

**2ND SOUTH ASIAN CONFERENCE ON
INTERNATIONAL HUMANITARIAN LAW**

REPORT

**14-18 FEBRUARY 2010
DHAKA, BANGLADESH**



ICRC

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ICRC

REFERENCE



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Dr. Dipu Moni, Honourable Minister for Foreign Affairs, People's Republic of Bangladesh is addressing at the inaugural session.



Mr. Christoph Vogt, Head of the Mission, ICRC, Dhaka delivering the welcome address at the inaugural session



Welcome delegates

The 2nd South Asian Conference on International Humanitarian Law was held in Dhaka, Bangladesh, from 14-18 February, 2010. The theme of the conference was "From Law to Action: IHL Implementing Legislation".

DAY 1 (Sunday, 14 February 2010)

Inaugural Session

The inaugural session of this four day Conference began at .00 PM on 14 February 2010. Ms. Rumana Binte Masud, the Communication Officer, Dhaka Office (ICRC, Bangladesh), welcomed the participants and invited the dignitaries to the dais. Minister of Foreign Affairs of Bangladesh, Hon 'ble Ms. **Dipu Moni** was the Chief Guest for this occasion. Mr. Len Blazeby, *Legal Advisor, Advisory Services IHL, ICRC Geneva*, chaired the session. He invited Mr. Christoph Vogt, *Head of Mission, ICRC Dhaka*, to deliver welcome address.

Welcome Address

On behalf of the International Committee of the Red Cross, **Mr. Christoph Vogt**, *Head of Mission, ICRC, Dhaka*, welcomed all the participants and guests to the Second South Asian Conference on International Humanitarian Law (IHL). He referred to the historical significance of the conference venue and mentioned that this was the same place which was once the site of the ICRC operations in 1971 which enjoyed the status of a neutral zone from 9 to 19 December in that year. It remained a mute spectator to the service rendered to thousands of persons by the ICRC in those days of war.

Mr. Vogt, noted that it has become a worldwide tradition for the ICRC to host IHL Conferences in association with host governments or with regional partners such as the League of Arab States, the Economic Community of West African States (ECOWAS), the Organisation of American States (OAS) or the Commonwealth of Independent States of the former Soviet Union. Such conferences are regular, often-yearly events. For example, 20 African nations would participate this June in the 10th South African Regional IHL Conference in Pretoria. These conferences aim to bring together Government officials and experts of IHL in order to share and debate the knowledge of law applicable to armed conflict. The ultimate aim of this exercise is of course, to work together to advance the accession to and the implementation of IHL treaties in the world, he added further.

Mr. Vogt remembered the efforts of the Henry Dunant in the development of the International Humanitarian Law and as the father of Red Cross and Red Crescent Movement. He observed: "the path he (Henry Dunant) started down led us to the Four Geneva Conventions of 1949, which now bind all States in the world..." Mr Vogt referred to the well-established direct or indirect links of the roots of the IHL in various cultural traditions worldwide. In respect of South Asia, he named some of the distinguished scholars including Justice Weeramantry who discussed IHL elements in Hindu, Buddhist and Islamic texts. He quoted some ancient traditions including, 'forbearance to use poison and poisoned weapons' , 'the admonition to fight only with those who fight with you' and the famous Buddhist saying that 'in times of war raise yourself to the mind of compassion'.

In the end, he expressed his thanks to the Government of the People's Republic of Bangladesh, the Ministry of Law, Justice and Parliament Affairs and the Ministry of Foreign Affairs, and in particular to the Director General of International Organisations, Mr. Ali Sorkar, for his support in organising this conference. He expressed his gratitude and well wishes to all the delegates for their commitment to discuss IHL related issues. He hoped that the participants would carry this discussion forward in their countries, together with ICRC in order to ensure the better implementation of IHL in South Asia.

Objectives of the Conference

Mr. Christopher Harland, *Regional Legal Adviser for South Asia, ICRC, New Delhi*, while noting the objectives of the conference, said that this conference sought to encourage process of treaty accession, implementation and work of national IHL Committees. This is done, in part, through country presentations. This regional Conference allows countries to share experiences in implementing IHL obligations. He further added that this Conference in Bangladesh would allow for a wider awareness of IHL and would hopefully benefit in greater IHL implementation in the countries present.

Recent Developments in IHL

Mr. Harland observed that IHL is not a static body of law and emphasised that in recent times, it has developed through both treaty as well as customary law. He discussed some of the important recent developments in the field of IHL. In this respect he mentioned that in 1995, the States parties to the 1949 Geneva Conventions requested the ICRC to create a unit charged with increasing the rate of implementation of legal obligations under IHL. These obligations, he added,



included the adoption of appropriate legislation to ensure that the violations of IHL could not go unpunished. The Unit in ICRC, he replied, was created to be responsible for actions and it is known today as the ICRC Advisory Services on IHL. This unit, with its network in Geneva and legal advisers around the world seeks better accession of IHL treaties including the core 28 treaties and their implementation.

He also referred to the ICRC's efforts in developing inter-ministerial national IHL committees that are functioning in 93 countries worldwide, including three countries represented in the Conference. These committees work on various matters such as IHL accession, advice to Government on IHL issues and implementing legislation and training, he added. The ICRC also works with these bodies and provides information and technical support. He drew the attention of participants towards two recent developments related to IHL in South Asian Region, firstly, Afghanistan's recent accession to the two Additional Protocols of 1977 to the 1949 Geneva Conventions and secondly, to Bangladesh's recent legislative efforts in respect of IHL. He further mentioned the latest IHL treaty, the 2008 Cluster Munitions Convention and hoped that it would soon enter into force.

He commended the efforts of the States parties to the 1997 Anti-personnel Landmines Treaty, including Bangladesh, as shown at the Second Review Conference on the 10th Anniversary of the Mine Ban Treaty, the 2009 Cartagena Summit in Columbia. He also mentioned the Review Conference of the International Criminal Court (ICC) in Kampala, Uganda to be held in May and June 2010. At that Review Conference, the States would be given an opportunity to propose amendments to the Statute of the ICC including the crimes that the Court may investigate, he added further.

Commenting on the ICRC's recent efforts to strengthen IHL, he emphasized that it was currently reviewing the treaty based norms in non-international armed conflict, based both in Common Article 3 to the Geneva Conventions of 1949 and Additional Protocol II of 1977. Further, he said that the ICRC was preparing a guide to the States for implementing the Optional Protocol of the Child Soldiers to the Convention on the Rights of the Child. He remembered 2010 as the 10th anniversary of the Protocol and hoped that ICRC would be able to share this document with many State Parties including in this region in the near future. It is important for States not only to prevent recruitment of child soldiers, but also to ensure that the legislation expressly forbids the recruitment of child soldiers by non-state actors, as a crime, Mr. Harland added.

On Biological and Chemical Weapons

He said that the experts around the world on Biological and Chemical Weapons would speak on Tuesday (16 February 2010) and hoped that the experiences of countries inside and outside the region would prove beneficial to those present in encouraging the domestic implementation of IHL. These treaties may not be an immediate perceived priority in the region but given technological advances, and the requirements of the Conventions, their importance to ensure an appropriate legal regime in place, is beyond question.

He, however, noted that all ten countries that were participating in this regional Conference are parties to the 1972 Biological Weapons Convention, but only one has express implementing legislation to the knowledge of the ICRC, he added.

Conclusion

He extended the invitation to the Government of Bangladesh to consider establishment of a National IHL Committee in the country, under discussion for number of years. He expressed his commitment to help the Government of Bangladesh on technical advice of the formation of such committee. Finally, he thanked Government of Bangladesh for their assistance and support in holding of the Conference. He also thanked the Foreign Minister of Bangladesh, **Ms. Dipu Moni** for her personal appearance in inaugurating session of the event. Further, he expressed his deep gratitude and appreciated the participants for their dedication and commitment to IHL and to its effective implementation in the countries of the region.

Address by the Special Guest

Mr. Mohd. Zamir, *former Secretary, Ministry of Foreign Affairs and Ambassador*, firstly, remembered his first contact with the ICRC during the post-1971 war crisis and thanked ICRC for its services.

He said that the recent commemoration of the 60th Anniversary of the Geneva Conventions of 1949 brought up once again the debate about their relevance. This gives a chance to think whether there was any need for change or to re-examine some of the provisions keeping in mind the context of the changing world. He referred the agreements prior to the Geneva Conventions of 1949 such as those of 22nd August 1864, 6th July 1906 and on 27th July 1929, just to demonstrate the gradual evolution of the principles of IHL as the strategic situation changed in



conflict areas. The only constant factor that gained greater focus despite change has been the humanitarian aspect related to any war and conflict situations, he emphasized.

He mentioned that the gravity and intensity of the Second World War made the world to reassess once again the existing principles relating to combat and international justice to mitigate the evils inseparable from the war. He characterized the Four Geneva Conventions of 1949 as a major step forward. He explained that the adoption of Universal Declaration of Human Rights was the first step taken in this regard and thus the 1949 Conventions were a major step forward. The Universal Declaration of Human Rights was 'a common standard of achievement for all people and all nations to the end that every individual and every organ of the society keeping the declaration in mind and subscribe the teaching and education to promote respect for the rights and freedom'.

It was this awareness about the implication of modern warfare that prompted the enactment of Geneva Conventions of 1949, he added. The Conventions have since become the basis for the contemporary rules of engagement in the conduct of conflict and providing protection for the wounded members of the armed forces in the field, and at sea, prisoners of war and civilians. He further referred to the Common Article 3 of the Geneva Conventions, which clarified that this would apply without any adverse distinction arising out of the race, nationality, religious belief or political opinion. It is this universal nature of the Convention that persuaded more countries to sign up to it, Mr. Zamir said.

This in turn, has saved hundreds of thousands of lives over the last sixty years. However, despite the general consensus to abide by the Convention, many of the State Parties have flouted its provisions under the pretext of new evolving types of armed engagements. He specifically noted down that, such deviations have been supported by government officials as they argued that the process of conflict has changed and the Conventions are unable to respond to these new types of engagement. This controversy gained special momentum after the terrorist events of 9/11 and the creation of the Guantanamo bay detention centre, Mr. Zamir observed.

He said, as the result of this, even the ICRC that has strong historical links to the Conventions was forced to seek clarification of what constitutes involvement in modern conflict. Mentioning one of the aspects of the problems about definition of lawful targets, he observed, "The rebel groups disguise themselves among local

populations and 'for too many civilians' risk being 'lawful targets'. The ICRC's Direct Participation in Hostilities document addresses this issue.

He deliberated about the changing nature of the conflict and categorically stated that nowadays conflicts are more likely to occur within States than between States. Those who are fighting for an ideology rather a country, from Palestine to Afghanistan, Sri Lanka to Iraq, made the distinction between soldiers and civilians quite blurred. In this regard, he mentioned that any effort to tamper with the wording of the Conventions could cause additional problems permitting governments currently in breach of the provisions to legitimize their position. In this respect, he gave the example of the U.S.A. Government position about the treatment of prisoners of war at its prison cells in Guantanamo Bay.

The Geneva Conventions 1949 have become a foundation stone to a dynamic body of IHL and it needs to be respected, he said. In addition to this, the Additional Protocols of 1977 and the most recent ban of the use of landmines and cluster munitions are evidence that the Conventions are taking note of recent developments of warfare technologies, he observed. He gave the examples of Gaza and a village named Khana in Lebanon where new kinds of warfare technologies like phosphorus bombs and cluster munitions were used.

