

Course and Meeting Report: International Humanitarian Law Course for Academicians and Practitioners 2019*

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ABSTRACT

International humanitarian law (IHL) as “Law of War” or “Law of Armed Conflict” is regulated by the Hague Conventions of 1899 and 1907, which regulate how war is carried out, and the Geneva Conventions of 1949 and the 1977 Additional Protocols regulating the protection of victims and prisoners of war. IHL also includes conventions and agreements on the protection of cultural and environmental property during armed conflict, as well as the protection of victims of armed conflict. IHL is designed to protect people who do not or no longer participate in hostilities; and it maintains the basic rights of civilians, victims, and non-combatants in armed conflict. This paper reports a IHL course and meeting held by International Committee of the Red Cross (ICRC) in collaboration with Department of International Relations, Universitas Muhammadiyah Malang Indonesia. Held in Batu, Malang, Indonesia from 18 to 23 August 2019, the ICRC-UMM International Humanitarian Law (IHL) Course 2019 was intended to provide lecturers and practitioners in the field of international law and international relations an understanding of IHL, and to bridge diverse research findings on these subjects by participants’ papers which were presented in the course. The course also included a joint symposium for lecturers, practitioners, journalists and researchers from universities and civil society organizations in Indonesia and Timor-Leste. This report highlights the main ideas, topics and discussions related to IHL covered in each course and meeting session.

Keywords: Course Report; International Humanitarian Law Course; ICRC

Introduction

International humanitarian law (IHL) is also known as “Law of War” or “Law of Armed Conflict”. It includes the Hague Conventions of 1899 and 1907, which

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regulate how war is carried out, and the Geneva Conventions of 1949 and the 1977 Additional Protocols, which govern the protection of victims and prisoners of war. IHL also includes conventions and agreements on the protection of cultural and environmental property during armed conflict, as well as the protection of victims of armed conflict. IHL is designed to protect people who do not or no longer participate in hostilities; and it maintains the basic rights of civilians, victims and non-combatants in armed conflict.

Course Method

The goals of the course were: (1) to provide sufficient understanding on the application of IHL in special situations, (2) to improve the quality of teaching and research by university lecturers and professors on teaching and conducting research projects in IHL, (3) to encourage participants to incorporate IHL materials into their respective curricula and (4) to increase awareness on IHL issues to foster active implementation thereof in the participants' respective countries.¹

All participants were required to submit an article on IHL prior to the course. The five-day program covered material presentations and discussions on IHL including from International Committee of the Red Cross ("ICRC") Indonesia and Timor Leste experts: Kushartoyo B.S., Christian Donny Putranto, Novriantoni Kaharuddin and Muhammad Awfa; Major Ahmad Fadilah, Brig Gen (Ret.) Natsri Anshari and Admiral Kresno Buntoro from the Indonesian National Armed Forces (TNI); Yunizar Adiputera from Universitas Gadjah Mada; and Azharuddin from Indonesia's Ministry of Law and Human Rights. Each session ended with a course evaluation and problem-solving quiz.

Seventy Years of Geneva Conventions

The first session was a course on the seventieth anniversary of the Geneva Conventions: a source of inspiration to address a humanitarian crisis, presented by Christian Donny Putranto, S.H., LL.M, Legal Adviser of the ICRC Regional Delegation for Indonesia and Timor Leste. Mr. Putranto discussed the historical aspects of IHL and provided an introduction to studying the field. Discourse on IHL began with the Diplomatic Conference of Geneva of 1949, which christened IHL as a set of rules and regulations which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in

¹ Term of Reference: International Humanitarian Law Course 2019, International Committee of the Red Cross (ICRC), 19-23 August 2019, p. 2.

hostilities and imposes limits on the means and methods of warfare. IHL deals with “how” wars are conducted, not “why” or “when” wars could be carried out. Military necessity and humanitarian consideration are two fundamental principles, which IHL seeks to balance. Regionally, it was also stated in the ASEAN Charter states that ASEAN and its Member States shall uphold IHL. It thus remains for Member States to implement IHL domestically: first, while the Geneva Conventions enjoy universal ratification this does not necessarily translate to universal respect of IHL; second, such respect is best attained through dissemination to members of armed forces and civil society; and third, adoption of legislation and setting up of special domestic structures is also another way to ensure respect for IHL.

Classification of Conflicts

During the second session, Mr. Putranto discussed the scope of the law applicable during armed conflict and conflict classification. There are two classifications of armed conflict: international armed conflict (IAC) and non-international armed conflict (NIAC). IAC occurs when there is: (1) a resort to armed force between two or more States (one shot theory), (2) a State intervenes militarily on the territory of another State or (3) a State exercises control over the whole part of another State’s territory. Occupation is a special category of IAC. Article 42 of the Hague Regulations 1907 states that “territory is considered occupied when it is actually placed under the authority of the hostile army.”² The applicability of IHL ends when an IAC ends which is considered by a general close of military operations and/or upon the release, repatriation and resettlement of specific affected persons.

