



ICRC

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7th Princess Maha Chakri Sirindhorn Lecture on
International Humanitarian Law

“Contemporary Challenges to Humanitarian Action”

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Introduction

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 Donietsk, Aleppo and Homs, Raqqa and Mosul, Maidiguri and Bengazi 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 cyber space 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 cyber space. There is only one cyber space, and the same networks, routes and cables are shared by civilian and military users. The interconnectedness of cyber space 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 cyber space, is it possible to do so, including to assess the indirect effects of a cyberattack on civilian networks? The anonymity that cyber space 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 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 for 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 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 also a tried and tested formula to prevent that humanitarian action is becoming part of larger and more controversial political agendas.

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

5-minute video on 40 years ICRC in Thailand

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.

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