While concluding his speech, he expressed his gratitude and thanks to the ICRC for the organization of a regional conference in Dhaka. He appreciated the proposal of having a national implementation authority on IHL in Bangladesh and commended the ICRC's preparedness to assist in this regard. He hoped a very good luck for all and looked forward for the ongoing deliberations and conclusions that would be very useful and helpful for all and particularly for Bangladesh.

Inaugural Address

Honourable Dr. Dipu Moni, *Minister for Foreign Affairs, Republic of Bangladesh*, expressed her pleasure to welcome all the participants and the dignitaries to the Second Regional South Asian Conference on International Humanitarian Law (IHL) on the theme "Form Law to Action : IHL Implementing Legislation". She thanked the ICRC Delegation in Dhaka, especially Mr. Christoph Vogt for arranging the Conference and inviting her to deliver the inaugural address. She focused her speech mainly on two aspects, firstly the theme of the regional conference and secondly on the relevance of the regional conference.



Theme of the Regional Conference

Ms. Moni said that the history of humankind, in much of its documented existence, and conceivable, in its entire unrecorded prelude, had been punctuated with violent conflicts. Such adventures over the past millennia claimed lives of millions, and caused suffering to millions more, who were left wounded and uncared for on the battlefield. She acknowledged the leadership role played by Henry Dunant for stepping in the situation to fill the humanitarian void in conflicts situations. She noted down the contributions of Henry Dunant, as the first ever Nobel Peace Prize winner in 1901. She quoted the citation that referred to his founding of the International Red Cross Movement as "the supreme humanitarian achievement of the nineteenth century".

Ms. Moni mentioned that over the years, this initiative of Dunant matured into a respectable institution worldwide, responding to the need of the victims, defending their dignity, and ensuring that humanity prevailed even in time of war and conflict. It championed rules to respect, and conditions to comply, even during belligerency and other armed conflicts. She commended the work of the ICRC as the inspiration of the First Geneva Convention. She said that the record of its (ICRC) dedication to the defenseless, for over a century of its work, in countless humanitarian missions, led the States parties to the Geneva Conventions to give the ICRC, in the mid-20th century, the mandate to protect victims of international and internal armed conflicts.

She noted down that the customs and laws of war, through various instruments and practices, grew into a full-blown legal corpus, which defined the roles and responsibilities of belligerents and the neutrals, of individuals and those engaged in warfare, of their relations to each other, and about treatment of protected persons. Many of these legal instruments have now been accepted as the customary law and States are bound to pursue them irrespective of whether they are signatories or not, she observed further. This makes it indispensable for practitioners to have knowledge of humanitarian norms for the protection of victims of armed conflicts.

Against this backdrop, she also acknowledged the collective contribution of all human civilizations, including South Asia to International Humanitarian Law (IHL). For example, rudiments of humanitarian laws can be traced to ancient Indian records. She noted down that the Laws of Manu, or Manu Dharma Shastra, described the types of weapons that should not be used. She quoted from the Laws of Manu, "When he fights with his foes in battle, let him not strike with

weapons concealed in wood, nor with barbed, poisoned, or the points of which are blazing with fire". There was also the command not to strike the enemy, "who folds his hands in supplication, nor one who looks on without taking part in the fight", she further observed. She also quoted from the Islamic Law that the noncombatants who did not take part in fighting, such as women, children, monks and hermits, the aged, blind, and insane were not to be molested.

Ms. Moni, however, pointed that much of the IHL is a heritage of humanity, of something of concern to all of us irrespective of any debate about its origin and contribution. With this theoretical background and context she emphasized the need to study the laws, to disseminate them, and to apply them.

Relevance of the Regional Conference

Speaking about the relevance of the conference, Ms. Moni pointed out that all nations have ratified the Geneva Conventions, thus recognizing a legal obligation to uphold their provisions in times of conflict. While ratifying these Conventions, nations agree to educate their military personnel and the public about IHL provisions just to make them realize that upholding IHL obligations is not only a moral duty but also an obligation. She observed that the more knowledgeable members of the armed forces and the public about the IHL, the more likely it is to be adhered to and upheld.

Ms. Moni pointed out the importance of the Regional Conference in disseminating the knowledge of IHL. It must be fully understood that IHL is an essential part of the conduct of States, and their agents. The most effective means of securing compliance with these humanitarian rules is through widespread public education in peacetime, she observed. In this respect she said, "dissemination of humanitarian laws in times of peace is as important as its application during armed conflicts". Further, she commended the ICRC's efforts for organizing the regional conference for spreading education and promoting IHL understanding and appreciation in the public domain.

She expressed her confidence that the Second South Asian IHL Conference, with its focus on implementing IHL legislation, would go a long way in raising awareness for following them through. She further observed that in a world which had witnessed so much warfare and internal conflict, and where millions become victims to civil strife every day, it is important that our policymakers, our members of the armed forces, and our public remain aware of the universality of IHL, and remain vigilant against their violation everywhere.



Conclusion

At last, she gave a glance to the topics of the agenda, like the 1972 Biological Weapons Convention, the International Criminal Court Statute implementing legislation, the Anti-Personnel Mine Ban Treaty, and the Convention on Cluster Munitions, that had been picked up for analysis and discussion at the conference. She justified their contemporary relevance for analysis and discussion at the conference. She further hoped a focused and interactive discourse on these timely topics that would not only open up new doors for States to implement IHL legislation, but also would enhance regional cooperation to work together for their implementation.

She thanked the ICRC for working with the Foreign Ministry of Bangladesh in arranging the regional conference and she whole-heartedly welcomed to Bangladesh all participants, particularly the resource persons and experts coming all the way to Bangladesh for the Conference. She hoped that the rapport that participants would build with each other during the conference would continue in their individual and joint initiatives in upholding International humanitarian Law, both within and outside of their boundaries. She expressed her confidence that the vigilance shown by participants would encourage the parties to conflicts to limit themselves to the use of methods and means of warfare that would not pose a threat, or cause harm to non-combatants, and actively promote the protection of persons caught in a conflict. She further hoped a pleasant stay in Dhaka for all the participants. Inaugural day of the Conference was the second day of spring in Bangladesh and so Ms. Moni greeted all the participants a very happy spring.



DAY 2 (Monday, 15 February 2010)

Implementation and Accession Overview- Worldwide and Regional

Mr. Christopher Harland, *The Regional Legal Advisor for South Asia, ICRC, New Delhi*, introduced himself to the participants and requested all the participants to introduce themselves. After this introduction, he spoke about the agenda for the day. This day was fixed for the country presentations. But before that, Mr. Christopher invited **Mr. Len Blazeby**, *Legal Adviser, Advisory Services IHL, ICRC, Geneva*, to give an overview of the national IHL implementation worldwide.

Mr. Len Blazeby looked at the status of national implementation of IHL from a global perspective, mainly focusing on 2009 and discussed how things progressed in 2009 in terms of ratification and other measures. Firstly, he looked at framework of the Advisory Services of ICRC, in order to have an overall understanding of the implementation of IHL. The first step in this regard, he mentioned, was to get States to engage in relation to the various IHL treaties.

Another aspect is to look at national IHL committees. He noted that. National IHL committees work as a tool to assist with both universalization as well as implementation of IHL. These committees, however, are set up, owned and run by the Government. Nevertheless the job that they do assists both the Governments themselves and works with the ICRC in relation to implementation of IHL treaties. The next step is to look at the domestic implementation that individual countries should translate these international obligations into their own laws and regulations.

Further, in his address, he highlighted that the Advisory Service of the ICRC generally looked mainly at 28 main treaties. He pointed out that the Advisory Services that came into being in 1996, and since then 1375 ratifications were made to date, which was a good sign. He also gave a brief outlook about the ratification status of the some of the important treaties of IHL and the recent developments in this regard.

Further, he reviewed the progress of National Committees established and pointed out that the number has increased from 35 in 1996 to 93 in 2010.

Switzerland and Mexico have recently set up their IHL national committees in 2009. He also hoped that forthcoming universal meeting of national IHL committees would be quite helpful for the states in dealing with violators or offenders of the IHL norms. He further emphasized the need of domestic implementation and observed that it becomes very difficult to undertake things like prosecution of people for violation of IHL without having any proper domestic implementation. He stressed this need and also linked it to the rising concept of individual criminal responsibility in most of the international treaties, in particular IHL treaties.

He outlined the importance of the Advisory Service as to assist the national governments in establishing the safeguard mechanism against IHL violations. He mentioned various tools in this respect, like engaging in bilateral dialogue with governments individually, organizing regional conferences and universal meetings, providing publication of model laws, having ratifications kit and the database on national implementation. This database is available through the web, through the internet, through the ICRC website, he added later. It also has case-law, judgments from states on various matters for eg., war crimes or other prosecutions, to help States to look at how the law is interpreted by other States, because various States look at the law through, judgments and other practices that customary law evolves. Apart from this ICRC also maintains model laws on various aspects of IHL, Mr. Blazeby said that there were two important benefits of these model laws on the ICRC site, firstly, these model laws primarily deal with common law traditions that require stand-alone pieces of legislation of various IHL treaties and secondly, they give States the required clauses that are actually needed to be implemented. Further he named some of the model laws prepared by the ICRC, such as the model laws on the Biological Weapons Convention, the model law on the Mine Ban Treaty, etc.

There is a need for the better implementation of IHL in its grave breaches, Mr. Blazeby pointed out. This is an obligation for all States to look into implementation, he added. As far as emblem protection is concerned, most States that use the Red Cross emblem have good protection for that particular emblem. However, such level of protection is lacking for the Red Crescent and the Red Crystal emblems, so there is a need to work in this respect, he emphasized.

Further, he expressed his dissatisfaction on the insufficiency of the translations of the Geneva Conventions in the official languages of the States due to the inability of the parties. He observed that people must know what are the protections available to them under the Geneva Conventions in the language they might

understand in their country. He, however, also expressed his optimism given the fact that the Geneva Conventions, and the Additional Protocols have been translated in all UN languages and probably of 30 or 40 other languages outside of that and he notes that it should not be a very hard proposition to get them translated in the official languages of all States.

He observed that the Hague Convention on Cultural Property and the ICC Statute have a low rate of implementation, and that certainly needs to be worked on. Child soldiers and biological weapons are subjects which also have few implementing laws. In 2009, there were four implementing laws for the Cluster Munitions Convention adopted, while there was one implementing law for the Mine Ban Treaty and two implementing laws for the Chemical Weapons Convention.

At the end, he pointed out the need for hard work to improve national implementation, especially for the Additional Protocols to the Geneva Conventions, for the emblem as well as the Conventional Weapons Convention.

Discussion

During the discussion, while answering a question on the Mine Ban Treaty, Mr. Harland replied that the use of landmines has declined since the inception of this Convention in 1997. Some additional States have signed a moratorium on the use of landmines and there are processes which are taking place through international bodies, NGOs and also various international bodies such as the EU and the UN to try to persuade the States who are not party to become parties. He pointed out that one of the strengths of the Mine Ban Treaty was its reporting system under Article 7 which requires each State party to put in annual document what is happening concerning landmines within their own country.. He noted that there are four States who are not parties to landmine treaty but still file a voluntary report.

