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FOREWORD

In 2023, the Asia Pacific region is stretching to the limits its traditional notion of peace; tension is rising across the world and the region. Multinationalism seems to be equally strained and incapacitated to deal with the challenges and provocations that arise each day. The challenges do not just play out on the political stage, or in the high-tech worlds of new technologies or warfare and artificial intelligence, or even outer space. The daily lives of humans living in and experiencing conflict are devastating, dull, drear, desperate.

Questions are asked daily about the relevance and applicability of IHL to modern conflicts and to the Asia Pacific region. Where there are major powers opposing each other with a war of words, where individual service people feel frustration as to lack of capacity, where some States seem to be able to attack their own population with impunity, it is tempting to think that IHL has lost its sting. Yet we do not witness in the news the everyday occurrences that demonstrate that IHL can make a difference – where families are reunited, children are released from detention, wounded people get to hospital in time. And the sting comes from each government and non-State armed group knowing inherently that they should apply IHL because it is enforceable in their own domestic laws and encompasses universal values.

We see the universal nature of IHL in two of the articles in this edition. Pimchanok Palasmith has written on an “Ethical Paradigm of Buddhism: A Buttress for Compliance with International Humanitarian Law”. This article notes that both IHL and Buddhism are about governing one’s conduct and avoiding evil. In this regard, Palasmith persuades us that ethical doctrines of Buddhism can be used to uphold IHL’s universal nature in conflicts in Buddhist majority states.

Taking a truly modern twist on the notion of IHL being founded on traditional and religious principles, Kheda Djanaraliev, in her article, “Prohibition of the use of nuclear weapons under Islamic Law: filling the gap of International Humanitarian Law?” examines how Islamic law can be mobilized to support the prohibition of nuclear weapons. Djanaraliev notes

that particularly given the number of Muslim majority States in the Asia Pacific, and those with nuclear capabilities or ambitions, using Islamic law arguments against nuclear weapons can give weight to IHL's prohibitions.

Two articles address the most vulnerable persons in conflict – children. Yet, children can also be associated with the armed forces and go on to commit atrocities, and there their status becomes more complex. Rebecca Lloyd, in her article, “Child Soldier to Warlord: Sentencing Ongwen in the International Criminal Court”, considers the vexed question of Dominic Ongwen, a child soldier-turned-commander in the Lord's Resistance Army in Northern Uganda who had been convicted and sentenced of numerous war crimes in 2021 by the International Criminal Court. Lloyd argues that the Court missed an opportunity to examine more fully the complexities of children as arms bearers and failed to address the impact of being a child soldier on the future actions of Ongwen.

Lance Ryan Villarosa also considers children as war fighters in his article, “Protecting the child who bears arms: How the status of Zones of Peace for Children under Philippine Act No. 11188 distorts International Humanitarian Law”. Villarosa argues that the lawmakers thought that they were doing a commendable action in the Children in Situations of Armed Conflict Law in the Philippines when they created the notion of children being “special zones of peace” who can never be attacked. However, the reality of many conflicts means that children are used in conflict and can otherwise become a legitimate target under IHL. He argues that this poses an unacceptable burden on soldiers and might place children under more harm.

Turning from protected people to protected objects, the final article in this edition by Ramindu Perera, “Environmental destruction during armed conflict, anthropocentrism-ecocentrism divide and defining ecocide” addresses a major issue across the world now, namely the protection of the natural environment. Perera argues that the focus on the environment as a people-centred good does not sufficiently address the damage we see to the environment in conflict; we need to think of the environment as a standalone entity in need of protection for itself for there to be any action. He addresses the crime of ecocide which is developing traction in the international community and the strengths and weaknesses of the proposed definition from an ecological perspective.

This is the fourth edition of the Asia Pacific Journal of IHL and this year, it demonstrates our continued commitment to publishing high quality articles on new and emerging issues of IHL or those which address a well-known subject of IHL from an innovative perspective. As an operational legal adviser for ICRC, my focus is on making IHL relevant to each fighter who needs to directly apply IHL in conflict, as well as to governments who need to develop, promote and accept the treaties and fully implement them into domestic law. The articles in this edition will certainly help me in my continued desire to demonstrate the on-going relevance of IHL to everyone in the Asia Pacific region and beyond and I trust it does for our readers too.

I would like to extend my sincere gratitude to the Board of Experts for their continuous guidance in this endeavour. I would also like to express my great thanks to the entire team at the UPIILS for their tireless efforts in producing this edition, guided by Ms Paula Deveraturda. Special thanks go to the Managing Editors, Prof. Rommel J Casis of UPIILS and my colleague, Ms. Sahar Haroon, for their expert guidance, support and partnership in producing this Journal.

KELISIANA THYNNE

Head of Legal Department, ICRC Philippines

PREFACE

The Institute of International Legal Studies (IILS) of the Universities of the Philippines (UP) Law Center and the International Committee of the Red Cross are pleased to release the 2023 Edition of the Asia-Pacific Journal of International Humanitarian Law.

Now on its fourth year of publication, APJIHL continues to be a platform for experts and scholars to forward IHL scholarship in the region. Over the years, the Journal has published peer-reviewed articles exploring intersections between armed conflict and other areas explored by international law, such as environmental protection, cultural heritage and religion, health, humanitarian policy, and human rights, from the perspective of or experience in the Asia-Pacific. Every edition has emphasized the region's perspective and contribution to the development of IHL, with the esteemed members of the Journal's Board of Experts providing strategic direction as the world found itself navigating a different landscape post COVID-19. While the opportunities and challenges for IHL scholarship have likewise evolved, APJIHL continues to pursue its purpose of creating a space for inter-disciplinary discussions necessary in advancing the body of rules in situations of armed conflict.

Four editions of APJIHL have been made possible through the long-standing partnership between UP IILS and ICRC. UP IILS has been a research hub for IHL even prior to the First Edition of the Journal in 2020, while ICRC's mandate has always included the promotion of IHL. APJIHL has been a key addition to the UP Law Center's roster of research and publications – unique and useful in its relevance in not just advancing legal scholarship in Asia-Pacific, but being a starting point for legal reforms in rights protection, international relations, and rule of law. With the publication of the 2023 Edition and the Call for Papers for the 2024 Edition, APJIHL will continue to stay true to its purpose and provide a platform for voices of those from the region.

UP-IILS would like to thank the research and administrative staff of the UP Law Center who most generously assisted with the editorial and organizational needs of the Journal. This volume would not be possible if not for the continued hardwork and efforts of Associate Editor Atty. Joan Paula Deveraturda, Assistant Editor Prof. Michael B. Tiu, Jr., Copy Editor Bienelle T. Aronales, Editorial Assistants Ella Edralin and Chester Louie Tan, and Alyanna Bernardo who prepared the lay-out. We also dedicate the 2023 Edition to Mr. Mario Dela Cruz – a valuable member of APJIHL who passed away this year.

We would also like to thank the ICRC, particularly Ms. Sahar Haroon and Ms. Kelisiana Thynne whose continued support made this fourth volume possible.

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