On the other hand, a NIAC requires that: (1) at least one of the parties to a conflict is a non-State armed group, (2) the non-State armed group is sufficiently organized and pursues a clear military and political objective and (3) the non-State armed group has sufficient military capacity to control territory. Based on Additional Protocol II (AP II) to the Geneva Conventions, the indicators (indicative and not cumulative) of the organization of armed groups are: (1) a hierarchical structure and chain of command, (2) capacity to plan and launch coordinated military operations, (3) logistics, including capacity to recruit, train and equip fighters, (4) ability to speak with one voice, (5) minimum capacity to control/discipline members and ensure

² Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Annex to The Convention: Regulations Respecting The Laws and Customs Of War On Land - Section III: Military Authority Over The Territory Of The Hostile State – Regulations, Art. 42.

respect for basic IHL obligations and (6) territorial control.³ The indicators for the intensity criterion indicatively are: (1) number, duration and gravity of the armed confrontations, (2) number of fighters and types of forces involved, (3) means used or type of weapons, (4) number of victims, damage caused and (5) effects on the civilian population, e.g., displacement.⁴ Based on Article 1(2) of AP II, there is still a distinction between NIAC and certain situations of violence such as internal disturbances and tensions like riots, isolated and sporadic acts of violence, etc. In this situation, the applicability of IHL ends when the NIAC ends. This is generally considered when a peaceful settlement is achieved.⁵ Thus, a NIAC ends when: (1) at least one of the opposing parties has disappeared or otherwise no longer meets the requisite level of organization, (2) hostilities have ceased and there is no risk of their resumption and (3) in the context of the support-based approach: lasting disengagement from the collective conduct of hostilities.

Mandate and Role of ICRC as well as RCRC Movement

For the third session, Mr. Generesius Blomen Nomer from the ICRC Delegation for Indonesia and Timor-Leste discussed the movement, role and dynamics of the International Committee of the Red Cross and the International Red Cross and Red Crescent (RCRC) Movement, which is also contributing in the International Federation of Red Cross and Red Crescent Societies (IFRC).⁶ The discussions covered the history of the RCRC Movement, the narrations on symbol or emblem, and the role of IFRC. The mission of the IFRC is to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by National Societies⁷. In its

³ Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 1.

⁴ Christian Donny Putranto “Scope of the Law Applicable in Armed Conflict”, *Course Material*, p. 16.

⁵ United Nations International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Dusko Tadić*, IT-94-1-AR72, Appeals Chamber, Decision, 2 October 1995, available at <https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic>.

⁶ About the IFRC, available at <https://www.ifrc.org/about-ifrc> (accessed on 21 September 2021)

⁷ National Societies are the backbone of the International Red Cross and Red Crescent Movement. Each one is made up of an unparalleled network of community-based volunteers and staff who provide a wide variety of services. The specific role of National Societies and the services they provide varies country by country. This is due to the different needs of communities, as well as the different relationships National Societies have with their respective authorities. National Society volunteers are often first on the scene when a disaster strikes. And they remain active within affected communities long after everyone else has left. In some cases, National Societies are the only organizations able to operate in countries experiencing disasters, conflicts, or a collapse in their social fabric.

operations, the IFRC applies the relevant principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

The session also covered the dynamics and development of the logo that has been chosen to represent the International Red Cross and Red Crescent Movement. ICRC uses the red cross while the Red Crescent uses the red crescent. When the ICRC, IFRC and National Red Cross and Red Crescent Societies operate together, the logo consists of red cross and red crescent emblems side by side. Their activities include (1) protection, (2) aid or assistance, (3) prevention, (4) cooperation, (5) economic resilient support, (6) habitat and water preservation, (7) health, (8) capacity-building and (9) natural disaster family separation tracing. With respect to regions, the greatest number of operations and activities take place in Africa. On a per country basis, meanwhile, ICRC's top five sites of operation are in the Syrian Arab Republic, South Sudan, Iraq, Yemen and Nigeria. ICRC funding is sourced from State contributions (83%), national societies (5%), the European Union (9%) and others (3%), with the United States being the largest donor country.

Protection of Medical Services in Armed Conflict

For the fourth session, Major Achmad Fadilah, Legal Officer of TNI, talked about the protection of medical services in armed conflict. Mr. Fadilah introduced the concept of “*salus aegroti suprema lex est*” (which translates to “the well-being of the patient is the most important law”) as the credo of the medical services in armed conflict. Medical services are generally divided into two categories: military and civilian. Each category is also further divided into two types of status and rights: those who are prisoners of war (POWs) and those who are not. Medical services not only concern people but also medical buildings and armed or unarmed vehicles. Military personnel from medical services are also armed and militarily trained. The use of arms in medical services, whether for the protection of people or vehicles, is limited to self-defense. Aspects relating to medical services are regulated by the Geneva Conventions: Chapter III on medical units and establishments, Chapter IV (Article 26 on personnel of aid societies, Article 29 on status of auxiliary personnel), Chapter V on buildings and material, and Chapter VI on medical transport. Mr. Fadilah also shared several real-life stories about medical services and prisoners of war who were treated in a manner not consistent with the Geneva Conventions, most of whom were tormented, killed, sexually harassed and even used as objects of biological experimentation by doctors.