Answering another question on the ICC, Mr. Christopher Harland said that the ICC was little bit different as it takes cases where individual states are not able to prosecute. The more individual States that have domestic legislation allowing them to prosecute war crimes and other crimes under the ICC Statute, theoretically, the less the need for the ICC. He pointed out that *prima facie*, it is national legislation and the national ability to prosecute that is most important because international prosecution is a fall-back position.

While answering a question on the cross-border transfer of landmines transfers to non-state actors, Mr Len Blazeby said that there has to be pressure on the States to ensure the place of stockpiles and to stop the transfer of mines. However, the solution is not a short-term process and it requires a long term strategy to rid the world of landmines. He pointed out that there is continued pressure on States, both by individual countries, the international community and civil society.

Outline of the IHL Implementation in South Asia

Mr. Christopher Harland, *Regional Legal Advisor for South Asia, International Committee of the Red Cross, (ICRC)* provided an overview of the IHL implementation in South Asia.

Overview of the materials given to participants

Firstly, he gave an overview of some of the materials given to the participants. It was divided into three sections, compiled as a document collection. These three sections are fact sheets, model laws and a treaty collection.

The first part is fact sheets. He also discussed Model Laws and a treaty collection that were given to the participants. He pointed out that this document collection could be helpful in assisting states in accession and the national implementation of various IHL treaties. Further, he mentioned the chart that participants have received. This chart is the ICRC New Delhi's internal assessment about both accession and implementation. He admitted that though all the necessary information for that chart is not available. He further hoped that these conferences may also prove helpful in providing missing information. He mentioned two recent developments that were not on the chart. These were firstly, Sri Lanka's Chemical weapons legislation and secondly, Bhutan's recent accession to the Child Soldiers Protocol in December 2009. Further, he invited suggestions to make the chart more comprehensible. He said that chart is self-explanatory and discusses the present position of IHL treaties with respect to accession, national implementation and other related matters. Further, he discussed national society legislation that establishes national societies in countries. He pointed out, for example, that the Maldives recently created the Maldivian Red Crescent Society. There are still 8 countries in the world that have not yet created a national society, Mr. Harland said.

He pointed out that the ICRC is trying to encourage States not only to make sure that there is an official translation, but also to ensure that Prisoners of War (PWs) must be given the Third Geneva Convention in their own language of understanding whenever the need arises. Regarding the First Additional Protocol, he noted that the International Fact Finding Commission based in Switzerland could be invited to examine violations of IHL in case of an international armed conflict if both parties agree. For Protocol II, he observed that there is no grave breaches provision in it. However, its provisions could be incorporated in the training manuals etc. Concerning Protocol III of 2005 for the new additional emblem, he observed that signatures that have been undertaken by States in the region have not yet been followed by accessions. Further, he discussed the Convention on the Rights of the Child that was signed and ratified by all States in the region, however, its Optional Protocol on Child Soldiers was signed but not yet ratified by many States in the region. Concerning the ICC Statute, he said that there were some signatures including Bangladesh and accession for example by Afghanistan. Similar works are being undertaken for ENMOD Convention, the Geneva Gas Protocol, and the Biological Weapons Convention. He pointed out that every State in the region is a party to the Biological Weapons Convention, but only one State has incorporated into its domestic law the provisions of Article 4 of the Biological Weapons Convention. He also mentioned about the implementing legislation related to Ottawa Landmines Convention as well as the Cluster Munitions Convention.

Regarding the establishment of National IHL Committees he said actually there is no legal obligation in the Geneva Conventions to create a National IHL Committee. He talked about Article 6 of the Additional Protocol I that envisages the training of qualified persons usually in law or the medical field to facilitate the application of the Conventions and the Protocol. He pointed out that though it does not talk about the creation of a national IHL committee yet the ICRC encourages the creation of national IHL Committees, particularly in those countries where it might be useful. Further, he said that from 30 States in 1996 to over 90 States now had created these committees.

Country Presentations

Delegations from the participating countries made presentations on the IHL implementation in their respective countries. These notes are based largely on the powerpoint presentations / notes made by the participants.

AFGHANISTAN

Justice system

- Constitution
- State laws
- International Laws
- Traditional justice fills the gap in State justice

Afghanistan's Ratification of Human Rights Treaties

- 1983- ICCPR (Covenant on Civil and Political Rights)
- 1983- CESCR (Covenant on Economic, Social and Cultural Rights)
- 1983- CERD (Convention on the Elimination of All Forms of Racial Discrimination)
- 1987- CAT (Convention Against Torture)
- 1994- CRC (Convention on the Rights of the Child)
- 2002- CRC OP 1 (Involvement of Children in Armed Conflict)
- 2002- CRC OP 2 (the sale of children, child prostitution and child pornography)
- 2003- CEDAW (Convention on the Elimination of All Form of Discrimination Against Women)

Ministry of Foreign Affairs: Treaty Reports on the Implementation of HR Conventions

Directorate of Human Rights and Women's International Affairs

- Coordination Unit
National Legal advisor, National Coordinator, Translator, International Technical advisor, Assistant
- Relevant Ministries
- Civil Society
- United Nations Technical support
- International Community Financial Support

Committee on Treaty Reporting

For the preparation of report on the implementation of each International convention:

- Steering Committee
- Drafting Committee



Afghanistan Signed, Acceded or Ratified other HR Conventions

Signature:

1954: Convention on Slavery

2000: Optional Protocol against the smuggling of Migrants by land, sea, and air, suppress and punish trafficking in persons, especially women and children

Accession:

- 1985: Convention on the suppression of Traffic in Persons and the Exploitation of the Prostitution

Ratification:

- 1956: Convention on the Prevention and Punishment of Crime of Genocide
- 2003: Rome statute of the International Criminal Court
- 2003: Convention against organized Crime

Afghanistan's Ratification of Geneva Conventions (1949) and other Treaties on IHL

1959: Geneva Convention I: Amelioration of the condition of Wounded and Sick in Armed forces in the Field

1956: Geneva Convention 2: Amelioration of the Condition of wounded, Sick and Shipwrecked members of Armed Forces at Sea

1956: Geneva Convention 3: Relative to the Treatment of Prisoners War

1956: Geneva Convention 4: Relative to the Protection of Civilian Persons in Time of Armed Conflict

2002: Ottawa Convention: Prohibition of use of stockpiling, Production and Transfer of Anti-Personal mines and Their Destructions

Civilian casualties

- Government of Afghanistan is committed to meet its human rights obligations, as laid down in its Constitution and international human rights treaties to which it is a state party.
- Parties to the armed conflict are encouraged to promote measures to secure compliance with IHL and respect for the protection of civilians including women and children

Parties to the Conflict in Afghanistan

National security forces

ANP / ANA / NDS / Public Protection Force

International military forces

ISAF /OEF

Non-state actors

Opposition armed groups

Warlords and illegal armed groups

Armed Conflict in Afghanistan

Civilian Casualties :

- Pro-government forces
- Anti-government elements
- Conflict related detentions

Pro-government forces:

Measures To reduce civilian casualties

Anti-government elements:

- Indiscriminate suicide and IED attacks
- Intimidation, abduction and targeted assassinations against civilians associated with the government or International military forces,
- Targeting health care workers, teachers, journalists and construction workers
- Spread of insecurity resulted in aid agencies curtailing their Humanitarian operations
- Indiscriminate attacks increased in 2009

Preventing and addressing child rights violations committed in the context of the armed conflict

Put in place a monitoring and reporting mechanism on grave child rights violations in Afghanistan , affected by armed conflict

The GoA Steering Committee on Children and Armed Conflict aims to:

- Prevent grave violations committed against children in the context of the armed conflict
- Increase data collection on grave violations
- Develop and enforce policies, programs and actions to prevent and respond to documented violations
- Promote inter-ministerial collaboration on particular issues of concern
- Combat impunity for perpetrators of grave child rights violations



GoA Steering committee CAAC Responsibilities

- Follow up on the implementation of recommendations by Secretary General and the Security Council Working Group on Children and Armed Conflict
- Endorsement of an Action Plan to combat grave violations against children
- Strengthen data collection
- Develop initiatives to address grave child rights violations
- Support legal review on areas of concern
- Ensure regular dialogue and collaboration on issues related to children affected by the armed conflict.
- Facilitate research and investigation in child protection concerns

GoA Steering Committee Children and Armed Conflict : representatives from the following institutions:

Presidential Office (Advisor), National Directorate of Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Defence, Ministry of Justice, Ministry of Education, Ministry of Public Health, Ministry of Women Affairs, Ministry of Labour, Social Affairs.

BANGLADESH

Implementation of international Humanitarian Law

According to Article 45 (a) of the Constitution of People's Republic of Bangladesh, all treaties with foreign countries shall be submitted to the President who shall call them to be laid before the Parliament. If any such treaty connected with the national security, it will be taken in a secret session of the parliament. According to this provision, it is necessary to approve every international treaty by the Parliament. On the other hand, according to Rule 16 (11) of the Rules of Business, 1996 cases involving the negotiations with the foreign countries on the treaties shall be brought before the cabinet, and it is the responsibility of the cabinet to decide the matter brought before it.

In the Bangladesh legal system, the enactment of municipal law is necessary to implement any international convention to which Bangladesh is a party. For accession of any convention in Bangladesh, it is necessary to seek approval from the cabinet division and for the implementation to enact a law by the parliament. Bangladesh has become party to many important IHL and related instruments. For the purpose of giving effect to international conventions or treaties, necessary legislative measures have to be adopted either by way of making new national law

or by making necessary amendments in the existing laws in line with requirements of the conventions or treaties.

In order to prevent the misuse of distinct emblem like Red Cross, Red Crescent and Red line and sun and for punishment thereof, Bangladesh in 1973 made an enactment in the name of Bangladesh Red Crescent Society of 1973 and created a Bangladesh Red Cross Society with retrospective effect from 16 December 1971, the day of Bangladesh independence. In 1988, Bangladesh made necessary amendments by changing the name and emblem of Bangladesh Red Cross Society to Bangladesh Red Crescent Society. For the implementation of the Convention related to the production, development of stockpiling of the Biological and Chemical Weapons, Bangladesh made an enactment in the name of the Chemical Weapons Prohibition Act, 2006. Soon after the independence in 1971, Bangladesh made a national legislation in 1973 titled International Crimes Tribunal 1973. The legislation provides for the establishment of the Tribunal for the trial of grievous criminals involved in war crimes, crimes against humanity, crimes against peace and genocide. This Act has been recently amended through the International Crimes Tribunal Amendment Act, 2009 to update its provision according to the basic need to prosecute the war criminals of Bangladesh. Bangladesh had adopted provisions within its national legislation to comply with the provisions of the Convention on the Rights of the Child. Under this law a person who is under 18 years of age is not allowed to be enrolled in the armed forces. Bangladesh is considering actively for a domestic legislation relating to the Four Geneva Conventions of 1949 and their Additional Protocols. Bangladesh is at the stage of finalizing the draft bills for the national legislation on the Biological Weapons Convention, 1972 and Convention on Antipersonnel Mines and their destruction, 1997.

IHL Training for Armed Forces

Starting from the strategic, operational - down to the tactical level, there is a great requirement of a thorough understanding of IHL for effective conduct of military operations and proper adherence to the Rules of Engagement. This will ensure minimum and justifiable use of force, minimum encroachment of rights and properties of civilians and proper treatment of target population.

