



Report on the work of Commission B:

Contemporary challenges in international humanitarian law

9 December 2015, 3:45 p.m. – 5:45 p.m. and 10 December 2015, 9:30 a.m. – 11:30 a.m.

Chair: Mr Richard Rowe, Australian Red Cross

Rapporteur: Mr Thomas de Saint Maurice, International Committee of the Red Cross (ICRC)

Note-taking: Ms Öykü Irmakkesen, ICRC

Panellists:

- Dr Cordula Droege, ICRC
- Dr Heike Spieker, German Red Cross
- Prof. Sandesh Sivakumaran, University of Nottingham

Summary

The commission served as an interactive forum for participants at the International Conference to discuss the contemporary challenges in IHL and how to address these challenges. There was broad agreement on the challenges and their underlying factors, as identified in the concept note for the commission and the ICRC's report *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Among the main challenges discussed were: the increasing complexity of armed conflicts, notably due to the proliferation and fragmentation of non-State armed groups; the expanding geographical scope of the battlefield; the interplay between international humanitarian law (IHL) and international human rights law; and generating respect for IHL. The need to ensure respect for and compliance with IHL was seen by many as the main challenge in contemporary armed conflicts. The importance of ensuring the protection of humanitarian actors was also referred to. Other important issues identified were: the challenges posed by urban warfare – including the practice by some parties of deliberately hiding among the civilian population – and the impact in humanitarian terms of the use of explosive weapons in populated areas. The commission also touched upon a number of other IHL challenges, and participants exchanged information on their own experiences and actions to promote IHL. The need for creative thinking to find new methods to address these issues, particularly relating to non-State armed groups, was emphasized, as was the need for concerted efforts to disseminate and implement IHL in the various contexts.

Panel presentations

The chairman opened the commission by highlighting the main challenges set forth by the ICRC in the concept note prepared for the Commission¹ and by referring to the objectives and guiding questions for the discussions: identifying the factors that most affect IHL application and the greatest challenges posed by contemporary conflicts, determining

¹ The concept note was based on the ICRC's report entitled *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, October 2015, doc. 32IC/15/11.

whether there are important challenges not identified in the concept note, and coming up with ways States and components of the International Red Cross and Red Crescent Movement can address such challenges. The chairman emphasized the importance of using the commission as a forum for dialogue between the participants in the International Conference. The panellists laid the groundwork for this dialogue. Their presentations focused on a selection of contemporary challenges and how to address them.

Dr Cordula Droege spoke about the regionalization of conflicts and foreign interventions, including the possible consequences for the geographical scope of application of IHL. She referred to the problem of certain parties to armed conflicts – either States or non-States – denying the applicability of IHL. She then addressed the challenge of the interplay between IHL and international human rights law, notably in relation to the use of force. New technologies of warfare were also mentioned, not only as presenting legal challenges but also as raising ethical and political issues.

Dr Heike Spieker addressed the challenges that practitioners and decision-makers encounter on the ground due to the growing complexity of legal concepts, including the interplay between IHL and international human rights law. She remarked on the difficulties, given the contemporary international situation, of envisaging treaty-making approaches to addressing these challenges. It is therefore important to continue applying and consolidating customary international law and the general principles of the law. That, however, raises interpretation challenges. She emphasized the need for new thinking in order to generate respect for IHL, particularly by non-State armed groups. She also mentioned the impact of hostilities on the natural environment, particularly in relation to aggravating the scarcity of resources.

Professor Sandesh Sivakumaran focused his contribution on the issues raised by the increasing complexity of armed conflicts, in particular due to the multiplication and fragmentation of armed groups and increased foreign interventions. Some of the concrete consequences are difficulties in determining when IHL applies and, at a practical level, in concluding truces or humanitarian agreements on evacuating wounded people. He referred to the challenges posed by issues of applicable law for territory under the control of non-State armed groups, the potential difficulty of engaging with certain non-State armed groups in light of counterterrorism legislation, and the need to engage with a wide variety of actors, such as diasporas and religious leaders who have influence over non-State armed groups.

All panellists commended the quality and focus of the concept note and the ICRC's report *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. All agreed that the main overarching challenge to IHL is the lack of compliance and of an adequate enforcement mechanism.

Discussion highlights

Most of the contributions by participants in the commission focused on the challenge of generating respect for IHL. Lack of compliance with IHL, including, notably, by non-State armed groups, was a central theme. The absence of accountability and the sense of impunity that armed groups and others seemed to have were often mentioned as factors contributing to the erosion of support for and application of IHL. Participants also mentioned the increasing reluctance in contemporary international relations to engage in or comply with regulatory processes. There were exchanges on whether we might be entering a new era in which power supremacy overrides support for and adherence to legal regulation.

It was noted that some armed groups that are parties to armed conflict blatantly reject the rules of IHL. But it was also emphasized that there is a very wide variety in the types of armed groups and that it is possible to engage with some of them and undertake dissemination efforts in order to foster better compliance with IHL.

Urban warfare was mentioned as an important challenge in contemporary armed conflicts. One major issue in relation to urban warfare is that some parties use populated areas to deliberately shield their military activities, thereby attracting hostilities to areas with concentrations of civilians and exposing the civilians to the effects of combat. The issue of using explosive weapons that have a wide area effect in populated areas was also mentioned as being of particular humanitarian concern in contemporary armed conflicts. Other weapons issues were also addressed by the participants, in particular the challenges raised by autonomous weapon systems.

During the discussions other challenges were referred to, such as the importance of ensuring the protection of people providing humanitarian assistance in situations of armed conflict, and the challenges posed by the interplay between IHL and international human rights law.

In addition, other specific challenges not explicitly included in the concept note were also mentioned, such as the importance of giving effect to the obligation to respect and ensure respect for IHL, including by States not parties to armed conflicts; protecting the natural environment in armed conflicts; and promoting IHL education in relation to situations of armed conflict.

As for ways to address these challenges, most contributions insisted on the importance of IHL training and dissemination. Some participants shared their practices in this regard, in particular in emphasizing the importance of more training for armed forces and dissemination of IHL among parties to armed conflicts. Dissemination can be carried out by States, but also in cooperation with National Societies and the ICRC. In addition to training and dissemination, it is also crucial that IHL be incorporated into the policies and practices of the armed forces and into academic curricula, and that it be implemented by States through domestic legislation. It was recognized that efforts should continue in that direction, and some States and National Societies submitted pledges to that end.

In order to be more efficient in these efforts, it was also emphasized that the methods dissemination and training should not only be adapted to the local cultures and the specific audience, but that new methods should also be explored, including the use of new technologies.

The commission confirmed that the challenges and their underlying factors, as identified in the concept note were, indeed, the most salient in the current global IHL context.