Command Responsibility under IHL and National Law

During the fifth session, Brigade General (ret.) Natsri Anshari discussed the nature of command responsibility under national law and how command responsibility is regulated under IHL. He began by sharing two stories from the field about command responsibility violations by Phalangist attacked in Sabra and Shatilla Massacre on Palestinians refugee in Lebanon and the case of Capt Ernest Medina for involuntary manslaughter under the Uniform Code of Military Justice. A military commander has two responsibilities, namely, to command and to control his soldiers. Command responsibility corresponds to a military commander's responsibility, in view of his position in the hierarchical system of the command structure, for war crimes committed by his soldiers. There are generally four command levels: the policy command (head of the State, high officials); the strategic command (war cabinet, joint chiefs of staff), the operational command, which has full command to prevent war crimes and the tactical command which is directly positioned on the field.

Camp commanders are responsible for handling POWs while executive commanders are responsible toward all civilians on the field or region that is under his/her control. Commanders can also be criminally liable based on direct and indirect responsibility. Direct responsibility refers to instructions, commands or duties given to soldiers or groups that cause direct criminal effects and/or acts, while indirect responsibility is associated with omissions that cause indirect criminal effects and/or acts. The criminal responsibility of commanders is based on the handling of any breach of duty, that is, a duty to prevent, stop and to punish. Commanders must have authority and competence to handle war crimes and any breach of duty.

Protection of Civilian Population and Objects in the Event of Armed Conflicts

For the sixth session, Dr. Arlina Permanasari, a law professor from Universitas Trisakti, lecture on how IHL protects civilians. The discussions also covered direct participation in hostilities and the use of emblems for the protection of civilians. The protection of civilians in times of war are regulated under the Part IV of the Geneva Conventions and AP I of 1977. The fundamental principles of IHL and basic rules concerning the means and method of warfare consist of the principle of distinction and limitations upon the right to adopt means and methods of warfare. The principle of distinction basically provides for who are combatants or civilians and which military objectives or civilian objects are. As for limitations on the means and methods of warfare, the relevant principles are that: first, the right of belligerents to adopt means and methods of warfare is not unlimited; second, it is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to

cause superfluous injury or unnecessary suffering and third, it is prohibited to employ methods or means of warfare which are intended, or may be expected to cause widespread, long-term and severe damage to the natural environment.

The prohibition of attacks on civilian persons and property includes all acts of violence. Attacks or threats to terrorize the civilian population are prohibited. Indiscriminate attacks are prohibited. The civilian population must not be used to shield military objectives. Parties to the conflict must facilitate the evacuation of the wounded, sick, disabled, elderly, women and children. As for civilian objects such as foodstuff, agricultural areas, crops, livestock, drinking water installation, and irrigation works must neither be attacked, destroyed, removed, nor rendered useless, to prevent starvation of the local population. IHL also regulates the special protection of certain types of properties such as cultural property, places of worship and works and installations containing dangerous forces (such as dams, dykes, nuclear electrical, generating stations which must not be attacked even if they constitute military objectives).

IHL also regulates some special zones such as safety zones, neutralized zones, non-defended localities and demilitarized zones. Safety zones are established to protect wounded, sick, aged persons, children under 15 and expectant mothers. These zones may be set up near sites of cultural property.

Secondly, Neutralized Zones are established in fighting areas and based on agreement. The function of neutralized zones is to shelter from the dangers of war, all persons who are not taking part in hostilities, those who are *hors de combat*, and those who do not perform any work of military nature. Neutralized zones may also be set up near places of cultural property.

Thirdly, Non-defended Localities are any inhabited places near or in a zone which armed forces are in contact with, and which are open to occupation by the adversary. The following rules apply to non-defended localities: first, all combatants and mobile weapons/military devices must have been evacuated; second, there shall be no hostile use of fixed military installations; third, there shall be no act of hostility committed by the authorities/population; and fourth, there shall be no activity in support of military operations.

Finally, Demilitarized Zones, has rules stating: there shall be no military operations based on express agreement that may be concluded verbally or in writing, directly or through a protecting power or any impartial humanitarian organization. The function of demilitarized zones is to create a zone fulfilling the same conditions as for non-defended localities.

To implement the relevant regulations, certain precautionary measures must be observed, including: verifying whether the objectives to be attacked are definitely military objectives; choosing means and methods of attack which avoid incidental

losses and damage to civilians; refraining from launching an attack if it could appear to be excessive; providing advance warning to civilian populations if an attack may affect them and avoiding positioning military objectives in the vicinity of civilian population or objects.