Wherever there is a scope of engagement in combat, the military must know the prescriptions on 'the conduct of combat' which essentially is the Law of War. Clear definitions of terms such as Combatants, Military and Civilian Objects, Protected



Persons and Objects, treatment of Prisoners or Captured, Wounded, Sick, Women and Children are, but essential knowledge, which is only obtainable through a thorough study and comprehension of IHL.

The aspect is given due importance in Bangladesh Military. The focus is on sufficient awareness of Leaders of men at all levels. Military being an organized force, there are rare scopes that under-commands can act independently in isolation and at their own.

At the entry level, during training in Military Academy, the requirement of imparting knowledge on this very important aspect have been rightly felt. The existing syllabi have already been revised and essentials of IHL have been included. Cadets will have exposure to IHL in their training curricula from 2011 onwards. Our soldiers in units are given some exposure to IHL, highlighting aspects of human rights, treatment of prisoners of war, sick wounded, child protection, special treatment for women and other allied subjects.

There are special packages in courses designed for commanders at Battalion level when they undergo unit command course. In Staff College there is package where experts on IHL are invited to deliver lectures on selected topics. There are limited scenario based exercises on the subject. We have a good number of officers who had undergone formal training courses on the subject with International Red Cross in UK, Switzerland and other countries. Their knowledge is utilized in different military forum.

In this regard expert ICRC teams have been very effective, when they had gone round to different garrisons of our military to impart elaborate lessons on relevant subjects. In this regard some of the quality study material provided by ICRC is being used as authentic reference which includes, Essentials of the Law of War, Handbook on the Law of War for Armed Forces, International Law Concerning the Conduct of Hostilities etc. In such sessions the experts interact sufficiently in the form of question and answer on various contemporary issues and challenges faced by military commander of various level, in many of their challenging assignments both at home and abroad. One the most effective learning module followed is, focus on selected case studies.

The most useful and elaborate teaching on IHL takes place at BIPSOT, (Bangladesh Institute of Peace Support Operation Training) which is one of our prime institutes specifically designed for training of Peace Keepers. Officers undertaking assignments under UN and other multinational outfit, do undergo such

comprehensive training at BIPSOT which has both theoretical and practical modules for effective learning. Our Contingents also under go tailor made courses to meet their specific requirements at BIPSOT.

Lunch Break

BHUTAN

After a century of Monarchy, Bhutan peacefully transitioned to a Parliamentary Democratic system of government in 2008. The Druk Phuensum Tshogpa Party won a landslide majority winning 45 of the 47 seats in the National Assembly. Being the newest democracy in the world, the DPT government has a daunting task ahead to lay the firm foundations for a democracy that is vibrant, irreversible and best suited to the historical, cultural and socio-political ground realities of Bhutanese society. For the first time in its history, Bhutan adopted a written Constitution on 18th July 2008.

Legal System

The Constitution is the supreme law of the Kingdom. All people are treated equal before the law, which has safeguards to ensure that people are not deprived of their rights arbitrarily or unfairly. Procedural fairness and separation of powers are fundamental principles in the Bhutanese legal system. The judiciary is independent from other branches of government and its decision cannot be subordinated to any non-judicial authority. The Judiciary comprises of the Supreme Court, the High Court, District and Sub-Divisional Courts and such other Courts and tribunals that may be established from time to time by His Majesty the King on the recommendation of the National Judicial Commission. The Supreme Court which is in the process of being established is the highest appellate Court in the country. Each court has its own jurisdiction defined under the Civil and Criminal Procedure Code (CCPC) of Bhutan. While Supreme Court is the final authority to interpret the Constitution, the High Court has original jurisdiction on all constitutional cases.

Any international or regional instrument acceded to by the Government and ratified by Parliament is deemed to be the law of the Kingdom unless otherwise inconsistent with the Constitution. These international instruments ratified by Parliament shall be applied by the Courts. (*Article 10, Section 25 of the Constitution and Section 29 of the Civil and Criminal Procedure Code*). The normative framework for the protection of human rights consists of the Constitution of Bhutan, Acts of



Parliament, court decisions or jurisprudence and customs and traditional practices. The Constitution provides for equality before law and equal and effective protection by the law. The right to a fair, impartial and independent trial is guaranteed by the Constitution. Besides the Constitution, the CCPC elaborately guarantees the right to fair trial in civil and criminal proceedings. The CCPC provides for unrestricted rights to appeal against the decision of a judge. The judiciary incorporates international standards in its decision making.

International Treaties to which Bhutan is a Party

Bhutan signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 17 July 1980 and ratified it on 31 August 1981. Bhutan presented its last periodic reports to the CEDAW Committee in 2009. Likewise, Convention on the Rights of the Child (CRC) was ratified in 1990. Being a party to CRC, it was also important for Bhutan to join other members States in ratifying two CRC Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography; and on the Involvement of Children in Armed Conflict. Although there is no case of involvement of children in armed conflict, it is suspected that some children trafficked or do engage in prostitution due to unemployment and social problems. As a measure to prevent and protect children from involving in armed conflict and prostitution, Parliament had ratified two CRC Optional Protocols in July 2009.

Most of the legal provisions in domestic laws relating to children are revised. Child-specific provisions are included in the Constitution, the Penal Code and the Civil and Criminal Procedure Code to safeguard the welfare and interests of children.

Promotion and Protection of Human Rights

Bhutan has had a good record of cooperation with the UN Human Rights mechanism and this is amply personified in our actions keeping in mind the respect of the various conventions that have been put forth by these mechanisms for the protection of every individual around the world irrespective of race, creed, caste and religion. The Constitution and other laws have adequate legal provisions which promote and protect human rights.

The Constitution

The Constitution of Bhutan guarantees and protects the human rights of every citizen and provides speedy and effective remedies if those rights are infringed

upon or violated. Article 7 of the Constitution specifically guarantees and protects human rights including right to life, liberty and security of persons, right to freedom of speech, expression and opinion, and freedom of thought, conscience and religion, and such rights cannot be abridged except by the due process of law. The Constitution also obligates the state to create a civil society and to protect human rights and dignity, and to ensure fundamental rights and freedom of people; to provide justice through fair, transparent and an expeditious process; and, to provide legal aid to secure justice.

In addition to the Constitution, a number of important laws such as the Penal Code, Civil and Criminal Procedure Code, the Royal Bhutan Police (RBP) Act and the Prison Act, which will further professionalize police service and prison management. The RBP Act embodies international standards and principles to handle the rights of an accused and best practices essential for effective, lawful and human conduct by police personnel.

Training to armed forces on IHL

As we all know that we have very small armed forces mainly for our own security and do not engage in any warfare, formal training on IHL is not conducted. However, I am sure our few no of the limited army officers would have been exposed to certain aspects of IHL during their studies and trainings.

Plans for the upcoming year

As of now, Bhutan has no specific plans to sign and ratify additional International Humanitarian Law. However, as and when it is necessary, it will consider ratification.

INDIA

Srinivas Burra *Legal Adviser ICRC, New Delhi*, made a declaration that he was from the ICRC and did not represent the Government of India and he further announced that he was going to present the ICRC's understanding of India's position concerning IHL ratification and implementation.

He noted that India has a parliamentary democracy with a cabinet form of government. He highlighted two issues that are important in respect of India's international obligations under international law. Firstly, who is the authority to enter in to an international agreement or obligation on behalf of India and

secondly, how the implementation process would take place once an international obligation has been accepted at the international level. He said that in accordance with the Constitution of India, the executive (in respect of India, it is Council of Ministers) has been given the task of entering into international treaties and agreements. However, for ratification part the President of India is authorized to ratify the treaty. Thus, it is through the assent of the President that the international obligation is accepted at the international level by the government. There is no specific legislation, however, with regard how an international treaty could be applied at the domestic level. He said that there is much controversy in this regard and this matter even went to the Courts in India. He further noted that the present understanding of the Supreme Court is that as long as the international obligations which the Government has accepted at the international level, do not go against the fundamental rights aspects of the Indian Constitution and the spirit of the Constitution, they could be incorporated directly without having any legislation.

India is a party to the Geneva Conventions, 1949 and it has implementing legislation named Geneva Convention Act 1960. This legislation also talks about the protection of emblem. Along the 1949 Geneva Conventions, India is party to The Hague Cultural Property Convention and its I Additional Protocol, Biological Weapons Convention and it has enabling legislation in 2000 and 2005, he mentioned. He informed that India is not a party to the Additional Protocols of the Geneva Conventions.

There is no specific legislation with regard to standard principles of IHL, such as command responsibility and others, but broadly these areas are covered under the Army, Air Force and Navy Acts. He mentioned that ICRC in India has some consultants, who are retired Armed and Police Force Officials. These Officials regularly conduct programs to different Indian Armed Forces and Indian Police Forces to train them in IHL. ICRC through its programs also spread awareness of IHL and Human Rights in Indian armed and Police forces. He further said that in the last one year there is not much in terms of any ratification or in terms of any legislation with regard to humanitarian law. He further informed that India does not have national committee. He pointed out that ICRC is working with civil society groups to make India obligatory under IHL. There is an independent group which consists of Academicians and Intellectuals to study the various aspects related to Additional Protocols to the Geneva Conventions and how India could become a party to Additional Protocols I and II. In conclusion, he said that this was broadly what ICRC thinks of India in the field of IHL.

IRAN

Iran is a party to the four Geneva Conventions of 1949. Iran has also signed the two Additional Protocols of 1977 but not yet ratified them. The related bill for ratification of these two protocols was formulated by Iranian National Committee of IHL in 2004 and was directed by the cabinet to the parliament (Majlis). The bill has been under consideration by the parliament since then. Iran is a party to the 1959 Cultural Property Convention and its two additional protocols; Iran has also ratified the 1973 Biological Weapons Convention and the 1997 Chemical Weapons Convention. Ratification of the Ottawa Antipersonnel landmines Convention has also been under considerations. Remaining landmine from the time of Iraq – Iran war has resulted to several killing and injuries of inhabitants.

Concerning criminalizing war crimes and other international crimes in legislation of Iran it should be noted that two laws that can be related to war crimes are the Criminal Code of 1996 and the Law Related to the Punishment of Members of Armed Forces of 2003. However, the objectives of none of these two laws are IHL related matters, but mainly state security and public order. In fact the only provision in Iranian legislation that can be applied for the trial of war crime offenders is Article 8 of 1996 Islamic Penal Code. The article recognizes the application of universal jurisdiction by Iranian courts. The ICC Rome Statute was also signed by Iran but its ratification has been under consideration since then. Since signing the Statute the issue of criminalizing war crimes and other international crimes has been an issue of concern in Iranian judiciary and cabinet. Already some draft codes have been prepared by related official bodies. The recent Israeli regime atrocities in Gaza have expedited the issue of criminalizing of international crimes and last year the judiciary formulated a bill which was sent by the cabinet to the Parliament.

The International Red Cross/Red Crescent Movement was initially created with the aim of assisting victims of war and armed conflicts, eventually expanding its activities to assisting also those affected by natural disasters. As such, the formation of the International Red Cross/Red Crescent Movement, as the largest network of humanitarian activities in the world, is the fruit of grief inflicted upon the human conscious as the result of sufferings caused by war; leading to development of the humanitarian law. However, the roots of this invaluable initiative should be sought not only in the contemporary legal and political efforts, but also in the inner voice of human conscious, echoed in our soul centuries ago in divine instructions of different religious, especially in Islam. Today, many researchers and scientists admit that humanitarian guidelines embedded in Islam

serve as an example for humanitarian instructions, which underline the importance of science, education, humankind, dignity and respect for human dignity.

