held various positions in Swiss diplomatic service in Bern, Pretoria and New York, where he was appointed ambassador and permanent representative of Switzerland to the United Nations in 2004. In this capacity, he worked to integrate Switzerland, which had only recently joined the United Nations, into multilateral networks. In January 2010, H.E. Mr. Maurer was appointed Secretary of State for Foreign Affairs and took over the reins of the Swiss Department of Foreign Affairs. H.E. Mr. Maurer is currently the President of the Board of the Basel Institute on Governance and is a leading voice internationally on humanitarian and related issues.

Your Royal Highness Princess Maha Chakri Sirindhorn,

Excellencies,

Distinguished Guests,

Ladies and Gentlemen,

First of all, I would like to congratulate Her Royal Highness on the important birthday she celebrated some few months ago. Let me add the congratulations and best wishes of the International Committee of the Red Cross (ICRC) at this occasion.

I would also like to thank Her Royal Highness as well as the Thai Red Cross for the organization of this biennial event, and the opportunity to discuss the challenges for humanitarian action in today's tumultuous times.

A Changing and Increasingly Complex Environment

Indeed, today's times seem to be dominated by wars and violence. From the urban violence in Latin American cities, to decade-old conflicts on the African continent, from multidimensional wars raging in the Middle East to newly emerging crises like Ukraine or low-intensity armed conflicts in Asia, fighting takes place on all continents and war is an undeniable feature of present and most likely future reality.

The ICRC has had over 150 years of experience in humanitarian action in armed conflict. Our experience, combined with our presence today in over 80 countries, in close proximity to parties of conflict, perpetrators of violence and victims - most of them civilians- allows us to see patterns emerge in the development of armed conflicts and other situations of violence, and the related challenges for humanitarian response. Indeed, over the last decade, we have seen new types of conflict emerge.

Today, I would like to give you a brief overview of how the ICRC looks at the transformation of war and violence in today's world. And how, as a humanitarian organization, we are trying to access people in need, despite those challenges, to deliver essential aid and to create a humanitarian space amidst conflict and violence.

Across the world and overall, the number of armed conflict is decreasing; more people than ever in the history of mankind are healthier, better educated, live longer lives. That should be good news. But in reality only the number of all-out international armed conflicts is decreasing. Internal armed conflict and protracted, long-term violence are increasing and fragile contexts are increasingly numerous in lower developed but also in middle income countries. We see a new type of conflict and violence emerging, with new dynamics that create challenges for humanitarian responders:

• Protracted conflicts that are ever longer in duration and frequently lead to the implosion of basic social delivery systems -for example in Afghanistan, Somalia, the Democratic Republic of Congo, but also in this region, in Myanmar or in some parts of the Philippines; in some places long-term conflicts are compounded by more frequent natural disasters.

• We see regionalized conflicts that spill over into neighboring countries- like the violence in northern Nigeria that is affecting Niger, Chad, Cameroon and other countries in the region or the Syrian-Iraqi conflict, which has destabilized the entire Middle East.

• We see volatile conflicts, spiked with terror tactics and suicide bombings and spread through the ideological battleground of social media and which are transforming traditional patterns of armed conflict.

• We see increasingly polarized conflicts politicized at global level through international organizations and with few capacities and skills devoted to political settlements as in Ukraine or Yemen.

• Battlefields that extend into cities and civilians' communities, with bombing and military attacks in densely populated areas, like in Syria or Gaza. Today, Lugansk and Donetsk, Aleppo and Hams, Raqqa and Mosul, Maiduguri and Benghazi have become symbols of such transformation.

• We see violence imposed by new actors, which mix political, criminal and business interests in amorphous structures, for example in the Americas but also along commercial and migratory routes in Africa.

• We see an increasing trend to have armed forces engaged in fighting terrorism and in situations of internal unrest thus blurring the line between the use of force in armed conflict and in public order.

The result is often and in many places a vicious circle: conflicts add pressure on fragile systems, states are increasingly incapable of providing basic services in terms of housing, health, water and sanitation or education. This increases the vulnerability of communities and adds pressure on resources and the social fabric of societies, thereby reinforcing conflicts, pushing whole regions into poverty, fragility, instability, crime and endemic violence. Whenever I am travelling and talking to affected communities, I am struck about the explanation offered for such situations; it is not first and foremost poverty, which drives violence, but injustice, discrimination and exclusion.

For the past 150 years, the Geneva Conventions and other bodies of international law have codified the limits of war and limits to the use of force: civilians must not be targeted in military combat; women and children must have special protection; hospitals and medical personnel must be spared in all circumstances and their commitment to save lives supported. Such and many other limits of war are not only to be found in international humanitarian law (IHL); they are universal norms in any society and culture and have existed for thousands of years, based on the intrinsic values of humanity, dignity, protection of the vulnerable and service to those in need.

Yet, there is a range of issues that considerably complicates the respect for the law. Let me enumerate some of them on which the ICRC is currently working on, notably compliance with IHL, the challenges of modern weapons, the humanitarian consequences of migration, and reconnecting people with their families.

Compliance

A first issue is the compliance with the existing treaty and customary rules of IHL, which is at the core of the ICRC's activities related to the protection of persons in armed conflicts. The ICRC works to improve compliance with IHL, by being present on the ground and by maintaining bilateral confidential dialogues with State and non-State actors to address specific humanitarian problems. We train armies and non-state armed groups; wherever possible, we engage with them in order to review specific cases, in which the law has been inadequately respected and we offer recommendations to redress violations of the law. We engage in dialogues with countries on their respective responsibilities when they export weapons or train armed groups.

In parallel, the ICRC promotes compliance through enhancing the understanding and acceptance of IHL, as well as assisting authorities in the implementation of IHL in domestic law. Such efforts include engagements with National Humanitarian Law Commissions but also reaching out to influential circles, including religious and community leaders and scholars, which enable us to better understand how value systems relate to the law of war, and to identify commonalities with IHL. This may be especially relevant when certain non-State armed groups reject IHL as a whole in the (wrong) conviction that it is a Western creation.

But we have to recognize that compliance with IHL is heavily dependent on the political will of the parties to a conflict. The Geneva Conventions and Additional Protocol I provide for a whole series of mechanisms to strengthen compliance, but they have rarely, if ever, been used. The reason for their failure is that their functioning is subject to the consent of the parties concerned. They were designed for international armed conflicts, not non-international ones.

Similar challenges overshadow mechanisms established under the United Nations (UN). They too are subject to political negotiation and selective in their choice of which situations to address.

For all these reasons, the ICRC and Switzerland have jointly launched a consultation process with States to identify options for strengthening compliance mechanisms. We are convinced that a regular meeting of States Parties to the Geneva Conventions to discuss recurring problems of application of IHL, building on lessons learned and thematic exchanges, could represent a welcome step forward in making the law more meaningful and its application and respect more thorough. We hope that the International Conference end of the year in Geneva will take important decisions forward on this way.

Detention

Another issue complicating respect for the law is related to the deprivation of liberty of persons. In international armed conflicts, IHL clearly states when and why a person can be detained or interned. Things get more complicated in situations of non-international armed conflicts, where IHL is far less precise.

The reason for this lack of certainty and lack of clarity is that IHL- applicable in non-international armed conflict- assumes that internment will occur, but it fails to clarify the permissible grounds and required procedural safeguards, which leaves detaining authorities without pre-determined rules to rely on against arbitrary detention. This is a recurring issue in legal studies: the world and societies evolve faster than the law and we find ourselves with a legal gap.

Moreover, international humanitarian law and human rights law partially overlap, yet partially leave a gap, most frequently where the clarity of the law is met with a much more complex, multi-layered reality on the ground. Increasingly, on the ground we are confronted with situations in which arrests and detention in the context of armed conflict, under terrorism legislation or common law issues go hand in hand, calling for more clarity on each one of the contexts.

Likewise, issues such as the transfer of a detainee from one State to another, material conditions of detention, including food, shelter and medical care, contact with the outside world, or specific needs of women and children or of particularly vulnerable persons such as the elderly or disabled, are not sufficiently regulated in non-international armed conflicts.

The ICRC works, together with States, to address these issues, and find both practical and legal solutions to the existing gaps. Such legal effort is deeply rooted in our broad and practical experience.

In 92 countries of the world, the ICRC visits prisoners and works with detaining authorities to monitor conditions of detention and provide support to reach international standards. Last year, we visited over 800,000 detainees in more than 1,600 places of detention around the world. The ICRC has regularly visited detainees in Thailand since 2004, particularly in the Southern provinces, but also in other parts of the country. We would like to further strengthen our cooperation with the Ministry of Justice, and its Department of Corrections in the coming months. We hope that we will be able to build on the relation of trust that we have established over the years and hope that such cooperation will also contribute to the further development of the international framework on detention.

Weapons

While the main challenge for improving the situation of victims of armed conflicts is ensuring respect for existing norms, we cannot ignore the evolving ways that wars are fought in the 21st century. The rapid evolution of military capabilities is a case in point.

The Geneva Conventions have bestowed the ICRC with a mandate to work on the humanitarian impact of weapons, always following the rule that all warfare must respect the principles of precaution, proportionality and distinction. We see it as a success that we managed, together with States, to enforce a ban on anti-personnel mines, because of the indiscriminate character of those weapons, or to regulate more thoroughly the trade of small arms and light weapons through the Arms Trade Treaty because of the massive lethal impact of such weapons in today's conflicts.

We are currently working on the issue of explosives in densely populated areas as we see battlefields moving from open spaces into urban, densely populated areas. While such movements can hardly be influenced, we cannot accept that the weapons move along into urban centers, close to family homes, hospitals and schools and at the same time become more lethal because of technological progress.

And even after a conflict ends, years and decades later, mines and unexploded bombs, shells and cluster-munition bomblets continue to kill and maim. This deprives entire populations of access to water, firewood, farmland, health care and education. It impedes relief work, depriving people of humanitarian aid, thereby aggravating humanitarian problems. Unexploded ordnances and anti-personnel

mines are a problem in this region, including Thailand and the ICRC continues to work on risk reduction, risk education and clearance of ordnances. We will have the opportunity to exchange more on the issue of weapons and the challenge of regulating them under international law in the debate this afternoon. I look forward to hearing your comments on this. In terms of precautionary measures, proportionality and distinction, a wide range of possible actions could be envisaged in order to improve the present situation.

New Technologies

Besides traditional weapons, new methods and means of warfare - such as cyber warfare and autonomous weapons - have become subject of increasing debate in the humanitarian, legal and diplomatic community. Clearly, the drafters of the Geneva Conventions did not foresee such technologies although they were aware of the increasing costs that military technology was inflicting in civilian infrastructures.

For example, cyber warfare - that is, means and methods of warfare that consist of cyber operations amounting to, or conducted in the context of an armed conflict. While the military potential of cyberspace is not yet fully understood, it appears that cyberattacks against transportation systems, electricity networks, dams, and chemical or nuclear plants are technically possible. Such attacks could have wide reaching consequences, resulting in high numbers of civilian casualties and significant damage.

As with any new technology, if cyber capabilities are used in armed conflicts, they must comply with IHL, in particular the principles of distinction, proportionality and precaution. The main challenge in this regard is the interconnectedness of cyberspace. There is only one cyberspace, and the same networks, routes and cables are shared by civilian and military users. The interconnectedness of cyberspace might make it impossible to distinguish between military and civilian computer systems when launching a cyberattack.

Also, the principle of proportionality requires to assess the expected incidental effects of an attack on civilians and civilian objects; but in cyberspace, is it possible to do so, including to assess the indirect effects of a cyberattack on civilian networks? The anonymity that cyberspace allows is another major challenge. If the perpetrator of a cyber-operation cannot be identified, it might become extremely difficult to determine whether IHL is even applicable to the operation, and to do so in a timely manner.

Turning to autonomous weapon systems, capable of searching for, identifying and targeting an individual with lethal force. Such weapons do not

yet exist, but research is advancing at high speed, which raises concerns that need to be addressed in time. It is far from clear whether autonomous weapons could ever meet the IHL obligations to distinguish between civilians and combatants, to carry out proportionality assessments and to take feasible precautions in attack. But even if it were technologically possible one day to enable autonomous weapons to fully comply with IHL, their deployment would still raise fundamental questions about how machines can be allowed to make life-and-death decisions or about who would be held accountable for war crimes. Let me be clear, the crucial question is not whether new technologies are good or bad in themselves, but to make sure that they are not developed and employed prematurely under conditions in which respect for IHL cannot be guaranteed.