Protection of Cultural Property in the Event of Armed Conflicts

On the sixth session, Dr. Permanasari discussed the legal framework of cultural property protection and different levels of this protection regime. Under IHL, cultural property is usually perceived as an icon of victory or a trophy for disputing parties, e.g., the destruction of the statue of President Saddam Hussein during the Iraq War. IHL protects cultural property in the event of armed conflicts as “silent victims of war”. The protection forms are preservation, law protection, restoration and conservation. The establishment of the timeline for the legal framework for cultural property could be divided into three parts, beginning in 1648: customary rules from ancient times (1648-1880); inserted, unratified regulations (1889-1949) and legally binding instruments (1954-1999).

The foundational Convention for the Protection of Cultural Property in the Event of Armed Conflict was signed on 14 May 1954. Under this Convention, cultural property can only be attacked in case of imperative military necessity. The definition of cultural property under this Convention has three elements: (1) movable or immovable property of great importance to the cultural heritage of every people such as monuments of architecture, art or history, archaeological sites, groups of buildings of historical or artistic interest, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections and important collections of books or archives or of reproductions of the property; (2) buildings whose main and effective purpose is to preserve or exhibit movable cultural property such as museums, large libraries and depositories of archives; and (3) so-called centers containing monuments, which contain large numbers of cultural property. Under the same Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property. The High Contracting Parties also undertake to prepare in time of peace for the safeguarding of cultural property situated in their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

IHL and Multinational Forces (MNF) and Operations

For the seventh session, Brig Gen (ret.) Natsri Anshari discussed the application of IHL to, and the use of force by, multinational operations. He started

the discussion by giving examples of violations against safe zones in the context of multinational operations. The legal framework of the United Nations (UN) Peace Operations consists of the following: the UN Charter, primarily; special rules on peacekeeping operations or concerning multinational forces, UN Security Council mandate(s), status of mission (SOMA) or status of forces (SOFA) agreements, agreements between participating States and rules of engagement; national laws (of the host and sending States), and international law (IHL, international human rights law, international criminal law, the 1946 Immunity Convention, the 1994 Personnel Safety Convention and other areas of law).⁸

Multinational Forces are responsible for monitoring ceasefires and the implementation of peace agreements. The dynamics of the forces, circumstances and operations in the field expand MNF roles spectrum to conflict prevention, peacekeeping, peacemaking, peace enforcement and peacebuilding, as can be seen in the case of the MNF in Afghanistan, DRC, Somalia, Libya and Mali. Considering the types of operational environment and level of military means and activities, peace operations are generally divided into four categories: first, observation missions, when the level of military means is low and the operational environment is under control; second, traditional peacekeeping, when military means are less-low and the operational environment is less under control; third, multidimension operations, when military means are sufficiently high and the operational environment is close to a belligerent category; and fourth, peace enforcement, when the level of military means is high and the operational environment is of a belligerent category.

Principles on Conduct of Hostilities

During the seventh session, TNI Major Achmad Fadilah discussed important principles on the conduct of hostilities and lawful targets. He demonstrated how the conduct of hostilities is normatively regulated by IHL and empirically occurs in the field, in relation to prohibited weapons of warfare. The body of such regulations on the means and methods of warfare are often referred to as Hague Law. Regarding means and methods, the session looked at three main topics: the target, means and methods of warfare. In the battlefield, the target is the first thing that must be set, examined and considered through a cost-benefit analysis for operation continuity. A target could be either a lawful or unlawful target, depending on the application of the principles of proportionality, limitation and precaution. Meanwhile, the means of warfare or combat equipment are regulated by the 1863 Lieber Code (instructions for the government of armies of the United States in the field); 1869 St. Petersburg

⁸ Natsri Anshari, "International Law on Multinational Forces", *Course Material*, p. 6.

Declaration (renouncing the use in time of war of explosive projectiles under 400 grams weight); the Hague Conventions (on respecting the laws and customs of war on land); and the 1977 Additional Protocols. The basic rules under Hague Law regulates the prohibition on employing weapons projectiles and means and methods of warfare of a nature that will cause superfluous injury or unnecessary suffering.⁹

TNI Major Achmad Fadilah also explained and demonstrated the concepts of perfidy and ruses of war as regulated methods of war. Perfidy is a kind of deception wherein someone promises to act lawfully but has every intention of breaking that promise later. The most common example of perfidy is that of an enemy raising a flag as a symbol of truce, only to attack the opposing side as they come forward to meet in the battlefield. Perfidy is prosecuted as a war crime because it takes advantage of applicable legal protections. On the other hand, ruses of war are not prohibited. As they are considered part of war tactics and strategy. Article 24 of the 1907 Hague Regulations states, “Ruses of war and the employment of methods necessary for obtaining information about the enemy and the country are considered permissible.”