The Iranian Red Crescent Society has had a key role in regards to promotion of the humanitarian law. From the legal structure point of view, one can mention the Iranian national society's article of association ratified in 1989, which explicitly points to the national society's obligation to promote humanitarian law. According to note 7 of article 9, note 6 of article 3 and article 1 of the IRCS' article of association, the obligation has been entrusted to the Red Crescent Society. In addition, according to Article 5 of the same law, all ministries as well as government-owned organizations, companies and institutions are obliged to extend their cooperation to the Red Crescent to carry out this task. According to this law, one of the four representatives of the president in the High Council of the IRCS must be a prominent, informed and highly specialized expert on humanitarian law.

In 1997, the then President of the International Committee of the Red Cross, officially asked Iran through its Ministry of Foreign Affairs to set up the National Committee of the Humanitarian Law. After examining the issue, the Ministry of Foreign Affairs determined that the Red Crescent Society is the most appropriate authority to chair such committee. Following correspondences made between the Iranian national society and the Ministry of Foreign Affairs, it was ultimately decided that the Minister of Foreign Affairs in a letter to the ministers of justice, education, higher education, as well as health, treatment and medical training, head of the Armed Forces Headquarters and vice-president in legal and parliamentary affairs request them to join hands with the national society to achieve this objective. Subsequently, the Ministry of Foreign Affairs, for its part, expressed its readiness for cooperation. In 1998, the cabinet gave its green light for formation of the National Humanitarian Law Committee. The by-laws of the committee was prepared by the IRCS Legal Division and all relevant organizations and bodies were requested to examine the by-law and express their opinion. The IRCS submitted the by-law to the cabinet the following year and made serious follow-ups until it was approved by the cabinet members. Subsequently, the Iranian Red Crescent Society was notified of the ratification in mid 1999. The by-law was, in line with Principle 138 of the Constitution, submitted to the president and he gave his corrective opinions. In another cabinet meeting chaired by the president, the corrections were applied to the by-law and soon the IRCS was notified of the corrections.

According to the mentioned by-law, the national committee consists of two bodies;

1. the Committee,
2. the Secretariat.

The president of the national society also serves as head of the national committee and in his absence, the secretary general will replace him. The secretary general is the secretary of the committee whose members include president and secretary general of the ICRC, plenipotentiary representatives of the ministries of foreign affairs, justice, interior, defense as well as health, treatment and medical training.

The Secretariat serves as the executive body of the committee and has, to date, undertaken various activities and measures in line with macro policies set during seasonal meetings of the Committee's members. Among such activities, include:

1) Publication and distribution of more than 20 books on a wide variety of issues related to the international humanitarian law.

2) Support for students working on their theses on the international humanitarian law

To date, a large number of students majoring in international law have used resources available at the Committee's library and have received the support of the Committee for conducting research on humanitarian law.

3) Organizing Educational Workshops

In line with teaching humanitarian law to students as well as government employees, the Committee has organized a number of educational workshops in Tehran and other cities. So far, 10 LFP workshops have been held with topics ranging from "Humanitarian law and Explaining it from the Islamic Perspective" to the concept of human dignity, the 1st and 2nd Geneva Conventions, PoW rights in Islam, theoretical and practical concepts of IHL, the concept of right from the perspective of Islamic philosophy and a comparison with the western concept in the philosophy of Emanuel Kant. Other topics included concepts of humanitarian law, components of the International Red Cross/Red Crescent Movement and the seven principles of the movement. These works were held in joint partnership with relevant organizations including the International Committee of the Red Cross. ICRC Representatives have effectively participated in such workshops.

- The educational workshop on "Developments in Humanitarian Law" was held jointly with MFA School of International Relations and the ICRC in fall of 2009.

- An educational workshop was held for provincial managers and legal experts in the fall of 2008.
- Two educational workshops were held on IHL with the participation of IHL focal points at the IRCS with the cooperation of the ICRC in 2007.

4) Holding Moot Court Competitions for Students

The Committee, jointly with the ICRC, the Higher Education Institute as well as prominent professors from Tehran, Shahid Beheshti and Allameh Tabataba'ee universities held a nationwide competition to select the outstanding team for the regional moot court competition in Bangladesh and the world Jean-Pictet competitions in Canada. The competition was held in two stages and ultimately the team from Shahid Beheshti University found its way to the regional competitions in Bangladesh.

5) Establishing the Specialized Committee for National EHL Plan

This Committee consists of representatives from the National Humanitarian Law Committee, the Iranian Red Crescent Society, the Ministry of Education and the International Committee of the Red Cross. The objective is to implement the national EHL plan in schools nationwide at the intermediary level with the aim of promoting and spreading the understanding of the rules governing international armed conflicts.

6) Creating the IHL Scientific Group at the IRCS High Education Institute

Members of the group have so far held 20 meetings to discuss and exchange views on issues such as how to hold scientific sessions in the provinces, exchange views on holding seminars and educational workshops, compilation and translation of educational materials required.

7) In cooperation with organizations such as the ICRC, the UNHCR, non-governmental organizations inside the country, the universities, the judiciary, the ministry of foreign affairs and the national news agency, the National Humanitarian Law Committee has held more than 10 seminars on subjects including recent developments in the IHL, peace and IHL, the customary international humanitarian law, media and IHL

8) The proposal to ratify the additional protocols and participation in the meetings of cabinet's political commission to follow up this issue, registering complains on behalf of 2,000 chemical weapons in the Special Court of Iraq through Iran's embassy in Baghdad, preparing the draft law on punishment of persons convicted of war crimes and crimes against humanity and endorsing its

parliamentary ratification and participation in international seminars, workshops and educational courses to update its information and materials are among other activities of the Committee. The Committee has also compiled a course titled "Humanitarian Law" for the Police Academy and is trying to pass it as a curriculum to be taught at military academies. The National Humanitarian Law Committee has managed to establish constructive relations with government institutions and scientific centers inside and outside the country and is intensively engaged in implementation of the EHL plan to students between the ages of 13-18, in cooperation with the Ministry Education, the State Students Organization and the ICRC. Other activities include preparing a four-stage research plan on IHL for the armed forces; the first phase of which has been ratified at the High Scientific and Applies Institute with the theme of "Educating Soldiers on Issues of Humanitarian Law".

C) The library of the National Committee contains more than 2,500 volumes of books in Persian, English and French on subjects including international law, IHL, law of war, international criminal law, international organizations and more. The library is open to researchers as well as university professors and students every day.

MALDIVES

IHL treaty accession

"Treaties entered into by the Executive in the name of the State with foreign states and international organizations shall be approved by the People's Majlis, and shall come into force only in accordance with the decision of the People's Majlis." {Art: 93 (a) of the Constitution}

Implementation of IHL

"Despite the provisions of article (a), citizens shall only be required to act in compliance with treaties ratified by the State as provided for in a law enacted by the People's Majlis." {Art: 93 (b) of the Constitution}

- In all trainings
- Preparing curriculum
- Legal advice
- Legal awareness
- Legal drafting
- Legal Publishing

- Legal research
IHL/IHR taught at first degree level

Maldives is working on the ICC Statute of 1998 and the Convention on Cluster Munitions in 2008. Article 4 (A) of the Maldives Red Crescent Act says to pay respect to; (i) main principles of Red Cross and Red Crescent movement (2) Geneva Convention, 1949 and its Protocols.

MYANMAR

Myanmar is party to all the four Geneva Conventions and it also has domestic rules and regulations which governs the code of conduct and ethics of the Members of armed forces. Myanmar has Armed Forces Act, Penal Code and other laws for civilians. Apart from this there are also various general circulars and training orders governing their discipline.

Code of Conduct for Armed Forces towards civilians among other things, prohibit armed forces from assaulting, showing disrespect, personal harming etc. towards civilians and advise them to respect others religions, beliefs, culture and tradition.. The Code of Conduct for Armed Forces towards enemy includes treating surrender or injured enemy with forgiveness and mercy. All members of armed forces remain abide by all its rules and regulations, directives and other orders regardless of their position and rank. Apart from this, the Advocate General and law officers of the country give lectures on Geneva Conventions at various training courses for members of armed forces. The numbers of such lectures were 1209 in year 2000, 1977 in 2001, 1309 in 2002, 1258 in 2003, 1399 in 2004, 1415 in 2005, 1217 in 2006, 1773 in 2007 and 1154 in 2008.

Military officers in Myanmar are sent to IHL courses offered by other countries. University students in Myanmar are given the opportunity to study the IHL courses of the law departments of the General and Mandalay University in Myanmar. The Geneva Conventions have been translated into Myanmar language by the Judge Advocate General's office. As a party to all the four Geneva Conventions, Myanmar has complied with the conventions and work continued to do so.

NEPAL

Nepal has ratified 27 Human Rights related international treaties including six of nine core HR covenants and conventions, and five different international treaties related with Humanitarian Law including four Geneva Conventions.

Six Big Conventions are as follows:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on Elimination of All forms of Racial Discrimination (CERD)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of All forms of Discrimination against Women (CEDAW)

Protection, promotion and respecting fundamental rights, democratic norms and values have always been a state policy and intrinsic focus of past Nepali Constitution. According to Article 9 of the Treaty Act 1990 if Nepal signs and ratifies any international treaty, the treaty should become part of the domestic law without requiring any specific legislation to enact the provision of that international law. Article 47 of Geneva Convention I of 1949 stipulates us as a high contracting party to undertake in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible. Keeping in mind all these provisions, *Sub Article (1) of Article 20* in the new Military Act sets down the requirement of human rights & International Humanitarian Law education and training for military personnel. The Interim Constitution of Nepal 2007 in its preamble expresses full commitment towards human rights. As such, section 3 of the Interim Constitution guarantees the fundamental rights of all citizens; *Article 33 (m)* lays down the obligation of the state to effectively implement international treaties and agreements; and *Article 144, (4)* of the *Interim Constitution of Nepal 2007* clearly states that the Nepalese Army will be trained and educated in accordance with the values and norms of human rights & IHL.

Integration before the Integration Order

Nepalese Army used to practice several norms and standards of humanitarian law although not as IHL but as a part of costume or general practice. Firstly, Nepalese Army is participating in peace keeping mission since 1958 and since then all the participating troops were sensitized in laws of armed conflict as a part of their duty and responsibilities. Secondly, After the democracy in 1950 as the Nepalese Army was initially trained by the Indian Army which was in fact raised by British Army, our training curriculum and operational précis right from that time incorporates many provisions of IHL. After insurgency broke in Nepal, IHL/IHRL started being



taught to trainee officers as two or three day package conducted by representatives of ICRC and NHRC.

Human Rights Cell established in Nepalese army

Before the establishment of Human Rights Cell, the Judge Advocate General (JAG) Branch was dealing with the Nepalese Army's Human Rights and IHL issues during and before the counter insurgency in Nepal. Human Rights Cell was established on 8th July 2002, and was headed by the JAG. the office was upgraded to Human Rights Division on 9th Nov 2006. Subsequently, the office was upgraded to Directorate of Human Rights to be headed by Brigadier General on 6th March 2007. Again, the Government of Nepal established the Human Rights Division and Human Rights Cell in the Divisional and Brigade HQs respectively.

