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2020 Edition

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FOREWORD

This inaugural issue of the Asia-Pacific Journal of International Humanitarian Law (APJIHL) is the result of a collaborative project of the University of the Philippines Law Center Institute of International Legal Studies (UP-IILS) and the International Committee of the Red Cross (ICRC). It follows a previous joint initiative, the Asia-Pacific Yearbook of International Humanitarian Law, which published five (5) volumes between 2005-2017.¹

With this re-branded and re-formatted journal, we hope to provide a unique platform for reflection and comment on international humanitarian law (IHL) in and by the Asia-Pacific region. The journal will be an annual publication, collating peer-reviewed scholarly articles, book reviews and analyses of significant IHL developments and events in the region.

For the ICRC, a key aspect of our mandate is to spread understanding and foster the development of IHL. Supporting academic journals such as the APJIHL is an excellent means of fulfilling this mandate, by stimulating discussion and encouraging scholarship and debate. At the same time, such journals are useful resources for us within the ICRC. The range of contributions from authors of all different backgrounds and disciplines allows us to take the temperature in certain areas, and to stay abreast of contemporary IHL issues and the application of the law in various contexts.

Having previously worked as a government legal officer, I know that these kinds of publications are also extremely helpful in informing government thinking and policy development processes on cutting-edge IHL issues.

During my time as the ICRC's Regional Legal Adviser in the Pacific, I have had the privilege of meeting and engaging with so many talented IHL scholars and practitioners, and I am delighted that we can provide here a dedicated platform for them to showcase their work.

One such talented academic and practitioner who really needs no introduction, Dr. Suzannah Linton opens this edition with an excellent

¹ APYIHL Vol. 1 (2005), APYIHL Vol. 2 (2006), APYIHL Vol. 3 (2007), APYIHL Vol. 4 (2008-2011) and APYIHL Vol. 5 (2012-2017).

scene-setting article. The contribution gives an overview of what Dr. Linton rightly describes as the complex and diverse IHL landscape in the region. With a wealth of practical examples, stretching all the way from Nauru to Pakistan, it showcases the meaningful contribution made by Asia-Pacific States to the development and application of IHL.

Dr. Eve Massingham's article deals with what is currently a hot topic of IHL: autonomous military systems. However, she does so from a novel angle, looking at the need for autonomous military aircraft to interact safely with the civilian environment, and the resulting impact of laws that protect international civilian aviation. Dr. Massingham's article highlights the intersections between IHL and a wide range of other applicable legal frameworks, thereby reminding us of the need to avoid considering IHL issues in a vacuum.

This intersectionality is again a feature of the article by Ms. Trang T. Ngo, which canvasses possible international legal frameworks, including IHL, that may apply to uses of force in "grey zone conflicts". T Ngo's analysis is framed in the context of the situation in the South China Sea, which continues to be one of the most disputed seas not just in this region, but in the world.

Then there is the intersection between IHL and domestic law, demonstrated beautifully in the articles by Atty. Raphael Lorenzo A. Pangalangan, by Ms. Kelisiana Thynne and Ms. Sahar Haroon, and by Ms. Kelisiana Thynne and Ms. Fiona Barnaby. Atty. Pangalangan's article examines the international criminal law doctrine of command responsibility, and the way in which it applies not only to acts but also omissions. It then traces the history of the notion of command responsibility as it is found in the criminal and administrative law of the Philippines.

Ms. Thynne and Ms. Haroon consider the compatibility of national gunshot wound reporting regimes with fundamental IHL rules protecting healthcare and access to healthcare. Their article draws on three case studies from across the region, Pakistan, Papua New Guinea and the Philippines. It assesses the extent to which these countries' laws on medical ethics and gunshot wound reporting are adapted to ensure consistency with IHL.

In their article on Malaysia's implementation of international and domestic criminal justice, Ms. Thynne and Ms. Barnaby provide persuasive arguments in favour of Malaysia becoming Party to the Rome Statute of the International Criminal Court. In doing so, they

courageously tackle thorny issues such as the US' opposition to the ICC, and whether a sovereign would enjoy Head of State immunity before the Court. The question of Head of State immunity was also picked up during a panel discussion held in the margins of the IHL Moot Court Competition in Malaysia in October 2019. That discussion is the subject of Dr. Jan Römer's report that appears in this edition of the APJIHL.

And speaking of tricky issues, Mr. Jonathan Kwik's article explores the various, and sometimes contradictory, international criminal law narratives that have developed around ex-child soldiers who go on to perpetrate war crimes. Mr. Kwik's contribution is very timely as, at the time of writing, the ICC Trial Chamber IX is deliberating on the proceedings against former child soldier, Dominic Ongwen.

Ms. Natasha Chabbra's article also looks at a recent ICC development: the Pre-Trial Chamber's authorisation of an investigation into the alleged deportation of the Rohingya population, based on the transboundary nature of that crime. Ms. Chabbra raises the interesting possibility that this decision has established a precedent that could be applied to establish ICC jurisdiction over international crimes committed in Syria.