Judicial Enforcement of IHL

On the eighth session, Mr. Putranto elaborated on State obligations to enforce IHL, ICRC’s role in enforcement of IHL, and the relationship between ICRC and the UN in the enforcement of IHL. IHL violations consist of grave breaches, serious violations of IHL and war crimes. These violations are dealt with by international criminal law which proscribes international crimes and imposes upon States the obligation to prosecute and punish at least some of those crimes. It also regulates international proceedings for prosecuting and trying persons accused of such crimes.¹⁰

Grave breaches of IHL are specific violations of the rules of IHL applicable to international armed conflicts and which are specifically listed in the Geneva Conventions and AP I as being particularly serious (Article 50/51/130/147 GC I-IV; Article 85 AP I). The regulation covers willful killing, hostage taking, attacking persons *hors de combat*, making civilian populations the object of an attack, torture and inhuman and degrading treatments, etc. Other serious violations of IHL consist of committing outrages upon personal dignity, in particular, humiliating or degrading treatment and desecration of the dead, enforced sterilization, compelling the

⁹ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 35/2 [hereinafter API].

¹⁰ Cassese Antonio & Paola Gaetta, *International Criminal Law 3rd Edition*, Oxford University Press, Oxford, 2013.

nationals of the adverse party to take part in military operations against their own party, killing or wounding a combatant who has surrendered or is otherwise *hors de combat*, making improper use of distinctive emblems indicating protected status, resulting in death or serious personal injury, etc. The following may also be considered war crimes: using prohibited weapons, launching an indiscriminate attack resulting in death or injury to civilians or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage, making non-defended localities and demilitarized zones the object of attack, using human shields, slavery, collective punishment and using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies.

Implementation of IHL at the National Level

Mr. Putranto continued to discuss IHL implementation at the national level during the ninth session. He discussed the obligation to implement IHL, the concept of a national committee of IHL and ICRC's role in IHL implementation. The legal basis for implementation takes root in Article 1 common to the four 1949 Geneva Conventions, which states that the High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances.

The ICRC Advisory Service on IHL has the role on advising governments on all national measures necessary to ensure full implementation to their obligations under IHL. The objectives relate to the ratification of IHL treaties, national implementation of obligations under these treaties, promotion of its work through National Committees on IHL and information exchange on national IHL implementation measures. To achieve its objectives, the Advisory Service provides legal, technical and drafting assistance, organizes seminars and meetings of experts, regional conferences and peer meetings, collects and promotes information exchange, prepares publications, e.g., fact sheets, ratifications kits, guidelines and model laws, biannual reports, regional reports, etc. and maintains contact with government officials and National Committees.

As of September 2018, 113 countries have National Committees on IHL made up of representatives from government ministries and other public institutions. National Committees should include qualified legal personnel and evaluate existing national law in light of existing obligations under the IHL conventions. National Committees also make recommendations to improve regulation and legislation, disseminate information, provide legal interpretation, develop relations with the armed forces, and conduct emblem review.

Role of National Committee in IHL Implementation: PANTAP Hukum Humaniter Indonesia

During the tenth session, Azharuddin from PANTAP Hukum Humaniter Indonesia, Secretariat Ministry of Law and Human Rights of Indonesia, discussed the mandates and roadmap of Panitia Tetap Hukum Humaniter (PANTAP). PANTAP ensures all national agencies and institutions which are linked with IHL implementation and development to execute mandate from Geneva Conventions and carry out harmonization of IHL legal frameworks towards national law. PANTAP was established based on Ministry of Justice Act No. M. 01. PR. 01-1980. Its Chairman is the Minister of Justice and Human Rights, while the Directorate General of General Law Administration serves as its Vice Chairman. Other members include the Ministry of Justice and Human Rights, Ministry of Health, Coordinating Minister for Political, Legal and Security Affairs, Ministry of Foreign Affairs, Ministry of National Education and Culture, Ministry of Defense, Indonesian National Army and Universities or higher education institutions. The latest IHL ratification in Indonesia which is facilitated by PANTAP are Undang-Undang No. 1 2018 on Red Cross and Government Act No. 7 2019 on Implementation Regulation on UU 1/2018. PANTAP has duties on formulating Indonesia position policy paper preparation on the 33rd International Conference of the Red Cross Crescent. PANTAP also provides action plan on developing IHL four years forward.

PANTAP's current programs include: formulating national laws on cultural property protection in time of armed conflict (long-term program); AP II to the Geneva Conventions, 1977 on enhanced protection for cultural property in the time of armed conflict (mid-term program); and studies on the possibility of Indonesia ratifying Additional Protocol (II) to the Geneva Conventions, 1977. Some of PANTAP program challenges involve inter-member coordination, existing law harmonization and IHL dissemination for stakeholders. To handle the challenges, PANTAP expects to increase research on IHL instruments that have not yet been ratified, as well as international cooperation with stakeholders to develop IHL concepts and theories.

