HRH Princess Maha Chakri Sirindhorn lectures on international humanitarian law

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International humanitarian law – recent international developments, regional momentum and opportunities for the Kingdom of Thailand

Keynote speech by

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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 over time. 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 a 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 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 region 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."*

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 endeavour 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 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 systematised 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 since 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.

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 joint 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 representative 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 set 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-defence 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 endeavours 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 that abuses grow 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.

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