Nepalese Army has issued directives/instructions related to protection and promotion of HR/IHL:

- 13th Dec 2001 issued by Judge Advocate General,
- 30th Dec 2003 issued by AG,
- 12th Mar 2004 by COAS,
- 10th Jan 2005 by COAS and
- 14th Sept 2006 (2063/5/29) in the form of Special Instructions by COAS.

These directives clearly instruct the Nepalese Army to respect and support the protection and promotion of IHRL and IHL and judicial proceedings during all operations.

Integration after the Release of the IHL Integration Order

- Ratifying Geneva Conventions in 1965 and implementing them in domestic law, although essential steps towards compliance, are not enough for fulfilling what is required by its contents.
- Even disseminating their content extensively, educating and training them are but insufficient strategies to bring the end result.
- As the behaviour of arms carriers during operations is shaped by factors such as doctrine, education, training and sanctions, it is realized that the norms and standards of IHL has to be integrated into these factors so that the operations are conducted in accordance with provisions of IHL.
- Until and unless, what is educated in theory is not supported by how it is trained, how operation orders are disseminated and how violations are sanctioned thus producing a conducive environment, the end state cannot be achieved in practice.

- Realizing this fact an 'Integration Order' to integrate IHL and IHRL fully in cooperated in modern contest with doctrine, education, training and sanction in Army which was issued by the Chief of Army Staff.

Formulation of Doctrine. Doctrine provides personnel with a common language and a common reference point that allows shorthand professional communication.

- It must be in accordance with national legislation that in turn embodies international treaties and conventions.
- It must encapsulate IHL principles and provide concrete measures and means for the respect of specially protected persons and objects.
- Bearing in mind the constitutional framework and the legal provisions coded in the military act, the Nepalese army endeavours to incorporate the consideration of the LOAC into its doctrinal documents.
- Efforts are underway to incorporate IHL/human rights standards and values in the operational/training doctrines.
- UN Member
- UN Declaration of Human Rights 1948
- Geneva Convention 1949 (Which was ratified on 1965)
- Nepalese Constitutions 1990 and 2006
- Treaty Act 1990
- Military Act 1960 and 2006
- Related provision of ratified core IHRL/IHL treaties and conventions

Education. Nepalese Army has included theoretical lectures and interactive seminars for officers and NCOs at appropriate phases of their career courses. The following measures have been adopted to ensure integration of IHL/IHRL in education.

- Formulation the code of conduct to be applied by all soldiers in an armed conflict situation.
- All preliminary, career and special courses as well as UN pre- deployment trainings include HR and LOAC lessons as part of the curriculum.
- In-country seminars and trainings on HR and IHL
- Distribution of books and pamphlets on HR and IHL in units and training institutions.
- The HR directorate carries out an initial pre-departure briefing on HR/IHL related issues to officers assigned on command duties.
- Officers overseas to attend human rights and IHL courses/ seminars.
- Formulating a manual on the Law of Armed Conflict is in the process. A shorter

"Handbook for Commanders" on the integration of LOAC into training and operations will be extracted from the manual.

- The Nepalese army has trained a total of 8253 officers and men in IHL/IHRL beginning from 08 July 2002 till 03 June 2009.
- Annual publications on the Human Rights Journal.
- Training on Child Rights and UN Resolution 1325 & 1820 for NA officers conducted by Save the Children Nepal and UNIFEM.

Training. This is the primary means by which doctrinal plans are suitably incorporated in the training cycle. Its application to instill a positive behavioral outcome in a soldier. The following IHL/IHRL friendly exercises are conducted as.

- All education package is setup the practical exercises.
- Collective Exercises.
- Command Post Exercises.
- Tele Battle Exercises conducted in higher courses.
- Confirm by all briefing and debriefing.
- Above exercises are integrating LOAC and IHRL theoretical knowledge into practical training in career and special courses for officers and NCOs throughout the different stages of their career.
- Commanders at all levels ensure as a reminder that a final brush-up in the form of a quick briefing is carried out to their troops on fundamental IHL aspects, just before the conduct of operations.
- The application of IHL into military operations is defined under the sub heading, "coordinating instructions" of a detailed operation order.
- The basic principles and spirit of IHL is already contained in the four major operations of war, minor operations, as well as in CI ops.
- Women and children shall be given special protection,
- Protection of the civilian population,
- Protection of cultural and religious property,
- Treatments of PWs, etc., are some of the many standard procedures that every soldier is expected to strictly comply with.
- Recent efforts are underway to incorporate IHL into scenario based tactical and collective exercises, including TEWT and Tele battle exercise to senior officers attending Staff College and Battalion Commander Course.
- Command Post Exercises have been designed and successfully conducted in Div level exercise. It helps to instill a strong sense of command responsibility and IHL discipline in a commander.
- Prepared Does & Don't Slide was developed for soldiers,
- Preparing Does & Don't movie with collaboration of ICRC & HRD

Sanctions

- Sanctions must be visible, predictable and effective so as to play a preventive role that the whole chain of Command is firm in defending its fundamental values and legal aspects of the command.
- Sanction can be enforced through penal or disciplinary measures.
- IHL/IHRL International Treaties/Covenants signed/ratified/ acceded by Nepal that puts a legally binding pressure on the part of the state to endorse the legislation of relevant Acts or Bills into the domestic and other laws in concord.
- IHL/IHRL International Treaties/Covenants signed/ratified/ acceded by Nepal that puts a legally binding pressure on the part of the state to endorse the legislation of relevant Acts or Bills into the domestic and other laws in concord.
- Various provisions related to the protection and promotion of human rights in the Interim Constitution
- Various legal provisions have been legislated in the Military Act that helps to enforce penal sanctions against violations of human rights and international humanitarian law.
- Directives/instructions on international human rights law and international humanitarian law.
- Sanctions must be visible, predictable and effective so as to play a preventive role that the whole chain of Command is firm in defending its fundamental values and legal aspects of the command.
- Sanctions can be enforced through penal or disciplinary measures.
- According to Nepalese constitution,
 - From Judiciary
 - From Legislative
 - From Executive
 - Through different special commission
 - According to Military Act and regulation,
 - Departmental action,
 - Summary Court Marshals
 - District Court Marshals
 - General Court Marshals
 - Summary General Court Marshals
 - Military Special Court
 - Supreme Court
 - ROE & Soldiers Cards
 - According to Domestic Laws.

- The following are the existing sanction measures that play an effective, preventive role in the prevention IHL/IHRL violations
- Establishment of the National Human Rights Commission.
- Establishment of the National IHL Committee.
- Establishment of a Commission on Disappearance (draft bill under consideration in the CA)

Establishment of the National Committee on IHL in Nepal

- Established as per the decision of the Council of Ministers on 26 February 2007
- It consists of 11 members representing various ministries
- The Minister for Law and Justice is the Chairperson, and
- The Joint Secretary, International Law Division of the Ministry of Law and Justice is the Member-Secretary.

Conclusion

It is indeed bitter reality of conflict that no matter how well trained soldiers are and no matter how much safeguard is put in place, some violations do occur. In context of Nepal violations of human rights and international humanitarian law that took place in the past conflict, however, are not a policy driven motive. Nepalese army adapts a zero tolerance policy against human rights and humanitarian law violations and always seeks to discourage the culture of impunity in our organization. Protection, promotion and respect of human rights and humanitarian law have always been vision and core values of Nepalese Army.

Mr. Blazeby invited **Mr. Christopher Harland** for presentation on Pakistan.

PAKISTAN

Mr. Christopher Harland pointed out that work is underway to establish a National IHL Committee in Pakistan. He further mentioned that the Constitution of Pakistan requires that the laws should be adopted in Urdu. He further said that Pakistan is translating the Geneva Conventions officially to cover that. Pakistan is also undertaking other weapons-related legislations.

SRI LANKA

Modes of Implementation

- Ratification
- Domestic legislation

- Other Domestic Means
- National Committees/Action Fronts that develop Action Plans

Geneva Law

Four Geneva Conventions of 12th August 1949(GC's)

- GC (I)-Amelioration of the Wounded and the Sick in the field
- GC (II)- Amelioration of the Wounded, Sick and the shipwrecked at sea
- GC (III)-Protection of Prisoners of War
- GC (IV)-Protection of Civilians in Times of War

Sri Lanka's accession

Sri Lanka ratified the four GC's on 28.2.1959.

- Remains bound to give effect.
- Sri Lanka follows dualism.
- So the enabling legislation was required.

Geneva Conventions Act

- GC Act No 4 of 2006 was enacted on 1st February 2006.

An Act to give effect to the First, Second, Third and Fourth Geneva Conventions on armed conflict and humanitarian law; and provide for matters connected therewith or incidental thereto

IHL Treaties and Implementation in Sri Lanka

- Convention on the Rights of the Child-12.07.1991
- Optional Protocol CRC 2000-8.09.2000
- Hague Convention 1954-11.05.2004.
- ENMOD Convention 1976-25.04.1978
- Geneva Gas Protocol 1925-20.11.1954
- BWC 1972-18.11.1986
- CCW 1980-24.09.2004.
- CCW Protocol I 1980-24.09.2004
- CCW Protocol II -24.09.2004
- CCW Protocol III 1980-24.09.2004.
- CCW Protocol IV 1995-24.09.2004
- CCW Protocol II a 1996-24.09.2004
- CCW Amedt 2001-24.09.2004.
- CWC 1993- 19.8.1994
- CWC Law-2006



Proposed Accessions

- Ottawa Treaty 1997
- Ottawa Law
- Meetings are scheduled soon.

Sensitization programs

- Military academies
- Law Schools and Faculties
- Police training School
- US-Police training Coordination –USAID
- National Action Plan
- Human Rights Manual
- ICRC's Role

Rehabilitation of Child soldiers

- CRC obligations fulfilled by Sri Lanka
- Disarming, demobilizing and reintegrating ex child combatants into society has neared completion.
- Long term support and monitoring have been launched.
- Sri Lanka has continued to focus on public awareness campaigns regarding children's rights. This includes a campaign launched at the highest executive level by His Excellency the President of Sri Lanka on 26 February 2009

Transitional Justice

- As part of the transitional justice mechanism DDR (Disarmament, Demobilization and Reintegration) has been put in place.
- Several former cadres of the LTTE have been identified as fit for rehabilitation and they will be released after rehabilitation.
- Some of them have already been released.

Amnesty Provision

- Those who take part in hostilities shall be given as wide an amnesty as could be given Protocol provision

Transitional Justice a la Sri Lanka

- DDR
- Identification
- Rehabilitation
- Release

Prosecution

High Contracting Parties

- to prosecute by enacting legislation to provide penal sanctions
- search for persons
- bring before its courts regardless of the nationality of any person for committing grave breaches –Art 49 GC (I), 50 GC (II), 129 GC (III) and 146 GC (IV) Article 85 of AP (I).

Sri Lanka

- Committed to full compliance of IHL
- Post Conflict Mechanisms



Day-3 (Tuesday, 16 February 2011)

Accession to and Implementation of the 1972 Biological Weapons Convention

Brig. General Nirendra Prasad Aryal from Nepal chaired the session. He introduced the topic and the resource persons. He first invited Ms. Ngoc Phuong Huynh, BWC Implementation Support Unit (ISU), UN Office for Disarmament Affairs, Geneva to speak on the topic.