Key Issues on Maritime Security and Armed Conflict at Sea

The eleventh session continued with a presentation by First Admiral Kresno Buntoro, Ph.D., Head of the Legal Service, Indonesian Navy, Center for Law and Naval Operations. First Admiral Kresno Buntoro explained how IHL protects the sick, wounded and shipwrecked. He also elaborated on the challenges of policing at sea and requirements of hospital ships. In armed conflict at sea, those entitled to be

respected and protected according to IHL are: the wounded, sick, shipwrecked and the bodies of the deceased; civilians (including migrants drowning at sea); Shipwrecked and stranded on a remote island; and persons in the hands of a neutral power. IHL protection at sea also follows the relevant rules on jurisdiction, depending on maritime zones, namely: zones under State sovereignty (internal waters, territorial sea, and archipelagic waters); zones where States enjoy sovereign rights (exclusive economic zone and continental shelf); zones not subject to State jurisdiction (high seas and the Area (deep seabed) as a common heritage of mankind), and special zones such as the contiguous zone.

The application of the law of armed conflict at sea also relates to the law of naval warfare, special targeting rules at sea, protective measures for persons and objects at sea, economic warfare measures, and maritime neutrality law. Fundamental Law of Armed Conflict principles are applied by general principles and operation level rules. Such general principles include humanity—that is, by diminishing human suffering by protecting and caring for protected persons and not utilizing weapons that cause unnecessary suffering; and military necessity, by limiting the use of force in relation to the perceived military advantage. The operational level rules consist of distinction (to attack military objects only), proportionality (expected incidental loss), and the application of precautionary measures. There are also special rules on naval targeting. The general rule is that military objectives are legitimate targets, and such status is ascertained on the basis of whether their nature, use, location or purpose make an effective contribution to military action and whether their destruction offers a definite military advantage. Thus, merchant vessels become military objectives when they are used to take part in hostilities, act as auxiliaries (e.g., troops or military material transport ships), sail under the convoy of enemy warships, breach or attempt to breach a blockade or actively resist belligerent visit and search.

Convergences between IHL and Islamic Law

IHL and Islamic Law were discussed during the eleventh session by Novriantoni Kaharudin, Lc., M.Si, Networking Adviser, ICRC Jakarta. Mr. Kaharudin started the discussion by reciting and discussing Qur'an Surah An-Nisa 76. The session covered the relationship between IHL and Islamic law, as well as their similarities and differences. The discussion was also based on the books of Abu Zuhrah, Ameer Zemmali, Miftah Ghamaq, Ahmed Al-Dawoody, Hamid Al-Saghir and Muhammad Iqbal An-Nadwi. Like IHL, the Islamic law on humanitarian law also invokes the principles of military necessity and humanity. It talks about limitation, which bears relation to distinction, precaution and proportionality. Humanitarian law under

Islamic law is also guided by the following principles: *Dharurah Harbiyyah* (military necessity according to IHL), *Insaniyyah* (humanity according to IHL), *Tafriqah* (distinction) and *Tanasub*—balance. Islamic law also provides for protected persons (*Ashab al-A'dzar*): (1) women (*al-Nisa*), (2) children (*Al-Dzurriyyah*), (3) elders (*Syaikhun Fani*), (4) scholars and/or chaplains or clergymen (*'Ulama, al-Ruhban*), (5) the sick and wounded, (*al-Mardha wa man fi Hukmihin*), (6) farmers, peasants and laborers (*al-Fallahun wal 'Usafa*) and (7) delegations or emissaries (*al-Rusul aw al-Mab'ututhin*). There is also "*Ashabul A'dzar*": people or groups that are weak or unable to participate in war.

Under the Islamic law on humanitarian law, there are also several prohibited means and methods of warfare, including: the use of catapults (*al-Manjanik*), poison or fiery arrows, human shields (*al-Tattarus*) and the staging night attacks (*al-Bayat*), taking hostages (*Rahain*) and attacks on cultural property. Exchanging guarantees is also permissible through an agreement if two hostile parties lack confidence in their opponents. In Islamic law, human guarantees are considered part of security guarantees. They must not be killed and hurt. It is not justified for Muslims to be the first party to betray the agreement. Human guarantees must not be killed even if the enemy betrayed first.

The challenge in the discourse between IHL and Islamic IHL relates to several things. First, there is a diversity of interpretations on the basic foundations of Islamic war rules. Islamic IHL is not talking about positive law, but rather the views and opinions of jurists or fiqh experts (*fuqaha*). In addition, there is no standardization and there are weak collective efforts to propose an Islamic perspective on humanitarian laws. The writers of contemporary jihad fiqh are generally not jihadis so there are issues related to authority and legitimacy.