Migration

The situation of vulnerable migrants is another subject of tragic relevance today. The ICRC is deeply concerned by the situation for migrants, including the irregular migrants in the Bay of Bengal, vulnerable as they are to the effects of armed conflict or other situations of violence. Amongst this group, women and children are particularly exposed to the multiple forms of violence and exploitation that exist.

Not surprisingly, numerous countries are challenged today to find an adequate response to a problem, which has gone far beyond national borders for a long time. Record numbers of refugees and internally displaced persons since the Second World War, compounded by other motives for migration, lead to challenges which do not have an easy answer. Our experience over the last couple of years has shown, that focusing on the mitigation of negative humanitarian consequences is in many respects a promising approach: working along migratory routes to provide minimal services to migrants helps curb the illegal exploitation along those routes; ensuring safe reception structures for those who have to return home is another. Ensuring humane treatment and adequate services in detention facilities for illegal migrants is yet another example of a humanitarian mitigation strategy. Transparent information of migrants can help make informed choices.

One consequence of migration be it in the search or more opportunities or to attempt to flee present or imminent dangers, is the loss of contact with loved ones. This can result in the person being considered missing by his or her family and causes high levels of anguish and suffering for those without news. Part of our response has been aimed at helping to restore family links, which is one more of the lines of action in which our partnership with the Red Cross and Red Crescent Movement has proven successful. Sometimes all it takes is a phone call. So, we provide phones. Several thousands of migrants on different migratory routes have been able to contact their loved ones thanks to ICRC-funded telephone services for example.

The ICRC seeks to remind the authorities of their obligations towards migrants in terms of protection needs and respect for their fundamental rights. It is necessary to ensure that the framework of protection for the migrant population established at national level is applied and respected, as well as to ensure that the required resources are available.

However, national legislation and political decisions must respect international legal standards, including the respect for non-refoulement as a principle of international law.

The ICRC stands ready to provide humanitarian assistance to irregular migrants in Thailand and other countries of the region. We are particularly involved in establishing family links, which is an important humanitarian need, also for the people rescued in the Bay of Bengal. We also want to support efforts to inform families about persons who died during their arduous journey.

Missing Persons and their Families

Throughout the world there are thousands of families who are without any news regarding the whereabouts of a relative who may have disappeared not only on his or her journey as a migrant, but also in other circumstances not involving migration. Of these, a vast number go missing for various reasons but there is no single mechanism for the search of missing persons nor to identify mortal remains. This prevents most families from ever knowing the fate of their loved ones and serves to prolong the suffering for all those who have a right to an answer.

The ICRC has been working to respond to the plight of missing persons and their families for a long time the world over, in particular where disappearances were related to armed conflicts and other situations of violence.

Such efforts include work with the authorities on measures that effectively respond to the complex needs of the families of persons gone missing, first and foremost their need to know what has happened to their missing loved one. The ICRC is providing legal and technical expertise to the authorities, for example on protocols to improve the quality of standardized data collection of missing persons, the handling of human remains or for strengthening the support to families.

In addition, the ICRC is developing a dialogue and cooperation with members of the civil society who work on this issue and have a wealth of experience, in order to ensure that the voice of the families is also heard and taken into account in terms of political policies and the eventual creation of mechanisms to properly address the problem.

For progress to be made on this issue, it is essential that all those involved - including civil society and the families themselves - work together to decide jointly which steps need to be taken. The ICRC reiterates its continuing commitment to providing any technical or other support that is required.

Principles

At the ICRC, we base our actions on the limits of war and the humanitarian space defined by such limits - not because the Geneva Conventions ask us to do so, but because where the limits of war are not respected, men, women and children who have not taken up arms - or combatants who have laid down their arms - are deprived of protection from murder, rape, pillage, humiliation, and the list goes on. We base our actions on the needs of people affected by conflict and violence, wherever this leads to humanitarian consequences.

Our experience shows that neutral, independent and impartial humanitarian action has the best chance to reach those most in need. It is a tried and tested formula to prevent humanitarian action from becoming part of controversial political agenda.

Yet, the humanitarian space necessary for our work is becoming increasingly difficult to navigate against the new type of conflict and

> "[...] neutral, independent and impartial humanitarian action has the best chance to reach those most in need."

actors that are dominating today. There are not only new and emerging non-State armed groups engaging in acts of violence and war beyond those limits. We are also concerned by the behavior of States testing such limits, or going beyond, in their anti-terrorism operations, in torturing and ill-treatment of detainees, in the use of illegal weapons, in engaging through secret operations of armed forces to destabilize countries and more. IHL is not a law depending on reciprocity. The violation by one side cannot legitimize the breach of law by the other side. IHL is applicable at all times.

Similarly, for our assistance operations and for the whole concept of assistance, the creation of a consensual humanitarian space for neutral and impartial humanitarian operations is critical. Unlike other organizations, the ICRC does not focus only on one specific area like health or food; nor on one specific group like children or women; nor on one specific type of activity like assistance or advocacy.

We are committed to respond to a broad area of needs (food, water and sanitation, health, basic household items) and thus describe ourselves as a multidisciplinary organization. We focus on the most urgent needs of people and thus on a broad range of vulnerabilities and thus work in direct proximity of victims. We are not just a relief agency but committed to assist and protect through law, to influence weapons bearers to respect contractual and customary frameworks in the limitation of the use of weapons, and we try to influence actors on the ground to better protect civilians.

This approach is tested today in many conflicts. Countries are forcing relief operations to combat zones and people in need: cross-border operations, humanitarian corridors, humanitarian convoys, no fly zones and more are popular concepts for this kind of humanitarianism. While I recognize that we are confronted with difficult dilemmas when needs are growing exponentially and access is prevented, we are reluctant with regard to unilateral and non-consensual humanitarian action, which may contribute to relieve the suffering of people but at the same time fuels the conflict. We are strongly of the opinion that patient, consensual, negotiated humanitarian action, which is radically needs based and principled is the best humanitarian action.

Let me clarify in this context our relations with national societies of the Red Cross and Red Crescent. While we will, as long as possible and as far as possible, privilege cooperation with national societies, we should also be aware that there are situations of conflict where the national society, as an auxiliary of the government, may be partial and therefore not independent in its delivery of humanitarian assistance. In such cases, the ICRC may decide to offer its services alone and not as part of the movement because only with a strong perception of independence,

> “[Princess Maha Chakri Sirindhorn’s] leadership as Executive Vice President of the Thai Red Cross is indeed remarkable and constitutes a great contribution to the humanitarian efforts of [the International Red Cross and Red Crescent] Movement.”

we will have access to and acceptance by all sides of armed conflict.

With such an approach, our response is distinct and different throughout countries and regions. We have a very different exposure today in the Middle East, in Africa, in Latin America or in Asia and within these regions because only a contextualized approach is an adequate approach.

ICRC in the Region

Here in Thailand, the ICRC first opened an office in Bangkok in 1975, to support victims of the armed conflict in Indochina. We are happy to celebrate 40 years of cooperation with the Thai authorities and the Thai Red Cross this year.

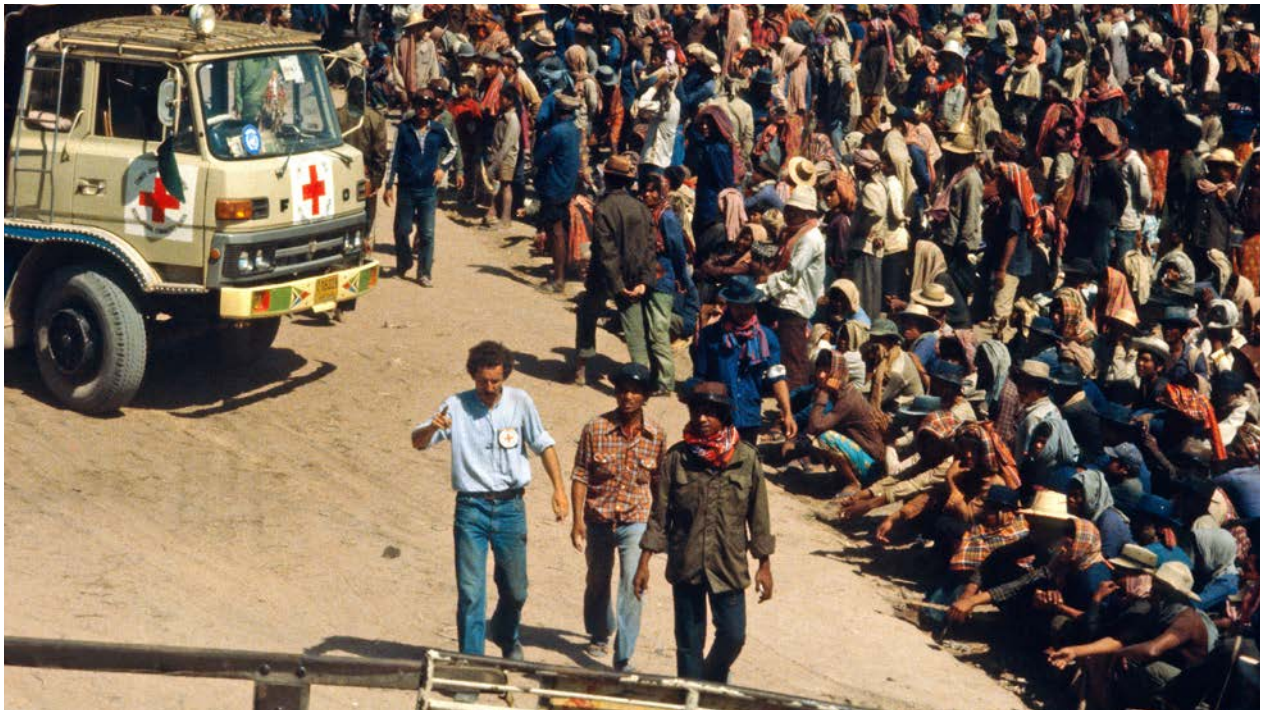
In 1979, when hundreds of thousands of Cambodian refugees arrived at the Thai-Cambodian border, the ICRC was among the first humanitarian organizations to provide assistance. We handed out emergency food and water supplies, and built the now famous ICRC bamboo hospital in Khao-I-Dang. The ICRC was also among the very few organizations to work on both sides of the border.

I would like to use this opportunity to again extend the gratitude of the ICRC to Her Royal Highness, who I know was personally involved in the operations of the Thai Red Cross at this time. Your leadership as Executive Vice President of the Thai Red Cross is indeed remarkable and constitutes a great contribution to the humanitarian efforts of our Movement.

Looking back today, the joint operation between the Thai authorities and humanitarian organizations can be considered a true success story: all refugees were able to return to Cambodia or were resettled in third countries by 1993, following the Paris Peace Accords. The ICRC stayed until the last camp was closed.

Today the ICRC office in Bangkok is in charge of operations in Thailand, Cambodia, Laos and Vietnam. It also provides support services to ICRC delegations in the whole of Asia. The ICRC notably runs a large operation in Myanmar, where many people still are affected by violence or suffer from the consequences of armed conflict. Here again ICRC managed to gain the confidence to work as one of the only organizations on all sides of conflict lines.

In Thailand, the ICRC provides support to families who have been affected by the violence in the three Southern Provinces.



Over 250 families have so far received financial and technical assistance from the ICRC, enabling them to develop an income-generating activity and build their livelihood. We also support the Thai authorities to care for war-wounded persons who still arrive in Thailand from Myanmar.

In the whole region, the ICRC is involved in promoting IHL to the armed forces and in universities. We recently organized a number of successful training courses for senior military and police officers based in the Southern provinces. And just two months ago, jointly with the Royal Thai Navy, we organized a weeklong seminar on the Law of Armed Conflict at Sea in Bangkok.

Senior Navy officers from 14 countries in the Asia-Pacific region, including China, Vietnam, the Philippines, the US and Australia attended and had the opportunity to discuss IHL - and this in a space where political tensions around the South China Sea could be put aside for the duration of the seminar, to the benefit of all participants. Building on positive experiences like this one, we would also like to strengthen our cooperation with the Royal Military Academy in the near future.

The ICRC enjoys a very strong and trusted partnership with the Thai Red Cross. We have been able to provide support to the Thai Red Cross in further strengthening their outstanding capacity to respond to all kinds of emergency situations in Thailand.

And I would like to thank the Thai Red Cross for the support and advice given to the ICRC throughout many years of cooperation for our activities in Thailand, in the region and in the world. In cooperation with the Thai Red Cross, we are also looking forward to adding more Thai staff members to ICRC operations all over the world.