We hope you enjoy these articles in our first edition, and that they will contribute to a greater understanding of and appreciation for IHL and humanitarian action in the Asia-Pacific, and beyond. We also encourage submissions for our future editions from students, scholars and practitioners, and look forward to supporting an ongoing regional discussion on issues which go to the heart of our shared humanity.

Finally, on behalf of the ICRC, I would like to extend our heartfelt thanks to the team at UP Law Center, especially my co-Managing Editor Prof. Rommel J Casis, for the expert guidance, support and partnership in producing this Journal.

GEORGIA HINDS

ICRC Regional Legal Adviser in the Pacific

PREFACE

The Institute of International Legal Studies (IILS) of the Universities of the Philippines (UP) Law Center is mandated by law to undertake research, training and extension services in various fields of international law, including international humanitarian law (IHL). Over the years it has conducted research and training in the field of IHL and published papers and other publications relevant to the topic. It also hosted the National Moot Court on International Humanitarian Law in partnership with the ICRC. This partnership in recent years resulted in the publication of what was then called the Asia-Pacific Yearbook of International Humanitarian Law (APYIHL).

Between 2005 and 2017, five volumes of the APYIHL were published featuring peer-reviewed articles and book reviews on significant developments in IHL and related fields.

Sometime in 2018, it became apparent to ICRC and IILS that it may be better to reformat the APYIHL from a yearbook into a journal with a Board of Experts representing countries in the Asia-Pacific Region. Thus, energized by a fresh concept and a new memorandum of understanding signed between the UP and ICRC in May 2019, the Asia Pacific Journal of International Humanitarian Law (APJIHL) took off aiming to not only continue what the APYIHL had accomplished but to take it to even greater heights.

After many months of planning, meeting, and peer review, finally in 2020, and amid the exigencies of an ongoing global health emergency, the UP-IILS and ICRC are proud to launch the first edition of the APJIHL, which will be made available in print and online.

The APJIHL is an important addition to the UP Law Center's roster of research and publications that further its mandate of advancing legal scholarship and identifying projects for legal reform, including in civil rights protection, international relations, and law enforcement. The APJIHL's special focus on subject matters that relate to the Asia-Pacific region, as well as by researchers who hail from or are based in the region, is also significant, in view of the challenges towards full implementation of international humanitarian law in the region, as well as the rapid emergence of non-traditional security threats in its constituent States' territories. The Philippines, for one, recently enacted its new anti-

terrorism legislation at the height of its citizens' struggle against Covid-19. Just a little over a month later, over a dozen persons were killed in suicide bombings in Jolo, Sulu, which acts were ascribed to the Abu Sayyaf Group, which in the past has aligned itself with ISIS and other non-state armed groups.

Following the online launch of this inaugural edition in November 2020, successive editions of the APJIHL may explore thematic areas of IHL, and will continue to publish peer-reviewed articles under an interdisciplinary lens. The production of new media for online distribution will also be continuously explored, including through podcasts and blog posts on the topics covered by the contributed articles.

Finally, UP-IILS would like to thank the research and administrative staff of the UP Law Center who most kindly assisted with the editorial and organizational needs of the Journal. This volume would not be possible if not for the tireless efforts of Associate Editor Maria Emilynda Jeddahlyn Pia Benosa, Assistant Editor Joan Paula Deveraturda, Copy Editor Sheigne Alvir Miñano, and Mr. Mario Dela Cruz who prepared the lay-out. We would also like to thank the ICRC, particularly Dr. Jan Römer and Ms. Georgia Hinds whose tenacious spirit made this volume possible.

ROMMEL J CASIS
Managing Editor

TABLE OF CONTENTS

Foreword.....	iii
Preface.....	vii
Deciphering the Landscape of International Humanitarian Law in the Asia-Pacific	1
<i>Dr. Suzannah Linton</i>	
Crime and Omission: Command Responsibility from Manila to Rome	48
<i>Raphael Lorenzo A. Pangalangan</i>	
Malaysia and the Rome Statute of the International Criminal Court: A Call for Ratification.....	65
<i>Kelisiana Thynne and Fiona Barnaby</i>	
Gunshot Wound Reporting Legislation in the Asia- Pacific Region: A Need to Ensure Better Consistency with IHL	99
<i>Kelisiana Thynne and Sahar Haroon</i>	
The Road to Ongwen: Consolidating Contradictory Child Soldiering Narratives in International Criminal Law	135
<i>Jonathan Kwik</i>	
Justice for Syrians Under the International Criminal Court: Applying the Myanmar Model of Territorial Jurisdiction for Cross-Border Crimes	164
<i>Natasha Chabbra</i>	

Radio Silence: Autonomous Military Aircraft and the Importance of Communication for their Use in Peace Time and in Times of Armed Conflict under International Law	184
<i>Dr. Eve Massingham</i>	
Grey Zone Conflict in the South China Sea and Challenges Facing the Legal Framework for the Use of Force at Sea	209
<i>Trang T. Ngo</i>	
Malaysia and the Rome Statute: Panel Discussion during the Margins of the IHL Moot Court Competition at the International Islamic University Malaysia on 12 October 2019.....	238
<i>Dr. Jan Römer</i>	