IHL and New Technologies

During the twelfth session, Mr. Putranto discussed how IHL regulates the use of new weapons technology, especially autonomous weapons. Technology determines how wars can be fought but IHL determines how wars may be fought. ICRC and its counterparts are still in the process of working on autonomous weapons regulations. The proposed working definition for autonomous weapons is "any weapon system with autonomy in its critical functions". Autonomous weapons systems (AWS) include missile and rocket defense weapons, vehicle "active protection" weapons, certain loitering munitions and torpedoes, and some sentry weapons. Weapons systems have autonomous modes to identify, track, select and attack targets. They could be fixed on ships, ground installations, tanks and other armored vehicles. ICRC's definition does not refer to lethality for two reasons: first, lethality is not

inherent to a weapon but depends on its characteristics and the way it is used; second, weapons do not need to have lethal effects to trigger obligations under IHL. ICRC's definition also does not refer to fully autonomous weapon systems because it is autonomy in the critical functions of targeting that are most relevant for ensuring respect for IHL, and the core legal and ethical issues are not dependent on technological sophistication but on the degree of human involvement. The purpose of a working definition is not to define the AWS of concern but rather to distinguish AWS from human-controlled weapons (including remote controlled weapons), to provide a baseline for discussion and to enable greater understanding of the legal and ethical issues based on existing experiences of autonomy in weapons systems and the use of force.

The use of AWS should be regulated by IHL according to its basic rules, especially the prohibition to use methods and means of warfare that cause superfluous injury or unnecessary suffering. New weapons also are obliged to undergo legal review, as stated in *A Guide to the Legal Review of New Weapons, Means, and Methods of Warfare: Measure to Implement Article 36 of Additional Protocol I of 1977*, Article 36 stated,

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.¹¹

ICRC has emphasized the need to focus on the legal obligations and responsibilities of humans—be it in the programming, development or operational phase of the AWS—and to determine the type and degree of human control required to fulfil these obligations. The need for human control for compliance with IHL is crucial for human combatants or fighters to make lawful judgments on how to respect distinction, proportionality and precautions in attack, thus, a minimum level of human control must be available over any weapon system. There is also a need to consider the compatibility of autonomous weapons systems with the principles of humanity and the dictates of public conscience.

¹¹ AP I, above note 9, Art. 36.

Humanitarian Disarmament: Landmines, Cluster Munitions, Arms Trade Treaty

During the thirteenth session, Yunizar Adiputera, Lecturer at Department of International Relations, Gadjah Mada University and Researcher at Institute of International Studies discussed weapons conventions related to incendiary weapons, arms trade, nuclear weapons, chemical and biological weapons, drones and killer robots, as key issues in humanitarian disarmament. There are three paradigms on rules about weapons: arms control, non-proliferation and disarmament. Arms control pertains to rules for limiting arms competition, in particular those intended to: (1) freeze, limit, reduce, or abolish certain categories of weapons; (2) prevent some military activities; (3) regulate the deployment of armed forces; (4) proscribe transfers of militarily important items; (5) reduce the risk of accidental war; (6) constrain or prohibit the use of certain weapons or methods of war; and (7) build up confidence among states through greater openness in military matters. Non-proliferation is related to the means and methods for preventing the acquisition, transfer, discovery or development of materials, technology, knowledge, munitions/devices or delivery systems related to WMD. Disarmament is related to the reduction or destruction of some of a State's weapons—or the withdrawal of armed forces—and, in international weapons law, rules referring to treaties or initiatives that prohibit or restrict the production, stockpiling and/or transfer of weapons.

Why do States adopt rules on weapons? States have the interest in the preservation or enhancement of their national security against external threats. Uncontrolled weapons could have a destabilizing effect on the balance of power among States or give any one of them incentives for perpetrating aggression without suffering severe consequences. The primary concern to impose rules on weapons is therefore the State's survival. The ban on biological weapons and chemical weapons, both of which are WMDs, is grounded on this logic. There are shifting paradigms on rules about weapons. First is the expansion of IHL into weapons prohibitions, with the aim of preventing the use of those methods which are of a nature to cause superfluous injury or unnecessary suffering. Second is the emergence of the concept of human security in Human Development Report 1994, by UN Development Programme which was less State-centric. Then there is the blurring of boundaries between state or military security and human security even on arms control, non-proliferation and disarmament. The paradigm shifted congruently with further

expansion to conventional weapons and also the nuclear weapons ban in 2017—Treaty on the Prohibition of Nuclear Weapons.¹²

Disarmament can be developed through the humanitarian aspect. It should bring humanitarian arguments and considerations into the centerstage, with the human as the referent object. It should bring more actors into arms control, non-proliferation, and disarmament discussions. Multilateralism and the democratization of the process are necessary. There are three characteristic of humanitarian disarmament treaties, which are that: they establish absolute bans on the use, production, transfer and stockpiling of specific weapons to prevent harm in the future; they supplement such obligations with requirements for remedial measures that reduce the effects of past use, such as victim assistance and clearance of mines and unexploded ordnance; and they espouse a cooperative approach to implementation that maximizes States Parties' potential to fulfil the relevant treaties' humanitarian goals.