Perspectives and Conclusions

Beyond our global work on legal frameworks, and our operations on the ground, we engage in advocacy, too. Creating awareness and spreading information about some lesser-known sides of the humanitarian consequences of armed conflicts can help prevent suffering. Our institutional strategy for the coming years therefore puts a particular focus on

the humanitarian consequences arising from migration (on which I have spoken already) on sexual violence, as well as the need for accessible health care.

Sexual violence for example - against women, men, boys, girls, and detainees - has been part of wars for centuries, all over the world. It is usually connected to other patterns of violence and represents a serious violation of IHL and eventually a war crime. We aim to educate and inform military, other weapons carriers and communities about the risks, the suffering and the essential medical and psychosocial treatment for victims of sexual violence. We acknowledge that sexual violence is a silent crime and often invisible, contrary to the lack of shelter, food, water, or medical services. We are therefore developing a new methodology in dealing with this form of violence; much more directed to create safe spaces and psychosocial support for victims so that they can overcome their traumas. Let me be very frank: the scariest part of today's world of violence may be the long-term effects and the intergenerational consequences that we may face when traumas from violence remain unaddressed to haunt future generations. Addressing such issues today also means that we have to be able to respond in law, policy and through our operational experience to such challenges.

Similarly, I am concerned by the continued violations of the integrity of health workers and health facilities in conflicts and other situations of violence. Two years ago, we launched a campaign on the matter of protecting healthcare facilities and staff. Because what happens when hospitals are attacked, or doctors and nurses targeted? When medical aid is blocked from delivery? People suffer longer and more. Just recently, in Yemen, a plane carrying medical equipment was prevented from landing. This means hospitals could not treat patients. And hospitals were quickly filling up with wounded people, but the medicine had not arrived. The same week, a colleague of mine was shot while driving an ICRC truck to get more medicine for a hospital in northern Mali.




The security of our staff has to be a priority - so how can we work when we are being attacked for doing our work?

Such acts of violence have devastating consequences not only for the respective contexts where they happen and for the targeted health services. We see violence against health facilities and workers increasing, as a global problem, leading to weaknesses of health systems and to a threat for global public health. It is not by chance that polio was re-emerging in fragile contexts like Afghanistan, Syria and the North of Nigeria; it is not by chance that Ebola happens in countries where the health systems have been weakened by generations of war and violence. Developing humanitarian law today is also addressing such challenges. We need legal frameworks at national, regional and global levels to address such challenges. The ICRC can assist States in ratifying IHL treaties and provide information and best practices. Indeed, we would particularly welcome Thailand ratifying the First Additional Protocol to the Geneva Conventions. But ratification is merely one first step. Implementation of IHL treaties and notably broad training of armed forces in IHL is a crucial second step, and one where the ICRC can support States.

I encourage the Royal Thai Government and the Thai Red Cross to actively participate in the International Conference of the Red Cross and Red Crescent this coming December. Thailand has a wealth of experience to contribute, particularly on compliance and detention.

At the ICRC we believe in making every effort to marry practical experience, policy and law. This way, we can adapt our operations to the needs of people suffering from violence and around them and counter the fatal spiral of violence and disrespect for the law with strong encouragement for practical humanitarianism, supported by strong law and decisive political action. I thank you. ❖

The Role of Women in Securing Peace, Justice and Well-being

Delivered at the Eighth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 11 August 2017 in Bangkok, Thailand
by

H.E. Ms. Elisabeth Rehn

H.E. Ms. Elisabeth Rehn was Minister of Defence of Finland from 1990 to 1995, and also held the position of Minister of Equality Affairs from 1991 to 1995. Subsequently, she was appointed as the UN Special Rapporteur for the Situation of Human Rights in the Republic of Croatia, Federal Republic of Yugoslavia, and Bosnia and Herzegovina, a role she served from 1995 until 1998 when she was appointed as the UN Under-Secretary-General and Special Representative of the Secretary-General in Bosnia and Herzegovina.

From 2001 to 2003, she was UNIFEM independent expert on the impact of war on women and co-authored the report "Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building." In 2004, she was appointed by the UNDP to provide an Independent Expert Review on the Programme of Assistance to the Palestinian People in the Occupied Territories. In 2011, she was a member of the UNHCR High-Level Panel on reparations to victims of sexual violence in the Democratic Republic of the Congo.

Your Royal Highness,

Your Excellency,

The Minister for Foreign Affairs,

Secretary General of the Thai Red Cross Society,

Distinguished Guests,

I would like to begin by expressing my sincerest condolences for the passing of His Majesty King Bhumibol Adulyadej. His devotion to improve the lives of the Thai people will long be remembered in the Kingdom of Thailand and around the world.

It is a great honor for me to have the opportunity to present you my experiences and thoughts. Throughout my life and my career, I have witnessed how important international humanitarian law and human rights law are for the protection of individuals.

The situation of human rights, both in Finland and worldwide is close to my heart. Today there are no barriers to information, what happens in Finland or Thailand; Syria or Yemen, reaches us on prime time with an almost frightening speed. I will take a special focus on the situation of women and children in wars and conflicts, but will of course also look into the developments in peacetime. I am grateful for having experienced so many positive achievements, which of course makes every step backwards even more sad.

The lecture will be given in the form of a narrative. I hope that you will not find this method of presentation self-praising, that is absolutely not the intention. Milestones of my life and my work will be covered in a greater context and also described through detailed stories. I hope they will explain why I highlight some of the national and international tasks that I have had over the years in the field of human rights, especially women's rights, and international humanitarian law. Whilst the main focus of the lecture will be on conflict situations, I wish to start by addressing women's role in the society in general. Evidence shows that gender equality is a powerful tool for conflict prevention, as I will discuss in more detail later on.

Women in Finnish Politics

Let us begin with Finland. I wish to pay tribute to my own country, celebrating the 100 years of independence achieved in 1917. Already eleven years earlier in 1906, Finnish women got their full political rights through universal suffrage and - as the first women in the world - the right to stand for elections. The following year, 19 women were elected to the Parliament (altogether 200 members). Every woman who made her way to a seat in the Parliament, had only her own energy and expertise, and some networks of likeminded women to thank for the achievement. Things were certainly not easy and straightforward for these Finnish female pioneers - on the contrary, they had to suffer not only a lot of direct criticism, but also talks

behind their backs, whispers and misbelief in their political capacity. I am sad to admit that this still is not past history. Generations of women politicians and women leaders from other branches have experienced some of the same mistrust. The official attitude and legislation acknowledge absolute equality. However, I believe that women will always meet some hidden male, and also female, skepticism, which of course makes women try even harder to testify that women leaders are as capable as men.

The way men and women make decisions differ - various studies have exemplified this. A recent study commissioned by Grant Thornton covering 10,000 companies worldwide gave an interesting result. Under stress, men seem to go for quick solutions, with less time for consultations before. Women take some time to get an overview of how the decision will affect more widely, including consultations. Both approaches have their advantages and disadvantages: women's way mostly guarantees sustainability, but might come too late to be efficient. The lack of hesitation, on the other hand, might make decisions taken by men too hasty, causing unforeseen problems. The study therefore strongly recommends boards to include both men and women in the leadership, to gain the advantage of decisions based on a variety of experience and facts. The same works for peace negotiations, women must be present at the table. I will come back to this.

If you only look at numbers, Finnish women's political glory was a period after 2007, when the President of the Republic, President of the Supreme Court, and 12 Ministers of the Government out of 20 were all women. The Parliament had over 40% elected women, as it has today as well. Finland also has a law requiring a 40% quota for the gender less represented in government committees, advisory boards and other similar bodies. Not a "women's quota" as often named. From experience we know that men traditionally dominate the committees for Foreign Affairs, Finance, or Defence. At the same time, you find the number of women dominating the committees for Health and Social Affairs, Education, Gender Equality. Through the quotas, we try to get a gender balance in the various committees.

In spite of their strong participation in the political life, Finnish women are not as equally represented at the highest levels of business, at the boards of companies. I acknowledge that many countries have a rather opposite situation to Finland when it comes to women's positions in leadership. There is a high participation of women in the economic life, less in politics. I'm told that women leaders are highly appreciated in the economic life of Thailand. As the national elections are scheduled for next year in Thailand, now is the perfect time to encourage more and more women to stand for elections also here in Thailand.

Politics or economy, it is important that women participate in building the society. Women have a special role beyond other roles, investing in health care, fighting infant mortality, working for reproductive health care, cultural tolerance, and not least for compulsory education, values Thailand and Finland share. We can of course ask ourselves what has been achieved by the many Finnish female politicians? Reaching over the party lines, women in the Finnish Parliament, like in many other countries, have established networks which cooperate on issues like length of parental leave and children's day care, making it possible for both parents to work outside the family with as equal conditions as possible.

I would like to present to you a video featuring the first woman as Minister in the Government of Finland. We can also listen in the video to the first female President of Finland, President Tarja Halonen.

My Own Experiences

My own journey started as the youngest of three daughters of a rural medical doctor, the only one for 10,000 citizens and presumptive patients. It is a very long time ago, but I learned what caring about people means in real life. I got many lessons following my father's work. My mother was engaged in the civil society - one of the important organizations was the Finnish Red Cross.

To take an example: today we all know how important it is to vaccinate all children, how many lives have been saved, how many babies have grown up to be healthy adults. During my childhood, it started in Finland too. My father travelled with a nurse to the village schools of our municipality, where children were brought by their parents to be vaccinated against the most common child diseases. My sister and I, young girls ourselves, wrote the names, birthdates, parents' names in reports. Sounds not very professional in today's efficient data-ruled Finland, but it worked during these circumstances. We used to help in the household, why not then also for a common good?

Those diseases are now almost eliminated in Finland, as long as parents understand to let their children be vaccinated. There are unfortunately tendencies amongst modern young parents not to let their children be immunized as "those diseases don't exist anymore". It is very dangerous thinking, and could jeopardize the achieved good health situation.

Globalization has many good values, but connecting people means also sometimes connecting diseases. The wonderful work UNICEF and others are doing when vaccinating the world's children, must not be undermined by less thoughtful people.

But there were other lessons to be learned too. During World War II, in my childhood, Finland was at war with the Soviet Union, and every citizen, even a young child like me tried to be helpful for the country. I became very patriotic (not nationalistic) when faced closely with our losses. It gave me a strong understanding of the situation of today's victims of wars and conflicts. Due to the terms of the 1944 Peace Agreement, Finland had to give up much of our territory at the eastern border. 400,000 of our citizens had to leave their homes to be re-settled elsewhere in Finland. I think it was quite unique that Finland left de-populated land to the victors, no-one was left behind, all were taken care of within the borders and their own country. My husband, then 11 years old, was one of those who had to leave their homes in 1944. The traumas of my husband's family, together with all the other evacuated men and women, elders and children, taught me to understand the feelings of today's millions of refugees and asylum seekers. Nobody wishes to leave their homes under pressure, the longing for a return seldom fades.

Minister of Defence

As a mother of four, working with my husband in his small enterprise, following the example of excellent women, I was drawn into politics in 1975. After 16 years in Parliament, Minister of Defence for five years, also working as the Gender Equality Minister at the same time, the road took me to the international arena.




The combination of Defence and Gender Equality seems certainly quite odd, but in reality, it was excellent. I could look into the gender equality from different perspectives. The position of defence minister was quite special - I was not only the first female Defence Minister in Finland, but also worldwide. There had been excellent women earlier like Presidents Bandaranaike, Chamorro, and some others managing the post, but in combination with a Presidency or of Prime Minister. This brought me in a position in Finland where many eagerly hoped for my success, as many feared and even wished that I will be a total catastrophe.

After my appointment, the old veterans of war were shaken, asking "Is Finland short of men when we have to appoint a woman as Defence minister?" Some radicals in the women's movement disliked the appointment, "again a woman falls in the trap built by men!" In spite of that, looking back at those five years, I believe they went quite well both for Finland and myself.

The main duty of the Defence Minister is responsibility for the security and defence of our country in all situations. This is something much more than buying F/A 18 - fighters or other military equipment. Caring in all situations about the people who we train to defend our country must be one of the priorities, otherwise security will not be achieved. In all surveys about the Finnish attitude to the defence of our country, the positive rates have been very high. For instance, more than 70% of the young men are prepared to defend the country in all situations. The conscripts can make a choice of civil service, but the percent is not very high. It was important for me to care about those who made the military service and their physical and mental well-being. I did not accept offending and unfair methods in their training. There were

many touching stories about the relationship with the conscripts. A woman as a Defence Minister is met with respect and honor - but at the same time she seems to be closer as a human being to the conscripts. I got private letters asking for help to solve their problems, sometimes I got just postcards with "Elisabeth how are you, we are fine?" signed by the conscripts of a unit. They came especially from peacekeepers out in missions.