Ms. Ngoc Phuong Huynh said that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological, Biological and Toxin Weapons and their Destruction, more commonly known as BBTDC or BWC, was opened for signature in 1972 and entered into force in 1975. The BWC is one of the three fundamental pillars of international community efforts against the Weapons of Mass Destruction (WMD). The current membership of the Convention is 153 States parties and 13 signatories. She said Nepal and Myanmar in the region are not part of the Convention and she recommended them to consider joining the Convention. The Convention prohibits acquisition or retention of Biological or Toxin weapons; it prohibits anybody to assist or encourage other to have Biological weapons and to require national implementation; and to encourage and protect peaceful uses of biological sciences and technology. Even if a State is not a State Party the Convention is still important to it. First, for security consideration and the BWC acts as a forum for cooperation in meeting international security obligations. However, it is not only security, it is also strengthening national public health, agriculture and national emergency situations. She highlighted the misconceptions or misinterpretations about the Convention. When the Convention is referred to with some countries, the first idea for them is not to see the disease, but what they see is weapons. Therefore, the first wrong idea is bombs or knives or guns and then you explain that there are diseases also.

A second misinterpretation is that they say that they do not have anthrax and high level bio-tech laboratories, so, don't need to protect Biological Weapons. It is not true. Because in your country you have not prohibited and in other country, it is prohibited and that people may come to your country to develop weapons. Therefore, joining the Convention is simple and free. It will also enhance States'

profile. States would get possible support for implementing the Convention obligations from the Implementation Support Unit (ISU), and also with other international organizations such as the ICRC and others to join or to cooperate. The BWC inter-sessional work programme : For every 5 years, there is a review conference and mainly the Conference would discuss and review the Convention. In between there are inter-sessional programs and the work program would be discussed here. The last one was in 2006. The discussion during those 4 years (2006-2010) covering main aspects and important topics related to Biological weapons, and in 2007 it was mainly on national implementation.

Regional activities and International Cooperation: In 2008, the discussion was on bio-safety and bio-security, oversight, education and outreach. In 2009, the discussion was on capacity building for the disease surveillance detection, diagnosis and containment. Basically, it is to put together the States that could provide assistance and offer assistance and the States that need assistance to voice their worries and concern and to ask for the assistance. The topic of for this year was responding to use or threat of use of or alleged use of biological weapons. The bio threats in the 21st Century could come from:

- Government biological weapons programs
- Non-state actors: bioterrorism
- Naturally-occurring, emerging and re-emerging disease
- Rapidly growing biotech capabilities, shrinking costs, and widely expanding interest, participation, availability and access
 - Unintended consequences, experiments gone wrong
 - Accidents, leaks, mistakes – or deliberate misuse or sabotage (bio-terror vs. bio-error)
 - Awareness and management of risks lagging far behind

She explained the spectrum of biological risks and quoted Kofi Annan who said “we must look at [the BWC] as part of an interlinked array of tools, designed to deal with an interlinked array of problems”. Both the WHO and the BWC work in the area at the international level. At the national level, health, defence, that is the police as well as agriculture and education are involved. Therefore, there is a growing need for coordination and cooperation. She said that when she asked delegates and experts from some countries about the person in charge of the issue, one would say it's weapons not disease, one would say is defence and other would say that it is international treaty, so it is foreign affairs is in charge and so on. At the end, the country would say, they would take care of the Biological Weapons, but do not know who would take care of it. She quoted Ban Ki Moon, who said that, “governments alone cannot confront the risks posed by biological weapons ... to

manage the full spectrum of biological risks, you need a cohesive, coordinated network of activities and resources. Such a network will help to ensure that biological science and technology can be safely and securely developed for the benefit of all.” Thus, she highlighted the cohesive coordinated network.

She talked about the prevention of WMD and the traditional vision. In this traditional vision, there are three kinds of weapons i.e., nuclear weapons, chemical weapons and biological weapons. Each of them has a convention or conventions, you can see for nuclear weapons, there is the non-proliferation treaty, similarly with the chemical weapons convention and for biological weapons, there is BWC. Whereas there was the IAEA and OPCW for the nuclear and chemical weapons, there is no such organization for the BWC. So here, you have normally a treaty, an Organization dealing with that treaty and interacting with State Parties and State Parties implement the treaty with the assistance of the Organization. For the biological weapons there is a gap, because there is no international organization. However, one could also have a different vision and that is the network system. The Implementation Support Unit (ISU) of BWC work programme would work with this integrated approach. Here, she quoted the Chairman of the ISU in 2007, who said that ‘if the problems lies in so many hands, so must be the solution and that’s why we should put around the same table to discuss together’.

She explained the The ISU as follows:

The Implementation Support Unit (ISU)

- Established by the Sixth Review Conference in 2006
- Housed in Geneva Branch of UN Office for Disarmament Affairs
- Officially operational in August 2007
- Funded by BWC States Parties
- Three full-time staff
- To be reviewed by Seventh Review Conference in 2011

Mandate of the ISU

- “Help States Parties help themselves”
- Provide administrative support for BWC meetings
- Facilitate communication among States Parties and with relevant organizations
- Support national implementation efforts
- Administer confidence-building measures (CBMs)
- Support universalization activities

What can you ask from the ISU?

- Information
- Education, training and awareness raising
- Communication
- Administrative support
- Assistance (coordination)

Information

- “Serving as a focal point for submission of information by and to States Parties”
- “Serving as an information exchange point for assistance related to preparation of CBMs”
- Providing access to information and resources

Communication

- Sixth Review Conference requested States Parties to nominate national points of contact
- ISU communicates with national points of contact as well as with permanent missions in Geneva or New York
- Facilitate communication among States Parties and with relevant organizations

Administrative support

- Administer confidence-building measures (CBMs)
- BWC meetings
- Support activities of the Chairman
- Research and preparation of background papers
- Act as substantive secretariat for the meetings

Education, training & awareness raising

- Organisation of awareness raising seminars and workshops: support in drafting agenda, list of participants, lists of speakers
- ISU participates in outreach, awareness raising activities

Assistance from other States Parties

- *“The Conference urges States Parties with relevant experience in legal and administrative measures for the implementation of the provisions of the Convention, to provide assistance on request to other States Parties.”*
- ISU helps the States Parties help themselves
- ISU uses network to provide assistance



- ISU maintains a list of generic offers of assistance made by States Parties to date

What kind of assistance from States Parties?

- National implementation
- Confidence-building measures (CBMs)
- Participation in intersessional process
- Anything else related to improving implementation of the Convention...

At the end, she talked about security vs development and said that sometimes, some countries would answer that they have other priorities in their country and are focussing more on human rights or on development and security is not the main issue. In this context she quoted Kofi Annan who said, "building public health capacities can strengthen safeguards against bioterrorism. And being better prepared to deal with terrorism can mean better public health systems overall. Similarly, the availability of training and technology is crucial to improving laboratory safety and security, and making labs safe and secure encourages cooperation and creates opportunities for development."

She further said that this was virtuous circle and not vicious circle and improving public health capacities is good for security and improving security is good for development.

Discussion

While answering a question by a delegate about the regulation of use of acids in their country and what kind of assistance ISU would provide, **Ms. Ngoc** said that lack of awareness was creating a lot of problem in this region and on the African continent. The first step is to establish contact between the Government and the ISU. Then, the next step is to make formal request. However, the ISU is very flexible and no need to give formal request by writing. One could discuss with the ISU and they put them in the pool of requesting for assistance list and would keep contact and see what possible could be done. One could make formal request or could make informal request.

Another delegate asked that research and development in bio technology could be used for biological weapons, and hence what kind of mechanism is in place to prevent that. In response to it, **Ms. Ngoc** said that is difficult to regulate research and development and there is no straight answer and no straight mechanism, of course, there is law enforcement, there is legislation, implementation, and

governments should have legislation, and scientists should be explained that if they produce these they would be punished. Raising awareness and training is required.

While answering a question regarding the steps towards becoming a party to the BWC, **Ms. Ngoc** said that apolitical decisions had to be taken in the country and for some countries it is not necessary to pass through parliament, but some needs approval from the Parliament. However, the ISU would extend the possible support in this regard.

The Chairperson of the session then invited Mr. Dominique Loye, Deputy Head, Arms Unit, Legal Division, ICRC Geneva to speak on 'International Humanitarian Law and Evolutions in Biotechnology and other Scientific or Technological Fields'.

Mr. Dominique Loye spoke about biotechnology and provided some answers and tools within the framework of IHL is summarised below.

Outline

I. Common starting point

II. Evolutions which may raise concerns

III. Tools which can eliminate or lessen these concerns

I. Common starting point

- Science and technology are advancing
 - for the benefit of humanity
 - but there are certain risks....for humanity
- St. Petersburg Declaration 1868
 - *that the progress of civilization should have the effect of alleviating as much as possible the calamities of war*
- Fundamental rules of IHL have to be upheld
 - The right to choose means or methods of warfare is not unlimited
 - Prohibition to use weapons-which "cannot distinguish" between military objectives and civilians or civilian objects
 - Prohibition to cause unnecessary suffering or superfluous injury
 - Customary rules prohibiting the use of biological or chemical weapons

II. Evolutions which may raise concerns

- Biotechnology provides capacities to:
 - alter existing diseases to render them more harmful
 - create viruses from synthetic material

- create novel biological substances combined with corresponding vaccines
- create biological substances with enhanced aerosolisation and environmental stability
- immunologically-altered biological substances able to defeat standard identification, detection, and diagnostic methods
- create biological agents to attack agricultural or industrial infrastructure
- Biochemistry provides capacities:
 - to create biochemical agents capable of altering physiological processes
- consciousness
- behaviour
- fertility
- Chemistry provides capacities:
 - to use drugs as weapons
- anaesthetic agents
- skeletal muscle relaxants
- opioid analgesics
- antipsychotics
- sedative-hypnotic agents
- Nanotechnology:
 - new capacity to deliver agents ??
 - new capacity to interact with the body ??
- Electromagnetic energy:
 - active denial system
 - pulsed energy projectiles
- Computerized systems:
 - automated weapons systems
 - cyberwarfare

III. Tools which can eliminate or lessen these concerns

- in the field of biology and chemistry:
 - national laws implementing the BWC and CWC, including regulations or administrative measures covering
- dual use issues
- laboratories safety and security
- research work
- border control
- disease surveillance
 - develop or strengthen a web of prevention approach between

- MFA, MINDEF, MINJUST, MININT
- scientists, academia
- industry
 - encourage best practices in the scientific and industrial world
- Principles of Practice
- Codes of conducts
 - ensure that students' curricula include reference to BW and CW prohibitions
 - "use" the scientific advisory board (CWC)
 - "use" the annual expert meetings (BWC)
 - In all other scientific or technological fields
 - IHL does not prohibit scientific progress and its possible militarization
 - but States have to ensure that their new weapons and methods of warfare comply with their legal obligations
 - Main task is a legal assessment but with information needed on
 - technical aspects
 - military utility
 - effects on the human / material target
 - Legal framework
 - To which specific weapons treaties is your State Party?
 - Hague Regulations
 - Mine Ban Convention
 - Amended Protocol II to CCW
 - Protocol IV to CCW
 - Chemical Weapons Convention
 - customary rules on specific weapons
 - prohibition on poison
 - prohibition on chemical weapons
 - prohibition on bullets which flatten easily in the human body
 - general customary prohibitions or restrictions
 - "unnecessary suffering" prohibition
 - "indiscriminate weapons" prohibition
 - How do I assess whether a weapon is of a nature to cause unnecessary suffering?
 - How do I assess whether a means or a method of warfare is indiscriminate by nature?
 - How do I assess whether a weapon's use might be prohibited in some or all circumstances?