The Arms Trade Treaty (ATT) is one of the international regulations on weapons or arms trade. ATT regulates the international trade of conventional arms and seeks to prevent and eradicate illicit trade and diversion of conventional arms by establishing international standards governing arms transfers. ATT requires all States Parties to adopt basic regulations and approval processes for the flow of weapons across international borders, establishes common international standards that must be met before arms exports are authorized and requires annual reporting of imports and exports to a treaty secretariat. The scope of ATT consists of battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons. It also includes ammunitions/munitions, parts and components. The center of the regulations is international trade which comprises export, import, transit, trans-shipment and brokering.

Humanitarian Consequences of Nuclear Weapons

During the fourteenth session, Yunizar Adiputro discussed the humanitarian consequences of nuclear weapons. Nuclear weapons are capable on producing an explosion and massive damage and destruction by the sudden release of energy instantaneously from self-sustaining nuclear fission and/or fusion. Nuclear weapons are not only used for strategic purpose when in a larger yield, but also for tactical

¹² United Nations Treaty on the Prohibition of Nuclear Weapons, available at <https://www.un.org/disarmament/wmd/nuclear/tpnw/> (accessed on 21 September 2021).

purposes in battles, usually of a smaller yield. The first use of “nukes” in armed conflict was in Hiroshima (6 August 1945) and Nagasaki (9 August 1945) during World War II by the United States. In Hiroshima, the United States dropped a uranium bomb equal to 15,000 tons of TNT and caused an estimated 140,000 deaths by the end of 1945. Meanwhile in Nagasaki, a larger plutonium bomb levelled 6.7 km² of the city and killed 74,000 people by the end of 1945. Ground temperatures reached 4,000 degree Celsius and radioactive rain poured down.

Other existing legal instruments on nuclear weapons can be classified as follows: first, the main instruments: the Nuclear Non-Proliferation Treaty (NPT), Comprehensive Test-Ban Treaty (CTBT) and Treaty on the Prohibition of Nuclear Weapons (TPNW); second, regional instruments: the Nuclear Weapons-Free Zones treaties (Tlatelolco 1967, Rarotonga 1985, Bangkok 1995, Pelindaba 1996, Semipalatinsk 2006;) and third, bilateral instruments—ABM Treaty, SALT, and START. The Nuclear Non-Proliferation Treaty has three pillars: non-proliferation (Art. I-III), disarmaments (Art. VI), and peaceful uses (Art. IV). It states that all parties must pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race and for nuclear disarmament, and for a treaty on general and complete disarmament under strict and effective international control. The significance of regulations on nuclear weapons is determined by how the parties address the legal gaps of the regulations.

IHL and Counter-Terrorism Measures

In the last session, Muhammad Awfa, researcher from IHL Department, ICRC Indonesia and Timor-Leste discussed IHL and counter-terrorism measures. The discussion included national counter-terrorism legislation and its coherence with IHL and the criminalization of humanitarian assistance. IHL does not automatically criminalize every act of violence by a terrorist, as IHL regulates both lawful and unlawful acts of violence by all parties. IHL governs equal rights and obligations for all parties to the conflict without any adverse distinction. United Nations Security Council Resolution urges State,

When designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities,

that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law¹³

Conclusion

The course not only delivered new important insights on IHL but also raised some questions among the participants, such as: what will be the next challenges in the practice and implementation of contemporary IHL? What will be the next opportunities for academicians and practitioners of IHL to develop and implement IHL not only in the international level, but also with respect to regional and national law implementation? What are the potential best approaches to combine multiple modalities in the research and practices of IHL? More definite answers and insights may only be expected when these issues are transformed into the design of subsequent courses and research projects. This would be a starting point for better IHL development and implementation in the future.

¹³ UNSC Res. 2462, 28 March 2019, Art. 5.

REFERENCES

- About the IFRC, available at <https://www.ifrc.org/about-ifrc> (accessed on September 21, 2021)
- Antonio, Cassese & Gaetta, Paola. *International Criminal Law 3rd Edition*, Oxford, Oxford University Press, 2013
- Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Annex to The Convention: Regulations Respecting The Laws and Customs Of War On Land - Section III: Military Authority Over The Territory Of The Hostile State – Regulations, Art. 42.
- Course Material, *International Law on Multinational Forces*, by Natsri Anshari
- Course Material, *Scope of the Law Applicable in Armed Conflict* by Christian Donny Putranto.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Art. 1.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 35/2.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art 36.
- Term of Reference: International Humanitarian Law Course 2019, International Committee of the Red Cross (ICRC), 19-23 August 2019
- United Nations International Criminal Tribunal for the former Yugoslavia, The Prosecutor v. Dusko Tadić, IT-94-1-AR72, Appeals Chamber, Decision, 2 October 1995; available at <https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic>
- United Nations Treaty on the Prohibition of Nuclear Weapons, available at <https://www.un.org/disarmament/wmd/nuclear/tpnw/> (accessed on September 21, 2021)
- UNSC Res. 2462, 28 March 2019, Art. 5.