Peacekeeping Missions

When I served as the Minister of Defence, military voluntary service was made possible for women. Women were also trained for participation in the Finnish peacekeeping missions. The first women joined UNDOF on the Golan Heights and UNIFIL in South Lebanon. Today we have had numerous women out in the missions - in the Former Yugoslav Republic of Macedonia, Bosnia & Herzegovina, Afghanistan, Kosovo to mention a few. Female peace keepers are needed in the missions not least to learn about the situation of women, to communicate with the local women. Many cultures don't allow women to be in touch or report to male strangers. Therefore, if a peacekeeping mission wishes to implement its mandate effectively, it is necessary to have female staff.

I was pleased to learn that the female peacekeepers from Thailand are especially trained to work with the local women, to learn about their thoughts and needs when affected by a conflict. There is a strong need for more female peacekeepers, and as strong need for getting more female civil police to the missions.

I am very proud that Ms. Tarja Raappana, one of the first trained women, was recently chosen by the Finnish Union of Peacekeepers as the Peacekeeper of the Year. It is an acknowledgement of the important values women are standing for in the missions.

Finland has a very long history of peacekeeping. We participated in the first UN mission 1956-57 in Suez, with more than 400 soldiers. Through the years Finland has participated under the UN-flag in numerous missions. Operations in Bosnia-Herzegovina and Kosovo were under the command of NATO, but mandated by UN resolutions. Today Finland participates also in peace missions authorized by the European Union and OSCE. Two Finns have

had the honor to serve as UN Special Representatives of the Secretary General in peace missions; President Martti Ahtisaari in Namibia leading UNTAG, the first UN peace operation covering both military, police and election observers 1989-90, and myself leading UNMIBH, a CivPol mission in Bosnia 1998-99. Before that appointment I worked from 1995 as UN Special Rapporteur on Human Rights in the Territory of Former Yugoslavia, an honorary mission.

Regardless of the nature of the missions, it has been of utmost importance for Finland to train the young men and women to have a sufficient preparation for the new duties. Until now Finnish Peacekeepers participate voluntarily, they have done their military service, and some have the ranks of officers. In addition to military experience, all the peacekeepers have to go through a country specific preparatory course focused on the situation in the conflict area. In addition to the military skills and strategies, the lectures include topics like history, culture, religion, traditions, gender equality, minorities, and of course human rights and international humanitarian law. We count on our young men and women to fulfil their duties also as a kind of ambassadors for Finland, respecting the people they are sent to protect. The training includes not only general introduction to humanitarian law and human rights law, but also practical guidance on for instance how to act when meeting a child soldier, or a victim of rape.

International Experience

Outside the politics, I chaired UNICEF and World Wide Fund for Nature (WWF) in Finland for many years, and I am proud to have been the Vice-chair of the Finnish Red Cross. The Convention on the Rights of the Child, the Geneva Conventions and other sources of international humanitarian law have been leading me. Partly through my contacts to WWF, I am very much aware of the challenges the climate change will bring us. More people have to leave their homes and home countries, in the worst case even to new armed conflicts.

> "The most important question is: Do we prefer peace or justice – or can we have both?"

It is interesting how much direct confrontation changes your mind. As an example, as Minister I accepted the fact that anti-personnel mines could be used at our borders if so needed.

As UN Human Rights Rapporteur in the Former Yugoslavia I met daily with mutilated civilians, many of them children, who had stepped into mines. When visiting Cambodia, I visited workshops for hundreds of victims of landmines. These confrontations with reality totally changed my mind. I am glad that my country has since joined the Ottawa Convention Against Anti-personnel Mines.

The conflicts of today have changed their nature, soldiers used to fight soldiers - today most victims are civilians, and especially women and girls are direct targets of warring parties and extreme terrorist groups. The strategy of war includes sexual violence and mass rapes. A few years ago, we were shocked by the news about the 200 Nigerian schoolgirls kidnapped by Boko Haram - one of the brutal extremist groups. The sin of the girls was the wish to be educated, something so extremely important to all girls and boys. Most of them have not been released until now - it is difficult to imagine what they have gone through, and how they can cope with the future.

I have been very sad to learn that even some peacekeepers have used sexual violence against the individuals that they were supposed to protect. The scandals from the Central African Republic where young local boys and girls were sexually violated should never be allowed to happen.

The establishment of the International Criminal Court in 2002 was a remarkable step forward also with regard to fighting sexual violence in conflict. The statute of the Court includes rape in the definitions of the gravest crimes. The statute defines various forms of sexual and gender-based violence as underlying acts of crimes against humanity and war crimes and recognizes that these may also constitute acts of genocide. The "court of last resort" has tried perpetrators with crimes that include the use of child soldiers in the DRC, sexual violence in CAR and the systematic destruction of humanity's shared cultural heritage at Timbuktu, Mali.

Alongside the ICC, domestic and regional mechanisms, as well as *ad hoc* and mixed tribunals have strengthened international justice.

Peace of Justice - Reconciliation

The most important question is: Do we prefer peace or justice - or can we have both?

Many high-level peace mediators prefer peace, as a means to build the society again, adding that justice will be handled later on. They fear that peace negotiations will not be successful when setting conditions. The same men who started the war, the warlords, are often parties to the negotiations. They are the perpetrators who should not enjoy impunity.

But from the victim's point of view, from the community's point of view, sustainable peace cannot be achieved without justice. My personal experience, especially as member and Chair for 6 years of the Board of Directors of the Trust Fund for Victims (TFV) of the International Criminal Court in the Hague, I learned that recognition of the victims' situation is a precondition for reconciliation. The TFV has been able to assist both raped women and child soldiers, healing trauma and leading to a new life.

The International Criminal Court (ICC) and the Trust Fund for Victims (TFV) were founded under the Rome Statute, adopted in 1998. The ICC is in charge of prosecuting and judging those responsible for genocide, war crimes, crimes against humanity, and crime of aggression. The TFV provides support to victim survivors of these crimes and their families in situations under the jurisdiction of the ICC.

The Trust Fund for Victims has two unique mandates. Perpetrators of crimes within the jurisdiction of the ICC cannot and should not escape accountability. Moreover, when convicted, they should pay for the consequences of their crimes. Within the Rome Statute, reparations to victims have become a touchstone of international criminal justice. If the indigence of the convicted person is confirmed, the first mandate of TFV will come to use. The States Parties have enabled the TFV to financially complement collective reparations to victims from its own resources. In 2015 after decisions on Court-ordered reparations, the TFV has planned the implementation assisted by a wide range of experts to find the best way to repair the harm, without causing more harm. In the Katanga case, the Trial Chamber of ICC has issued an order for reparations, finding 297 victims of Mr. Katanga's crimes eligible for reparations. The decision States both individual and collective reparations.

The second mandate of the Trust Fund has been very active since 2008, with more than 300,000 beneficiaries. Using voluntary contributions from donors, the TFV provides assistance to victims and their families in ICC situations through programmes of physical rehabilitation, material support and psychological rehabilitation. It serves as an immediate response to the urgent needs of victims and their communities who have suffered harm from crimes under the jurisdiction of ICC.

To give an example on the complexity of assisting victims, I will mention former child soldiers. They were forced to fight by the enemy, and are definitely victims. At the same time, they are perpetrators, who have killed in a brutal way following orders of the Commander. I have met with many of them in Northern Uganda and DRC. The community will not accept them back after the peace. For girl soldiers who have given birth to a child fathered by the enemy, the situation is even worse. How to get them back to the society?

This is one of the many reasons why women must be included in all peace processes, at the table, not as observers behind. Women and their organizations are experts on the society to be built after the peace agreement. Justice, education, social security, trauma counselling are as important as building bridges and roads. Justice is not only to get perpetrators behind bars. At best it should be transformative justice, seeking the truth and recognition of the crimes.



A well-known example is the use of Gacaca-courts in Rwanda. During the genocide in 1994, 800,000 men and boys and some women too, were killed within 100 days. At the same time around half a million women and girls were raped. It was impossible to manage trials for all the perpetrators The UN Rwanda tribunal and national courts did their best to handle the gravest crimes, but the prisons were overcrowded with prisoners waiting for trial. Rwanda has an old tradition of justice that has functioned by bringing the people of a village together, "sitting under the tree". Led by the old wise man of the village, victims, perpetrators, witnesses come together to work out the situation. Of course, they cannot function as a judicial court, but for less grave crimes it is possible to find the truth, to get confessions, perhaps some compensation, in the best situation even forgiveness, and most important, reconciliation, which gives the means to go forward with your life.

International Humanitarian Law

International human rights law has the aim of protecting all persons at all times. International humanitarian law (IHL) is applicable in times of armed conflicts. Both protect human rights, but the difference between them is that IHL is largely based on distinctions - in particular between civilians and combatants. The protection of civilians has unfortunately failed too often during the last decades.

The principle of distinction is the cornerstone of IHL. It requires parties to an armed conflict to distinguish at all time between civilians and combatants and not direct attacks against civilians or civilian objects, such as schools and hospitals.

IHL also prohibits indiscriminate attacks, which although not intentionally targeting civilians, are of a nature to strike military and civilian objects or persons without distinction. IHL prohibits also the use of certain weapons that are intrinsically indiscriminate or which can continue to cause injury long after their deployment, such as chemical and biological weapons as well as anti-personnel mines.

Parties to an armed conflict are required to ensure the humane treatment of all persons within their power, including security of life and person and fundamental judicial guarantees. Women must be especially protected against rape, enforced prostitution or any other form of indecent assault. Women's personal safety is also protected by human rights and refugee law.

These are some examples on what the IHL stands for - and what so brutally is broken in conflicts like in Syria. The rules of war are not respected anymore. It is a great concern that the UN and Red Cross/Crescent/Chrystal flags are the direct targets of attacks. Too many of the brave people who serve in the conflict areas helping civilians, have lost their lives.

The representatives of the media are facing the same situation; the security of the free media reporting to the outside world has decreased. Their work is utterly important - otherwise we would not know the truth. Another source of grave concern is the frequency of attacks on health-care facilities and personnel, despite their specific protection under IHL.

The rule of law, both within the national boundaries and in the international arena, is an achievement of our civilization that we need to defend. Some practices such as torture in all its forms have been outlawed under all circumstances, be it in armed conflict or in peace time. I understand that Thailand is a party to the Convention against Torture and is currently enacting national legislation to better implement this important international treaty. This is essential if perpetrators are to be prosecuted and sentenced.

The United Nations Rules for the Treatment of Women Prisoners, known as the Bangkok Rules, recognize that women prisoners are at particularly high risk of rape, sexual assault and humiliation in prison. The Rules provide important provisions for the protection of women against abuse in prisons and for ensuring accountability for abuse. I know that Her Royal Highness Princess Bajrakitiyabha has been instrumental in establishing and promoting these Bangkok Rules.

I also wish to highlight the need to stop irresponsible arms transfers. They facilitate human rights abuses and violations of the IHL on a massive scale. Fortunately, the Arms Trade Treaty was adopted to stop such transfers and will therefore contribute to reducing the suffering of millions of civilians who are affected by armed conflict and violence. I was pleased to learn that Thailand has signed the Treaty and is in the process of ratifying it.

The President of the ICRC, Mr. Peter Maurer, has noted that "We have entered an era in which armed conflicts are greater in complexity and numbers of actors, longer in duration, wider in their regional impact, broader in tactics and weapons used and, above all, more atrocious in the human suffering they cause". He also said that "We must be honest with ourselves: collectively, we are failing to protect the most vulnerable from the impact of armed conflict and violence" and urged for a renewed commitment to respect the law. I wholeheartedly join this call truly hope that the countries of this world will make every effort to enhance compliance with the law, and establish this mechanism.

I also wish to refer to a speech by UN Secretary-General, Antonio Guterres speaking in London after his appointment in January. "We are seeing the human rights agenda losing ground to the national sovereignty agendas. We see more and more irrational behaviours, including an aggressive nationalism". He emphasized the three separate pillars of the UN- peace and security, human rights and sustainable development - and questioned whether these issues could any longer be addressed separately, saying "There is no peace and security without human rights." And about Syria, and for all wars, "we need to convince the parties of the conflict that these wars cannot be won". When that is understood, there is a hope for peace.

Women as Defenders

Is there a hope for peace in the women's actions for peace?

After the UN Security Council Resolution 1325 on Women, Peace and Security was adopted in 2000, Ellen Johnson-Sirleaf, today the president of Liberia, and I were asked by the UN to make an assessment of the real situation of women and girls in wars and conflicts. Commissioned by UNIFEM, we travelled to 14 regions of conflict around the world, starting in 2001 in East Timor and Cambodia. We interviewed hundreds of women and girls about their experiences. It was sad to learn that regardless of whether we were in Cambodia or Somalia, Colombia or Sierra Leone, the women had the same story to tell about armed men who raped them and kidnapped their children to be soldiers. In some cultures, the husbands left their raped wives. It was too much for a man's pride and honor to have a wife who has been with other men.

Our report, "Women War Peace", was presented by Secretary General Kofi Annan to the Security Council in 2002, with many recommendations. One of them was the need for National Action Plans for the implementation of SCR 1325. Finland is updating the 3rd version of the NAP, as new challenges will come. The cooperation between government and civil society during the preparation is most educating and fruitful, a positive process in itself. I am glad that our Ministry of Defence has been very actively involved during the years. I have

> “[...] women must be included at the table
> in peace processes, and not as outside observers,
> in order to maximize the chances
> for a successful outcome.”

learned that Thailand is now in the same process, working for your own National Action Plan. I know that the Southern Border Provinces in Thailand have long been affected by violence and I am aware that women play an important role in many civil society organizations in that part of the country. I would like to express my sincere hope that these women with their direct experience of violence will be part of this national discussion. I wish you a lot of luck with the important work, and hope for a good result. I am sure that my ambassador Mrs. Suikkari-Kleven is more than happy to tell about our experiences if you so wish.

I was also a member of the High-Level Advisory Group for an update of the situation of SRC 1325, facing its 15th birthday. A new Global study “Preventing Conflict, Transforming Justice, Securing the Peace” was commissioned by UN Women with the lead author Radhika Coomaraswamy. The study is excellent, but I was saddened to find that we had to repeat many of the recommendations already presented in the report 15 years ago. Still too many of the recommendations had not been implemented.

There was some good news as well. Major advances have been made to address sexual violence in conflict through international courts and other accountability mechanisms. The number of peace agreements that include gender specific provisions has increased compared with the time before SCR 1325. More security sector personnel are now trained to prevent and respond to sexual and gender-based violence, and more countries are implementing national action plans or related strategies.

The report also demonstrates that women’s empowerment and gender equality contribute to the conclusion of peace talks and sustainable peace, accelerating economic recovery, strengthening protection efforts of peace operations and humanitarian assistance, and countering violent extremism. The findings in the Global Study highlight that when women are at the peace tables, their participation increases the probability of a peace agreement lasting at least two years by 20 per cent, and 35 per cent over 15 years.

There are many successful examples on women’s activities to build peace. The African Women’s Situation Room has achieved excellent results preparing for elections in Africa. Women are trained to function in situations before and under elections. They inform local women about the elections, your rights to vote of free will, not under pressure of male relatives.

The importance of security at the polling stations is followed up with direct connection to police stations. During the election the Situation Room functions as a central for all information. There are clear indications about functioning well, with experience from Liberia, Senegal, Kenya and many more elections. The fair voting right is elementary for women's participation in the political life.

In Colombia, the peace negotiations finally after the long civil war ended in a Peace Agreement. The Colombian women's strong activity to end the war was a clearly acknowledged cause to the final breakthrough. In Guatemala women have played a decisive role in the peace process, and the strength of the Liberian women is well known. Through silent mass protests, where the women sat dressed in white, they forced President Charles Taylor to start peace negotiations. The methods women use in their work for peace are quite unconventional, but effective. Unfortunately, the movement of Peace Defenders is facing problems, it is important that their valuable work for peace is acknowledged.

One more very special example. Already for several years African women organizations have gathered at the African Union in Addis Ababa for a pre-meeting before the Summit of the Heads of State. During 3-4 days "Gender is my Agenda Conference" prepares the Summit Agenda from a Gender point of view. The outcome is a proposal, or list of requirements, for the Heads of State. This is quite unique, to my knowledge there are not pre-meetings on Gender in connection to the Summits of other Continents.

Some of the experiences made in other countries might be helpful in the ongoing attempts to end the violence in the Southern Border Provinces of Thailand. As I said before, women must be included at the table in peace processes, and not as outside observers, in order to maximize the chances for a successful outcome.

Where Do We Stand Today?

The UN Secretary-General Antonio Guterres has a long experience from the field. I welcome the emphasis on human rights and prevention he has announced to be his priorities. Together with many other women, I was disappointed when UN Member States once again did not appoint a woman to the highest position of UN. The truth though is that an excellent candidate won, and we expect him to raise the credibility of the world organization. Creating peace in Syria has failed because of the difficult rules of the Security Council with the veto rights for permanent members.

The UN has weaknesses, but through the years the UN agencies, together with initiatives like Justice Rapid Response, or the Global Centre for the Responsibility to Protect, or the quite new Sustaining Peace Framework have represented major steps towards addressing the structural shortcomings of the multilateral system.

The ICRC has recently published an interesting study called People on War 2016. People living in countries affected by armed conflict were asked if they believe the rules of war matter. They do. Over two thirds of people living in these countries think it makes sense to impose limits on how they are fought. Almost half of those surveyed in conflict-affected countries believe international humanitarian law prevents wars from getting worse. But the study also showed that people are becoming resigned to the death of civilians as an inevitable part of war. This trend has to be reversed.

The attitudes of people all over the world seem to have grown much harder. There is more division between people than elements unifying them. The hardened attitudes, the fact that people of many countries were confronted with the enormous amount of unhappy people trying to escape from war, extremism and the negative impacts of the climate change seem to have opened for a much more militaristic attitude amongst people. To end conflicts with arms instead of through negotiations seems to have been accepted by too many. There is an increasing thinking of “us” and of “them”. A thinking that always has ended sadly.

Last week, The Baltic Sea and Gulf of Finland which we have been used to regard as the Sea of Peace, was the training areas for Russia, China, and later some NATO countries and the Nordics. All are friendly States, but massive demonstration of military power frightens civilians. And I have not forgotten that I used to be Defence Minister, and am still a patriot, and I don’t like the situation.

I am a born optimist, otherwise I would not be here with you today. My address might have sounded very pessimistic, and I have to apologize for that. We must trust each other, cooperate for peace, and give our support to all of them who have the courage to personally work for bringing peace and justice to the world.

Thank you. ❖

Aceh Peace Process (1999-2005): Keys to Final Solution

Delivered at the Ninth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 23 August 2019 in Bangkok, Thailand
by

H.E. Dr. Hassan Wirajuda

H.E. Dr. Hassan Wirajuda was Minister for Foreign Affairs of the Republic of Indonesia from 2001 to 2009. Subsequently, he was a member of the Council of Presidential Advisors (2010-2014). Prior to his political career, he served as the Ambassador of the Republic of Indonesia to Egypt and the Ambassador/Permanent Representative to the UN and other International Organizations in Geneva.

As the Chairman of the Joint Committee Meeting, he played a key role as the facilitator of the Peace Talks between the Government of the Republic of the Philippines and the Moro National Liberation Front (1993-1996), which led to the signing of the Manila Final Peace Agreement on 2 September 1996. He was later appointed by President Abdurrahman Wahid as the Chief Negotiator on the Dialogue between the Government of Indonesia and the Free Aceh Movement (First Phase, 1999-2000).

Introduction

The conflict in Aceh between the Government of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) began in 1976. By 1999, the 23 years of protracted armed conflict had resulted in an estimated 5,000 to 10,000 casualties. No one could be sure what the precise number actually was, as like any other internal armed conflict, no authoritative third party could provide actual and verified reports. The Geneva Protocol Relative to the Protection of Civilian Persons in Time of War (1949) was not applicable. Indonesia has not ratified the protocol. In a province with a population around 5 million, this estimated casualty figure was still a substantial one.

During this period, dialogue was not a vocabulary of both sides. But the force to dialogue came after *Reformasi*, a major political change that occurred in Indonesia in 1998, following the East Asian monetary crisis which turned into a multi-dimensional crisis. *Reformasi* is to change and reorient past policies and practices and develop new policies on many aspects of State's life, including on how the government dealt with the question of Aceh.

Root Causes of the Aceh Conflict

Like in many cases of conflict of this nature, economic injustice has always been an important factor that triggers regional resentment or rebellion against central government. In the mid-1970s, substantial natural gas was found in Aceh, which in turn suggested that Aceh is a rich region. But under the centralized system, the government then adopted a policy of limited autonomy called "wide and responsible autonomy" for local governments. In practice, it stressed more on responsible rather than wide-ranging. As a consequence, most revenues from gas resources went up to the central government and very little trickled down to the local government.

Indonesia is a very diverse country in terms of ethnicity, culture, language, customs or tradition and religion. In comparison with many other ethnic groups of the Indonesian archipelago, Aceh has a distinctive and strong local identity. Aceh was claimed as a veranda of Mecca, signifying strong Islamic religiosity of the people of Aceh. In the applause of history, Acehnese are proud of their history as fierce fighters against the Dutch colonial power. Aceh was subjugated only at the year 1904, the latest among other regions of Indonesia. On this basis, following the defeat of the Japanese to the Allied Forces in 1945, GAM claimed that the transfer of sovereignty over the Aceh region must be given to the people of Aceh. Additionally, as a resource rich region, Aceh had a history of resisting colonial governments.

Under the military dominated government, led by President Soeharto who ruled Indonesia for 32 years, the only approach in dealing with armed rebellion was to crush it. *Reformasi* also meant that the military had to withdraw from its dual functions, relinquish its political role and promote professional military. But it took a humanist and pro human rights president, President Abdurrahman Wahid, to initiate dialogue with GAM, a break with a past policy. Although in the history of peaceful conflict resolutions in Indonesia, dialogue or negotiation with the local rebellions was not at all new.

Attitude to Dialogue and Third-party Mediation/Facilitation

Since its birth, Indonesia was traditionally open to a Third-Party mediation or facilitation in solving its own conflicts, both inter-State and internal conflicts. In fact, following the Proclamation of Independence of Indonesia on the 17th of August 1945, during the War of Independence (1945 - 1950), the efforts towards recognition of Indonesia's independence were facilitated by the United Nations. The UN Commission on Indonesia, which was established following the Second Military Aggression by the Netherlands in 1948, and its Tripartite Commission, were the genesis of what was later on called UN Peacekeeping Missions. This episode was closed by the Hague Agreement between Indonesia and the Netherlands in 1949, facilitated by the United States. The ensuing conflict between Indonesia and the Netherlands over West Irian (now called Papua) in the early 60's was resolved through negotiations, under the UN flag, but was actually facilitated by the United States, leading to the Williamsburg Agreement of 1962.

Another case was the East Timor conflict. East Timor was one of the 19 "non-self governing territories". Therefore, following the draft withdrawal of Portugal as the colonial power, East Timor was always on the agenda of the UN Committee on Decolonization since 1975. Unfortunately, the Tri-Partite Dialogues involving Indonesia, Portugal and the UN from 1983 - 1999 failed to attain a final solution. In my view, the process of mediation was handled unprofessionally by the UN. The Tri-Partite Dialogue met only twice a year, comprising of a Senior Officials and Foreign Ministers Meeting, each for a total of merely 1,5 days. The disappointment

on the way the UN handled the mediation process on the question of East Timor might have contributed to the Government of Indonesia's decision to opt for international NGOs to facilitate the dialogue on Aceh with GAM.

From the aforementioned examples, along its modern history, Indonesia was open to dialogue and third-party mediation if it is meant to solve its problems. Not only on international but also purely domestic issues, generally with favourable results. In the case of earlier conflicts in Aceh, namely the armed conflict with Daarul Islam (Islamic State), led by Daud Beureh in the late 1950's, it was resolved through dialogue.

Based on those experiences, unlike some countries, Indonesia does not put non-interference principle at the forefront. And in the case of Aceh, Indonesia respectively invited two international NGOs, the Henry Dunant Centre of Dialogue, now called Humanitarian Dialogue (HD), from 1999 - 2004 and Centre for Management Initiatives (CMI) from January - August 2005 to facilitate the peace talks from February 1999 until August 2005. The failure of the first facilitation by HD opened the way to the facilitation of CMI.

It took five years to resolve the conflict, interrupted by a natural disaster of global scale, the earthquake and tsunami that struck Aceh on December 26, 2004. The questions often raised were whether the Aceh tsunami was a key factor to the final solution of Aceh conflict. Or is it *Reformasi* which was the key factor to final solutions?

Stalemate and *Reformasi* Opened the Way to Peace Talks

1. Failure of Military Solution by Both

Indonesia was and still is a unitary State. Under the military dominated government and a very centralized system of governance, as well as military culture, unitary was equal to uniformity, which in the end, was at the expense of Indonesia's great diversity. Any notion of dissent or rebellion must be crushed by the military. Furthermore, the military and intelligence approach to contain dissent failed to win the hearts and minds of the Aceh people, and on the contrary, made GAM bigger. Likewise, for 27 years, GAM failed to materialize its promise to establish an independent Aceh. This was attributed to a lack of clear ideology, effective leadership and weak military force.

2. *Reformasi* and New Approach to Conflict: Open and Democratic Indonesia

Reformasi provided an opportunity to evaluate past policy mistakes, make the necessary corrections and adopt new policies. In the wake of reform, the power of the military was significantly reduced. The military was the most powerful institution in the country and it had dual functions - military as well as political. *Reformasi* effectively stripped the military of its political function and allowed the military to focus more on building its military professionalism. Therefore, the internal military reform process "returned the military to their barracks" and accepted the authority of a democratically elected civilian government. During the early stages of military reform, the notion to annihilate GAM by force of arms was still very strong.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3. Dialogue as an Option

The combination of this stalemate and *Reformasi* opened the way for dialogue as an option. But it took a humanist President in the form of President Wahid (1999—2001) to initiate the dialogue with GAM. President Wahid deployed his Cabinet Secretary, Bondan Gunawan, to establish contact with GAM by meeting with its Commander, Abdullah Syafei in the Aceh jungle and meeting with the GAM leadership who based themselves in Stockholm, Sweden. It was only recently disclosed that during these meetings, GAM positively responded to the call for dialogue. In fact, it was explored with GAM, who they expected to be the chief negotiator for the Government.

Except for a few exchanges of statements at the UN Human Rights Commission, I did not personally know the GAM leader, Hasan Tiro and therefore, was surprised to learn that the GAM leaders preferred to have me to be the Chief Negotiator for the Government. I kept guessing why and what was the reason behind this. But my best estimation was our mutual connection - myself and GAM - with the Moro National Liberation Front. Both GAM and Moro forces were trained militarily in Libya. While in my capacity as former Chairman of the Joint Committee of the Moro National Liberation Front (MNLF) and the Government of the Philippines Peace Talks (1993-1996), the MNLF leadership shared their kind words about me to GAM.

4. Humanitarian Perspective Both at Entry and Exit Points

It is very difficult for a long-standing protracted conflict to find reasons for dialogue. Ideally, a ceasefire is a prerequisite to begin any dialogue or negotiation. However, to set up a ceasefire agreement is quite a lengthy and difficult process by itself.

"There is a moral imperative for peace mediation to be about more than a means of getting a document signed at the political level; it should also be an opportunity to get the parties to engage in the responsibility they have for the suffering of their people. The humanitarian approach to mediation is particular: it sees mediation as a way of saving lives and not just a path to a peace agreement." (Griffiths) [1] Therefore, a humanitarian pause is a method that is more easily accepted by both sides.

The following were my first salvo during the first Exploratory Session with GAM which was attended for the first and last time by GAM Leader Hasan Tiro:

"Between GAM and the Indonesian Government, we have a serious conflict. The conflict in Aceh was very political and deadly. You dreamt of establishing an independent Aceh and on the opposite side, the Government, as any government, would reject a demand for part of its territory to be a separate and independent entity. You have tried to settle those differences by the use of arms, which was equally responded by the Indonesian military. Your dream to establish an independent Aceh remains a dream but also, I must say, that the Indonesian military has failed to crush GAM. Moreover, if you think that you are truly the leader of the Acehnese, would a true leader choose the force of arms to settle the conflict and as a result, thousands of Acehnese including civilians, women and children suffered, either killed or wounded? Let's try for us to think of alternative options, namely to settle our

[1] Martin, Harriet. *Kings of Peace, Pawns of War : the Untold Story of Peace – Making*. Continuum, London, 2006. Martin Griffiths was the mediator in the peace negotiation between the GAM and the Indonesian government. His expertise lies in developing political dialogues between Governments and insurgents.

differences no longer by the force of arms but instead by dialogue."

GAM Leader Hasan Tiro immediately responded by saying *"Yes, I fully agree".*

I was often asked whether or not the tsunami, which occurred in Aceh on 26 December 2004, was a key factor in the achievement of the final peace agreement between the Government and GAM in Helsinki in August 2005. My answer is no.

However, the tsunami certainly inspired leaders on both sides of the equation to go back to the negotiation table which was disrupted by a major combined operation (involving some 30,000 troops of the Indonesian Military and National Police) which certainly resulted in more casualties. The tsunami itself resulted in the deaths of 200,000 people.

From the humanitarian perspective, there was an urgency to save more lives. Moreover, the distribution of humanitarian relief assistance required relative peace to allow the humanitarian personnel to distribute medicine, clean water and assistance to the affected areas outside of the province's capital. Even though an informal ceasefire was agreed upon, the urgency to attain peace had become a priority, not only in response to the emergency phase (26 - 30 March 2004), but permanent peace was also urgently needed at the ensuing rehabilitation and reconstruction phase (1 April 2005 - 30 March 2010).

Three Phases of Peace Talks

1. Humanitarian Pause (January 2000 - August 2001)

There were three phases of Humanitarian Pause, namely Humanitarian Pause 1, Humanitarian Pause 2 and Political Talks.

Keep in mind that the negotiations started only one year after *Reformasi* when Indonesia was still in the beginning of policy reform, in the midst of the instability of policies due to frequent changes of presidents. Despite the credit attributed to President Wahid to change the course of action in dealing with the Aceh conflict from a military to dialogue approach, he was known as erratic and his term was very limited to do more in creating stability in the Aceh peace process. Having lost its





power in the wake of *Reformasi*, the military still strongly opposed an Aceh dialogue. In the field, the military was a disruptive force on the implementation of the understandings reached at the dialogue - table, in particular on the security arrangements to facilitate the delivery of humanitarian relief assistance.

The humanitarian pauses effectively minimized the humanitarian consequences. Efforts worked towards the return of thousands of Internally Displaced Persons (IDPs). It was able to deliver humanitarian relief assistance to camps and villages where the IDPs returned and reduce the number of IDPs from 50,000 to 6,000. This, in turn, facilitated the political talks.

Another achievement of the Humanitarian Pause, especially as it moved up to the political discussions, was a Memorandum of Understanding on the future elements of the governance of Aceh, which, in essence, contained elements of the future autonomy of the provincial government of Aceh. I had difficulties to sell this idea to the central government in 2000, only two years after *Reformasi*, during which the old concept of local governance (wide and responsible autonomy) under a very centralized system still prevaile, despite the fact that under *Reformasi*, wide-ranging autonomy was one of the key pillars of *Reformasi*. In reality, old concepts die hard, as we had many spoilers and detractors who were clinging to the old concepts.

Under the dynamic process of reform, in 2002, Indonesia formally adopted the Law on Autonomy in which the central government delegated more powers and authorities to all local governments under regular autonomy and special autonomy. This decentralization is accompanied by a very generous revenue sharing (50% for regular autonomy and 70% for special autonomy), and Aceh was designated as one of the two provinces with special autonomy. Therefore, the special autonomy status of Aceh province, which was agreed in the MoU on Aceh, was not a product of negotiation but rather a unilateral policy.

2. Cessation of Hostilities Agreement (COHA, August 2001 - 9 December 2002 and one Tokyo Round of May 2003)

This second phase of dialogue took place when Indonesia was under the presidency of President Megawati Soekarnoputri (August 2001 - October 2004). Unlike President Wahid, President Megawati, being nationalist, was lukewarm towards the dialogue. Coordinating Minister Susilo Bambang Yudhoyono (SBY), was reappointed and continued to coordinate the dialogue process despite limited room to maneuver. This situation allowed the detractors, such as the Army Chief of staff, General Ryamizard Ryacudu to voice their opposition to the dialogue.

In the course of two years, the COHA process was focused on attaining the cessation of hostilities agreement, or more precisely on the ceasefire arrangement, that in turn, was expected to provide a conducive atmosphere for political talks. COHA was attained and signed on 9 December 2002, covering the demilitarization of Aceh and decommissioning of weapons, supervised by a monitoring team comprised of troops contributed by Thailand and the Philippines.

On matters of substance, the Indonesian side began to introduce the new concept of autonomy based on the Special Autonomy Law No. 18 Year 2001 as the ultimate form of solution. Both sides agreed to a process leading to an autonomous government in Aceh and put aside, for the moment, the issue of independence.

These developments show the connection and the dynamic relationship between *Reformasi* and process of accommodation at the negotiating table. It was quite a leap forward from the provisional understanding on the future elements of the governance of Aceh (2000). This guided the discussion process to focus further on the ultimate form of solution, namely special autonomy or independence. The elaborate Cessation of Hostilities Agreement including a wide-detailed demilitarization and the commission of weapons came to a halt primarily because of its detailed provisions. Compared to the same “ceasefire agreement” under COHA, which was subordinated to humanitarian pretext. Moreover, primarily for the sake of supporting the monitoring activities, the constituents of the dialogue were enlarged from a Tri-Partite meeting including Indonesia, GAM and HD to a much bigger forum including

far more powerful players namely United States, Japan, European Union and the World Bank - each with their own political interests. With the backing of this group of powerful actors, HD was more confident to toy with the new idea of a confederation, a middle ground between special autonomy demanded by Indonesia and independence demanded by GAM. Strong on the notion of unitary State of Indonesia and sensitive to the notion of the concept of federation since the beginning of the republic, the introduction of a strange concept of confederation fed the detractors fuel to disrupt the dialogue. The Tokyo Meeting which was held to salvage the COHA process reached a deadlock when several members of the GAM delegation for the Tokyo Conference were arrested by security forces in Aceh on the eve of their departure.

As a response to the failure of the implementation of COHA, the Government of Indonesia launched a combined operation deploying around 30,000 troops from the Military and National Police. On 26 December 2004, Aceh was badly affected by the earthquake and tsunami of a global scale and therefore needed a global response. So, by the end of 2004, as a result of the combined operation, GAM was practically on the run. As troops moved in small groups, GAM guerilla forces had to move from their static base which had cut off their supply lines of logistical support.

The tsunami on 26 December 2004 was a humanitarian disaster of a global scale. Some 200,000 people were reportedly killed and wounded. The disaster forced an enormous amount of people to be displaced as their houses and shelters were destroyed. This humanitarian disaster was exacerbated by a lack of supply of food, shelter, clean water and medicine, which was dealt with in the three-month emergency phase until 30 March 2005. Aceh was still in a conflict situation. While there was an informal ceasefire agreement reached between the military and the GAM forces, the delivery and distribution of humanitarian relief to the affected remote areas, especially during the three-month emergency phase was insufficient to cope with the large operational needs. In a way, the tsunami also "saved" GAM because they were able to come out of the jungle to go back to their towns and villages, protected under informal ceasefire arrangements.

The emergency phase was followed by the rehabilitation and reconstruction of Aceh, which was originally planned to take place for

> "[...] consensus doesn't mean unanimity. But it does not also mean the majority view. It depends on the reason, that even a tiny minority view can prevail."

five years. So, the need for the delivery of humanitarian relief assistance and the need for security for post-tsunami rehabilitation and reconstruction forced the leaders of both sides to end bloodshed and head back to the negotiation table.

3. Helsinki Dialogue (Helsinki Final Agreement) January - 15 August 2005 leading to the signing of the MoU on Aceh.

The direct presidential elections in the first half of 2004 brought SBY as President and Jusuf Kalla as Vice President. As the previous coordinator of the dialogue process and now as President, the vacuum was filled by Vice President Jusuf Kalla. Formally he was a businessman, a no nonsense leader, successful mediator of local communal conflicts in Poso and Ambon and a confident peacemaker.

The first thing that Vice President Kalla did was to explore the possibility of a new mediator to replace the HD which lost their credibility at the second phase. The choice was another international NGO called the CMI which was chaired by former President of Finland, Martti Ahtisaari. In the field of conflict resolution, he was known for his success on Kosovo. Finland, a small country, was not only neutral but also had no political agenda. This process was called the Helsinki Process.

Figures matter. A combination of the no nonsense Jusuf Kalla and the statesmanship of Martti Ahtisaari was a key factor to the success of the Helsinki Process. On the format for solution, from the very beginning, Martti Ahtisaari made it clear that the acceptable format for solution is special autonomy for the Aceh province. He made it clear from the very beginning that the independence was not an option. He told the GAM delegation at the first session of the Helsinki Process: "If you want to talk of the independence of Aceh, get out from this room". As a statesman, he knew the psychology of States, and that no nation-State would allow part of its territory to disintegrate from the mother country and separate as an independent entity. This somewhat differentiated the Helsinki Process with the facilitation by Henry Dunant Center which was willing to entertain the middle ground between special autonomy and the independence of Aceh, namely the confederation concept.

So, the focus of the discussion was therefore on the special autonomy for Aceh and for that matter, Law No. 18 Year 2001. In effect, there was a continuation of the earlier discussions under humanitarian pause and COHA. Unlike COHA, the 7-month Helsinki Talks did not address, at least not in detail, the ceasefire arrangement. The tsunami disaster helped encourage the goodwill of both parties in the equation to create security conditions that

allowed efforts to cope with the aftermath of the tsunami. As the special autonomy was agreeable to be the basis of dialogue, for the sake of a final solution, Indonesia was more accommodating to certain demands of GAM. Accompanying the main agreements, the Aceh Monitoring Mission (AMM) which comprised European Union and ASEAN personnel was set up to monitor the disengagement process including movement of troops, decommission weapons and ammunition, and dispute settlements. Unlike the COHA process, during which ceasefire was meant to facilitate political talks, in the Helsinki Process, the monitoring team was established after the political talks were concluded with the function to monitor the implementation of the agreement.

Make It or Break It

On the Proposal of GAM for Aceh to Have Local Political Parties

While the discussion on the MoU was concluded and ready to be signed, at the last minute GAM came up with a proposal on local political parties. GAM claimed that in a democratic process, they are entitled to voice their views in the election process and therefore cannot rely on the existing party system which was nationally-based multiple parties. This is a sensitive political issue because it can be easily seen as violating the Indonesian constitution or certainly in violation of the existing law on political parties. So, at the last minute, the negotiations in Helsinki reached a stage of "make it or break it". At this crucial moment, directives from Vice President Jusuf Kalla was to advise GAM to conclude and sign the MoU and refer their proposal to the Indonesian Constitutional Court, with a promise to be fully backed by the Government.

At this crucial time, President Yudhoyono took over the subject matter for his decision. He convened a meeting attended by some 12 cabinet members on political and security cluster including the Commander of the Armed Forces, Chief of National Police and the Head of Intelligence Agency. And interestingly, a majority of them rejected the GAM proposal, arguing that the establishment of local parties was unconstitutional. I was the one who argued that it was not unconstitutional, since the 1945 Constitution doesn't mention a word on local parties and not even a law on local parties. To enlighten the discussion, I played the role

of "devil's advocate" including enlightening the discussion on the need to learn from the experience of China, a great country with thousands of years of civilization, in solving the problem of Hong Kong by negotiations with Britain. A single party and authoritarian China went to the extent of accepting the principle of "One State, Two Systems" and allowing local parties to be established in Hong Kong.

What's important here is that by agreement, Hong Kong became an integral part of China and consequently, the Chinese flag is hoisted in Hong Kong. In other words, in a pluralistic society, why don't we tolerate a part of a country to have their own distinct system?

As reflected in the discussion, consensus doesn't mean unanimity. But it does not also mean the majority view. It depends on the reason, that even a tiny minority view can prevail. The fact that I was allowed to play a role as "devil's advocate" reflected the democratic process of decision-making at the highest level. You can imagine, at the time of the military dominated government of President Soeharto, I have been truly labelled as a "devil". I had my last word in that crucial policy discussion and President Yudhoyono concluded that the Government accepted the GAM proposal for Aceh to have their own local parties in addition to the existing national based parties.

With the acceptance of the GAM proposal of local parties by the Government of Indonesia, which completed the 7-month process of negotiations, the MoU on Aceh was signed in Helsinki on the 15 of August 2005.

The next challenge was to internalize the peace agreement in order to gain wide support, including from the military. The military initially opposed the dialogue, joining as a reluctant party or occasionally as spoilers. But we should not discount the important position of the military, which is a direct party in the conflict, I must give due credit to the military because as a result of their internal reform, by August 2005, the Commander of the Indonesia Armed Forces, General Edi Hartono accepted the MoU on Aceh. He said in a cabinet meeting: "The military fully respects and are loyal to the decision made by a democratically elected President."

Successful Implementation

The whole process of implementation went well and peace was restored. The contribution of troops from ASEAN members, namely Thailand, Malaysia, Brunei and the Philippines, working closely with the EU monitoring elements, contributed to the success of

the implementation of the MoU on Aceh. But from the Indonesian side, the implication for ASEAN members' participation in the AMM was an opportunity to share our success stories with our fellow ASEAN neighbors. This actually explained my idea that under the Political and Security Community (2002), ASEAN needs to have an ASEAN peacekeeping force to support its internal peacemaking and under ASEAN's pledge to send ASEAN peacekeepers to other areas of conflict. At the same time, we can imagine for solutions of armed conflict between ASEAN soils, that we depend ourselves to the other region's peacekeeping missions.

Meanwhile, the local parties of Aceh actively participated in the local elections. Local parties gained majority seats in the local parliament (63% in 2009, sliding down to 42% in 2014 and further decreasing 23% in this year's elections). It successfully sponsored former GAM leaders to be elected as Governor, district heads or mayors. But the decline of the role of local parties was primarily attributed by their failure to transform themselves from "liberators" to "administrators".

Conclusion

There is a close relationship between *Reformasi* and the peaceful resolution of the Aceh conflict. The dynamics of the democratic process was reflected in the positions of the Indonesian delegation at every step of the dialogue process.

When people ask me whether the tsunami was the key factor on the successful outcome of the Aceh peace process, my response was no. The Aceh tsunami provided an impetus for both parties in the equation to resume the dialogue that was halted in the year 2004 in order to save more lives, distribute emergency medical assistance, and also to provide security and political stability in the ensuing phase of rehabilitation and construction.

An important key to the success of the dialogue on Aceh was that in a more open and democratic Indonesia, we were more receptive to new ideas for solutions. Some things were even considered as taboo to discuss. I'm referring to the concept of special autonomy, as well as the concept of local parties.

For successful negotiations and implementation of peace agreement, we need the support of the military. The case of Aceh clearly shows that the support of the military was crucial and an important key to the successful implementation.

In a pluralistic society like ours, we should be more open and tolerant to differences because uniformity could induce disintegration. Be magnanimous towards your opponents. After all, they are our fellow countrymen even though they may happen to have differences or grievances.

In Indonesia we believe of the wisdom of former President Soeharto: "Don't inherit our problems to the future generation." Keep in mind, a dormant conflict, especially conflicts which have religious connotations, may invite a group with strange ideologies who will voluntarily join in and therefore complicate its resolution.

Thank you for your time and attention. ❖

The Prevention of Arbitrary Displacement and the Protection of the Human Rights of Those Displaced by Armed Conflict

Delivered at the Tenth Princess Maha Chakri Sirindhorn Lecture
on International Humanitarian Law
on 30 August 2023 Bangkok, Thailand
by

Ms. Cecilia Jimenez-Damary

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Your Royal Highness,

Excellencies,

Ladies and Gentlemen,

I have the honour to address your Royal Highness and the esteemed audience and present to you a Lecture on "The prevention of arbitrary displacement and the rights of internally displaced persons under International Human Rights and Humanitarian Law". This is a matter of great importance in the world today, as we see a growing number of human lives direly affected by armed conflict and violence in many parts of the world, sparing no continent and affecting millions of people. The normality of human lives is affected by violations of their rights at individual and collective levels, and these violations continue to threaten stability, peace and security in many regions of the world.

In the course of armed conflict and violence, forced displacement is an occurrence that is more often than not the norm. Over the years, there is an increasing gravity and intensity of situations where people are forced to leave their homes, and seek safety away from threats to their lives, safety and dignity. Vulnerable peoples are often in the midst of the flight - women, children, the elderly, people with disabilities, among others. Others are even specifically targeted and therefore have to run for their lives - people with different political opinions, human rights and environmental defenders, community organisers, among others. More often than not, they are civilians, and not combatants.

Your Royal Highness, respected audience - over three decades ago, I was first exposed to this incredible suffering when, as a young lawyer, I led a team of paralegals to the north of my country, where air and land attacks operations were being undertaken. We trekked for three days and nights over rice fields, rivers and valleys, until we found around 50 people - men, women and children - sheltering and finding refuge in a cave. While we stayed with them for a couple of days, taking their affidavits, they narrated to us how they had to abandon their fields, livestock, their humble houses and their peace of mind so that they can escape the operations. We took their affidavits the same time that we could hear from far away the guns of the military operations. When asked, they refused to come with us to better safety, because they felt they should go back when the fighting stops. Unfortunately, when we came back three months after, with more assistance goods, they were still there. These persons were the first I encountered whom we then called "internal refugees". They are now called "internally displaced persons".

Forced displacement because of armed conflict and violence begins in the territories of States - and people forced to leave their homes but remain inside their countries are called "internally displaced persons", or IDPs. In many cases, they cross borders in order to seek safety, either as asylum seekers, refugees or even migrants. Wherever they may be, they continue to have rights under human rights and humanitarian law.

The worrying trend in the number of internally displaced persons worldwide is manifested first of all by the continuous increase over years of the numbers of people living in internal displacement because of armed conflict and violence. At the end of 2022, this reached an alarming count of 62.5 million people displaced by armed conflict and violence, which is the highest number ever recorded. Moreover, amid the increasingly complex nature of armed conflicts and generalized violence, it has become harder to enhance compliance with international humanitarian law and human rights. Political solutions have become more elusive and displacement is increasingly prevalent and protracted.

Situations of conflict and violence have also been compounded by disasters as drivers of displacement and, since 2020, by the COVID-19 pandemic and its far-reaching effects.

The majority of those recorded internally displaced by armed conflict and violence remain in what we call “protracted displacement” - that is, with no durable solutions in sight - for an average of 20 years. This means that generations of internally displaced children are growing up in displacement, with their education and growth development negatively impacted. These children live in fear for their lives, mostly in areas where their families do not come from, away from communities. In all of my missions as a UN Special Rapporteur on the human rights of internally displaced persons, I made sure to always meet children. In Iraq, when I asked an 8-year old girl, displaced and orphaned by the war against ISIS on what she wants to be when she grows up, she answered me: I do not have any dreams, because I have no future.

The situation is particularly harder for peoples who have close attachment to their lands, especially indigenous peoples who are forcibly detached from their ancestral domains and whose cultures rely intimately with their natural habitats. Lastly, the need for timely action is evidenced by the ever-rising of number of children, women and men internally displaced and other affected communities of victims of gender-based violence and other human rights abuses occurring in the context of armed conflict and violence.

Who are IDPs?

So, what makes "internally displaced persons" different from refugees and migrants, bearing in mind that there are different groups of persons who consist the spectrum of mobility and that such mobility is a feature of human civilization from prehistoric times to the present?

The Guiding Principles on Internal Displacement, endorsed by the United Nations in 1998, provide a descriptive definition of IDPs as follows: "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (Guiding Principles on Internal Displacement, introduction para. 2).

The definition provides distinct nuances of the following:

- First, the non-voluntariness of mobility on the part of those displaced, that is, they had no choice but to leave, if they want to save their lives and their security;

- Second, the probable causes, which includes armed conflict and violence; and

- Third, a territorial application - IDPs remain within the territory in which they have been displaced.

It must be stressed that being internally displaced does not confer a specific legal status (contrary to refugees). In other words, IDPs enjoy the same rights as any other citizens or nationals of the country of displacement.

Nevertheless, being an internally displaced person does not take away the right to seek safety outside the country where no safety can be found in the country of origin. Data have shown that some internally displaced persons are motivated, and able, to cross borders to become international migrants, refugees or asylum seekers. In Libya, I met a father of three children, widowed by the war, who bluntly told me that if he finds no solution to his displacement, he will cross the Mediterranean Sea.

On the other hand, refugees, migrants and those in exile from their homeland may return to their own home countries

only to find themselves in secondary internal displacement.

Thus, we have people, who were IDPs in their countries, who have fled to neighbouring countries to find safety and security, and where the host country provides conditions to enable different forms of national and international protection to provide for their safety. Such countries accepting these people in distress can also function as transit countries, providing conditions so that the displaced persons can find safety and security in third countries willing to take them in.

Moreover, it is important to stress that protection and assistance to internally displaced persons remain under the direct and primary responsibility of States. The States, through their governments, also have the primary responsibility for the prevention of arbitrary displacement, to protect internally displaced persons and to find solutions in accordance with international law standards. This important premise is founded on the principle of sovereignty as responsibility, which is embodied in the UN Charter and reiterated in various

international instruments, among which is the Guiding Principles on Internal Displacement which was adopted by the UN in 1998. Many of the governments I met were willing to assume their roles.

The role of international agencies and other actors to protect and assist IDPs is, on the other hand, complementary, and they have the right to offer protection and assistance to States. Under international law and practice, States are prohibited to refuse such offers on an arbitrary basis.

The purpose of highlighting the situation of IDPs and working to enhance their protection is not to privilege IDPs over other groups; in fact, IDPs have the same rights as others in their country. They often experience many of the same risks as other civilians caught in conflict, who also are in need of protection. Yet, the experience of internal displacement also creates heightened as well as distinct protection risks for the reason they are forcibly displaced. These particular risks need to be understood and addressed so that the rights of IDPs are protected along with those of other non-displaced civilians. A human rights-based approach to internal displacement, is therefore needed to shift the discourse of national sovereignty to State responsibility on human rights law obligations.

Given the current situation, there are growing challenges for prevention, protection and solutions that dictate for the need to push for international support for national responsibility for internally displaced persons. This is the reason that side by side with the developments for enhancement for protection for refugees and migrants, efforts are likewise being stepped up for internally displaced persons.

The Worrying Trends Call for the Urgent Attention of Governments and the International Community to Prevention

Majority of the discourse on the protection of the rights of displaced persons has been focused on protection and assistance, as these are important humanitarian and legal domains that prevent the loss of life, provide emergency succour especially to vulnerable populations, and enable some respite from the threats of armed conflict and violence. At the same time, preventing arbitrary displacement in line with international standards is an important primary responsibility of States and protects the population from the harms associated with displacement. Preventing arbitrary displacement is also in the interest of States, as displacement can lead to fragmentation of social cohesion, and prevention is actually less costly and easier in governance, than responding to displacement once it has occurred.

In addition, the UN Secretary-General's Call to Action emphasized that prevention is a top priority across the United Nations system and that there was 'no better guarantee for prevention than for Member States to meet their human rights responsibilities'. This obviously applies to the implementation of durable solutions to resolve internal displacement, which also supports the Secretary-General's call for new and protracted internal displacement to be reduced by at least 50 per cent by 2030.

What Does Prevention of Arbitrary Displacement Mean?

Very importantly, preventing arbitrary displacement does not mean preventing people from moving. Liberty of movement and freedom to choose one's residence are rights protected under international human rights law, and displacement can have a protective nature and prevent other harm and human rights violations, particularly in situations where people leave their homes or places of habitual residence in search of safety.

Rather, preventive measures must focus on addressing the conditions that lead to displacement and on protecting people from being forced to leave their homes, in line with international standards. Taking measures to prevent crises and conflict are essential to preventing the conditions leading to displacement. Such important measures are wide in scope and prevent a range of human rights violations, which include, but are not limited to, arbitrary displacement. There are also key measures that States can adopt to prevent arbitrary displacement specifically.

Your Royal Highness,

Excellencies,

Esteemed Ladies and Gentlemen,

Under international human rights and humanitarian law, there are certain displacement situations which are prohibited by virtue of their automatic nature as arbitrary displacement. These forced displacement situations are prohibited based on the right of every person to be protected against arbitrarily displaced from their homes or residence. Among others, these prohibited displacement situations are

described in the Guiding Principles on Internal Displacement as follows:

1) Situations of apartheid, "ethnic cleansing" or similar practices;

2) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

3) Collective punishment

Moreover, should displacement be necessary where security of civilians or imperative military reasons so demand, they should last no longer than necessary. It must also be stressed that the application of international humanitarian law, by virtue of its protective nature, requires certain principles. These are:

- Principle of distinction - enabling the distinction between the civilian population and combatants and between civilian objects and military objectives, thus protecting civilians from being targeted
- Principle of proportionality - prohibiting attacks against military objectives which are "expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated"
- Principle of military necessity - permits military measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law.

Thus, not every conflict-related forced displacement constitutes a violation of international humanitarian law. To constitute a violation of international humanitarian law, a party to the conflict must have forcibly displaced the civilian population, for example by ordering the population to leave or physically transporting the civilian population out of an area, on non-permissible grounds (i.e. outside the two allowed exceptions). In addition, where a party to the conflict commits violations of international humanitarian law (e.g. attacks directed against the civilian population or civilian objects or indiscriminate attacks), with the intention to coerce the population to leave, that would also amount to forced displacement that is prohibited under international humanitarian law.

The Importance of Compliance with International Humanitarian Law and Human Rights Law

Putting in place the appropriate legal, policy and institutional framework at the domestic level, in line with international law, is key to preventing arbitrary displacement. This includes ensuring compliance with International Humanitarian Law and International Human Rights Law by ratifying relevant treaties as well as taking measures to implement their obligations at the domestic level through laws and policies.

Laws and policies relating to the protection of internally displaced persons need to ensure an appropriate response to internal displacement when it occurs, so as to prevent multiple displacements. Amending any laws and policies that have a discriminatory effect on internally displaced persons in the exercise of their rights, which perpetuates displacement and poses obstacles to durable solutions, is essential in this respect. Developing and implementing legal

provisions to support conditions that prevent arbitrary displacement and to criminalize behaviours leading to arbitrary displacement is of high interest to authorities across ministries and at all levels of government.

Currently, there are around 50 countries which have adopted varying degrees and levels of IDP laws and policies. One of the priorities of the mandate of the Special Rapporteur on internally displaced persons is to encourage these policies and laws. Importantly, the internally displaced persons themselves have to be engaged. When I visited Nigeria, I was proud to march in the streets with the government officials of Nigeria, the internally displaced persons, the unions and civil society, in a show of force to reiterate their collective advocacy for a law. They have since moved forward.

As previously mentioned, States also have a particular obligation to protect against the displacement of groups of people "with a special dependency on and attachment to their lands". These would include indigenous peoples, minorities, peasants, pastoralists and others. As far as indigenous peoples are concerned, this protection draws from the explicit prohibition under human rights law against the forcible displacement of indigenous peoples from their lands or any form of forced displacement that would affect the rights of indigenous peoples. In Mexico, I met many indigenous peoples who had been displaced by the drug cartels operating in the mountains. One grandmother I met was lamenting about how her sons were killed defending their house, which was eventually burned and fields taken over by the gangs so that the cartels can illegally plant marijuana. The remaining members of the family and the community had to leave the lands of their ancestors. Indeed, policies towards the protection of indigenous peoples should not be forgotten.

Some States do not have a law specifically on internal displacement but have provisions on internally displaced persons scattered over different instruments, or have adopted national policies on internal displacement instead of legal provisions. Where they do, laws and policies on internal displacement should assign clear responsibilities within the Government, set up the relevant administrative structures to operationalize their responsibilities and establish accountability mechanisms. Governments should also establish monitoring and early warning mechanisms that incorporate human rights and displacement risks as part of their risk assessments.

Lastly, a number of States have adopted legislation prohibiting arbitrary displacement by including provisions to protect people from displacement and criminalising the commission of arbitrary displacement subject to domestic penal law. Arbitrary displacement as a crime may also amount to an international crime if it meets the criteria applicable to being a crime against humanity, a war crime or genocide, for example.

Compliance with international law by ratifying relevant treaties and adopting and implementing the appropriate laws and policies are important first steps that must be followed by the necessary measures to ensure their full implementation and monitoring.

Incorporating a Preventive Approach in All Phases of Displacement

Contrary to a common misconception, prevention is not relevant only before displacement occurs; it is relevant to all phases

> "Contrary to a common misconception, prevention is not relevant only before displacement occurs; it is relevant to all phases of displacement."

of displacement. Incorporating a preventive approach in the response to displacement prevents further displacement, including in countries that accept persons fleeing from armed conflict and violence in neighbouring countries.

Humanitarian assistance and protection measures, while addressing the immediate needs of internally displaced persons, also prevents secondary displacement by creating the conditions for people to stay in safety and dignity in an area pending a solution to their displacement. States must therefore guarantee and facilitate conditions for effective and safe humanitarian access by both international and local actors providing them to populations in need. In many countries where armed conflict continues to rage, one of the interesting emerging practices I have seen is the establishment of humanitarian corridors in order to deliver life-saving assistance. In others where a number of internally displaced persons have found refuge in other areas in the country, it is likewise important to ensure the living conditions that would facilitate not only shelter, food and other important rights, but access to livelihood as well.

The facilitation of conditions to prevent arbitrary displacement is particularly important as well for other countries who have received people fleeing from armed conflict and violence from another, usually, neighbouring country. National screening and protection systems may need to be established in order to ensure that there are the clear conditions and due process standards to accept those who need safety and security, provide conditions that improve their access to rights and services and regularise the stay of persons in need of international protection. In these cases, it would be important to ensure capacity-building of State officials across the departments, as well as effective and appropriate public communications, to implement these national processes.

Moreover, a preventive perspective is important in durable solutions and development processes, which must be designed and implemented in respect for human rights so as to prevent the recurrence of arbitrary displacement. As one of the Government officials informed me in South Sudan, the Government has a key role not only in the protection of IDPs, but also to include them in developmental processes.

Far too often, political interests determine Government policies that favour one type of solution to internal displacement over another, and authorities push through plans that might not meet the required standards. For example, in some contexts, some Governments have imposed premature camp closures in an attempt to forcefully end a displacement crisis while the conditions for durable solutions were not in place, forcing people to go back to unsafe conditions.

Return, relocation and resettlement processes that do not meet the required standards may amount to arbitrary displacement. Internally displaced persons might also undergo secondary displacement to escape forced returns or relocations and move to informal settlements or other temporary accommodations where they are exposed to the risk of evictions and further displacement.

In post-conflict settings, peace processes that include displacement issues and the participation of internally displaced persons and affected communities play a fundamental role in resolving internal displacement and preventing its recurrence. Peace agreements have increasingly included provisions to address internal displacement and protect the rights of internally displaced persons, although to different extents. This practice is commendable and should be extended to cover a wide range of issues related to internal displacement, and include durable solutions as a specific goal in the peace process.

Furthermore, transitional justice can help prevent further displacement by ensuring accountability for acts that had led to displacement. Truth commissions can investigate, report and officially acknowledge displacement as a serious human rights issue. Whether through judicial or non-judicial processes, transitional justice can provide victims with reparation for the harm suffered, such as restitution, compensation, apologies and guarantees of non-repetition, helping to heal grievances and repair the social fabric. In my country, the Philippines, the peace process between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, in their successful endeavour brought the armed conflict to a close. As I was the government-appointed member of the Transitional Justice

and Reconciliation Commission established by the peace process, we made sure that internal displacement was part of the discourse of transitional justice as part of prevention and solutions.

A Preventive Approach to Arbitrary Displacement cannot be Disconnected from a Human Rights-Based Approach

Human rights violations are usually causes and consequences of arbitrary displacement. As such, human rights monitoring constitutes an effective early warning mechanism, and realizing human rights is the main path to preventing crises and related displacement, mitigating their effects when they take place and resolving them. A human rights-based approach also takes into account the situation of different groups of people, as well as their agency and coping mechanisms, which are essential elements to inform prevention and protection strategies.

Lack of political will, reluctance to acknowledge risks at early stages of crises and resource constraints can unfortunately divert actors fromtaking preventive measures and trap them into a reactive approach. Prevention requires strategic thinking and a fundamental shift in approach to avert the consequences of displacement by looking at risks and taking early action.

Effective prevention strategies require a whole-of-government and whole-of-society approach, with the participation of internally displaced persons and displacement-affected communities, and the support of the international community, including humanitarian, development and peace actors. Moreover, collaboration of humanitarian, development and peace building actors in prevention efforts to prevent future displacement are essential.

Your Royal Highness,
Excellencies, Ladies and Gentlemen,

Armed conflict and violence affect the lives of the very people directly in their midst. They affect the peace, security and safety of humankind, including ours. The protective nature of International Human Rights and Humanitarian Law can only be as effective as their implementation. As I conclude this lecture, I call on all actors, stakeholders and the international community to join forces and capacities to urgently redouble efforts for the prevention of arbitrary displacement, the protection of the rights of displaced persons and towards contributing to conditions for their durable solutions. These efforts can only be effective through well-designed and well-implemented laws, policies, programmes and processes that are grounded in human rights.

Anent to all of these is the need to ensure the genuine participation of internally displaced persons in a democratic, transparent and decision-making process. One of the women internally displaced with whom I spoke to was adamant: “As a woman fleeing war and violence in my country, I want that my story to be known and awareness raised on the effects of armed conflict on my people. But more importantly for me, I want to be part of the solution - I need to participate in decisions affecting me.”

Your Royal Highness, I thank you for this opportunity and your kind attention. ❖

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