Data needed on:

- Technical understanding
- Military utility
- Effects on the human/material target
 - How can I help a military commander to take all feasible precautions in the choice of means and methods of warfare?
 - How can I help a military commander in applying the proportionality rule?

Legal assessment has to draw on a wide range of expertise (multi disciplinary approach) and there is a need to formalize the legal review process. The ICRC has developed a Guide to help interested States to put in place a formal legal review mechanism

There is a requirement under Article 36 (1977 Add. Protocol I to the Geneva Conventions) which says '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'.

Discussion

One delegate that if a State buys a weapon from other country and uses it for defense purposes then how to find the legal responsibility when such weapons did not meet the legal requirements? **Mr. Loye** answered that the manufacturer has certain obligations, but as a State, the buying country certainly has an obligation and responsibility. They should ask the manufacturer, to give the technical data and the details of what impact it would have on soldiers and on materials targets, because it is the State's responsibility as an independent State have to live up this responsibility. They have the responsibility to do a legal assessment.

Another delegate asked whether ICRC has any obligations or is it a practice of ICRC to carry out independent studies of different kinds of conflicts, where weapons like drones were used against innocent civilians. If you ask the individuals or groups using it, they would just get away by saying that it was a collateral damage or something like that. However, precious human lives have been lost. Therefore, use of these weapons are creating lot of menace to the human beings. In ICRC, is there any provision to carry out independent study in such areas and suggest

those nations, international organizations? He felt that ICRC should carry out independent study and come out with suggestions.

Mr. Loye replied saying that the mandate of the ICRC is to work protect the victims of war and protect civilians. If civilians are affected by the use of weapons, the available information is assessed. So, if drones for eg., have been used and civilians have been killed, ICRC gathers information from the military and public sources and then intervenes in the use of such weapons in order to highlight what happened so that the precautions are taken and the proportionality principle is respected. That intervention clearly is not a criminal investigation. The ICRC does not interfere with the State to say well a particular person or soldier has violated the rule. The State in question has to put in place the measures and investigate itself. The ICRC is not asked by the international community to do a criminal investigation and to prosecute. If a State agrees, they could call on an Independent Fact Finding Commission which could follow the investigation. As on today, this Fact Finding Commission has never been used successfully.

When new technologies are developed, the ICRC would assess whether is in conformity with IHL and if there are concerns, then go to the States and raise the issue. For example 10 or 15 years ago, a new technology was developed by States in blinding laser weapons and the ICRC heard about it, got concerned and approached certain States like Sweden, Switzerland. They took up our concerns and then they brought to international fora and then it was discussed. Finally there is Protocol IV of the Conventional Weapons Convention which prohibits this technology. So, that is just an example how the ICRC could play certain role.

Work of the UNSC 1540 Committee

Dr Reza Mousazadeh of Iran chaired the session

The Chairperson invited **Dr. V. Siddhartha** to speak on the topic.

Dr Siddhartha sought to highlight the rationale of UNSC Resolution 1540, which was the result of the Cancun conference in Mexico, namely the freeing of trade from government control. This had unintended consequences like the clearing the path for easier trade of dangerous weapons and the resultant danger of the same landing in the hands of terrorists and non-state actors without much difficulty, all without the knowledge of the government.

The September 11, 2001 attacks against the World Trade Centre demonstrated the ability of terrorists to strike terror using ordinary civilian technology, thereby causing the deaths of a large number of people and destruction of property. This

highlighted the significance of preventing the proliferation of weapons across countries and the need to give teeth to legal instruments to deal with the problem of Atomic, Biological and Chemical (ABC) weapons. In this context, the importance of preventing business, both public and private from facilitating the trade in dangerous weapons, either knowingly or unknowingly was highlighted. The speaker stated that NPT and Conventions like the Biological and Chemical weapons convention deal with the responsibility of State actors alone and this creates a problem as the role of non-state actors is involved. This is an issue which needed urgent redressal. The speaker pointed out that the UNSC Resolution 1540 is unlike other legal frameworks as the same is mandatory. This made the Resolution significant. However, he pointed out that not all portions of the resolution are mandatory for all UN Member States. It is not permissible for any member to opt out if the same is not to their liking. There are several member states who do not like the same. They comply as they have no choice. Member States have stated that they are against proliferation, but have opposed the mandatory reporting clause of UNSC Resolution 1540 on the ground that it infringes on national sovereignty. However, despite that almost all states signed the same.

In accordance with 1540, there is a requirement for States to criminalize the WMD proliferation by non-State actors, including the activity of giving aid or abetting support, facilitating or financing such activities. Furthermore, there are itemized requirements like the comprehensive national exports controls adopted by the States. So that enterprises public or private engaged in the activities particularly in manufacturing trade of those items, their export is regulated by States. However, if the export takes place illegally without the authorization of the State and if the activity is concerned with trade of illicit weapons, then the same should be penalized. Cooperation among states is essential to deal with the problem of illicit weapons and dual-use items. This requires the adoption of specific legal instruments by States for border controls. There is a Control list, which gives details about what goods and services, covered or regulated. For the implementation of the onerous resolution by various States, there are provisions to ask for and receive assistance to draft laws and implement them or organize training for various stakeholders including industry within the country itself. In order to sensitize the people within the country, assistance could be sought for.

There are certain legal requirements to be undertaken under the Res. 1540 and there is a website which gives details about it. He said that the base level information of legal instruments of almost all the States parties is available on the

website. The website would also provide lots of information pertaining to national legislation on the subject. Apart from the above, the implementation reports of the States as required by Resolution 1540 would also be there. Furthermore, a database of legislation of most of the reporting States and the reports of 1540 Committee to the Security Council are also available. The value of the information for the preparations of the national legal instruments, action plans, implementation of 1540 often underestimated. This was realised by him, he said, while he was serving in the expert group. He urged the delegates to visit the website and get hold of all the legislation, mix them so that a good legislation is the result, consistent with the circumstances of the State and their constitutional requirements.

He said that for the first time the information is publicly available in one location. This has facilitated incremental harmonization amongst States of concepts of exports and of border control. Implementing UNSC Resolution 1540 is the responsibility of the Member States who are sovereign. There are no sanctions for non-compliance with Resolution 1540. He said there was lot of discussion as regards this issue. The resolution also does not specify any specific standards to adhere to in order to be declared as being compliant. According to the speaker, it would be convenient for the States, from an administrative perspective to have one legislation that comprises the provisions of all the conventions and other legal instruments.

However, UNSCR 1810 followed on 1540, urges the 1540 Committee to assist States in identifying the needs of 1540. So, now it comes mandatory for the Committee to help States to implement 1540 as it has been explicitly mentioned in Res. 1810, Para. 4. For eg., it encourages all member States summarize action plans and how they are going to implement 1540. States can go to other States mentioned earlier in the previous presentations and 1540 committee helps States in this regard. In order to assist States to prepare their Action Plans, the Committee engages in sustained dialogue with individual States, assist them to list, prioritize and establish appropriate means of implementation.

UNSCR 1810 enhances the role of 1540 committee from merely acting as a clearing house it has graduated to matching the request of assistance with offers of its provision. The Committee identifies national practices which worked well which could be adopted by other States that have similar characteristics. This could be either adopted in toto or adapt depending upon the way in which the Constitutional provisions of various States allow.



UNSCR 1810 connects the SC Resolution 1267, 1373 and 1540. States would find it convenient from administrative point of view, combining the requirements of 1267, 1373 and 1540 in such a way that one covers the same in one comprehensive convention.

The three Committees and its expert groups are mandated to intensify coordination of approaches to States and assistance-providers in the area of border and customs controls. He talked about the alternative philosophy of national legislation. For some countries, particularly, the US, foreign trade is by law a privilege, which is granted by the State and it is not a right, whereas in many countries, particularly in commonwealth countries and in many European countries, it is a right and not a privilege. Consequently, US courts do not question on grounds of equity or fairness the technology, national security or foreign policy reasons of the Executive to deny that privilege in specific cases. Violators of the law have the option to settle fines and other punishments by plea bargaining, through which process the executive is also able to gain valuable intelligence.

He said that for countries with a compact basket of domestically produced industrial goods and services, the administrative burden of implementing UNSCR 1540 could be considerably lightened by a law that makes the export of all goods and services subject to executive approval except for those which populate that basket.

Discussion

One delegate asked when a State is lax and transshipment takes place, it could compromise the security of another State and how such situation could be dealt with. **Dr. Siddhartha** said there was no universal answer and each State has to put in place law and its technical capabilities. Assistance was available with respect to nuclear weapons for eg., the business about radioactivity, detectable when containers are shipped. Nothing much could be done for biological weapons. However, states needed intelligence, and a law in order to use that intelligence.

While responding to another question **Dr. Siddhartha** said that not all parts of the Chapter VII of the UN Charter are mandatory, only those parts are mandatory which begin with the words 'decide' 'Security Council decides'. It is those parts which are mandatory. The entire resolution of 1540 is not mandatory, only those parts which says 'decides' are mandatory. So to speak of the others, depending upon their working, and depending upon the wording, the Security Council not

the Committee, would take the cognizance to 'non-compliance'. There is not a single case that the Security Council has taken note of. With regard to 'non-compliance' of the mandatory parts, those are by and large only reporting parts which are to be taken by nations individually under their respective constitution to see whether they put or not put in place law or mechanism to implement that law.

He further said that as regards the NPT, the matrix is structured, in such a manner that a party to the NPT would not have nuclear weapons. The question of States having nuclear weapons does not in principle arise because of the fact that if a State is a party to the NPT, it would not possess nuclear weapons. If states were to go out from the NPT, for eg., they would still be bound by 1540. The case of DPRK would be one where being part of NPT, it has its own nuclear weapons. It is still bound by 1540, in other words, it has to prevent non-state actors from accessing its capacity to build nuclear weapons. It is not a substitution for it. So it applies to even if states withdraw from NPT. However, it is very important to ensure that nuclear weapons are not being traded.

The Chairperson invited **Ms. Angela Woodward** to make her presentation.

Angela Woodward, Programme Director, National Implementation Measures Programme, VERTIC talked about model laws and how States could go about incorporating the obligations under BWC and UNSCR 1540 into their national law.

The BWC prohibits biological warfare and bioterrorism ...

- the intentional use of pathogens or toxins
- against humans, animals or plants for hostile purposes

... and any activities involving biological weapons

- biological agents and toxins in types and quantities that have no justification for prophylactic, protective or other peaceful purposes
- weapons, equipment and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict

Agents/toxins/equipment are dual-use (peaceful & hostile)

Prohibitions relate to purpose



UNSCR 1540 (2004)

- Prohibit and prevent nuclear, chemical and biological weapons proliferation to non-State actors, especially terrorists
- Must adopt and enforce national laws (offences, penalties etc.)
- Must establish a national system:
 - to account for and secure items in production, use, storage, or transport
 - for physical protection measures
 - for effective border controls and law enforcement measures
 - for national export and trans-shipment controls

ICRC Model Law

Penal law	Criminalize prohibited activities Establish appropriate penalties
Criminal procedural law	Facilitate law enforcement Establish jurisdiction for national courts
Biosecurity measures	Licensing activities involving controlled agents/toxins
National oversight	“Responsible Authority”
FOR REGULATIONS	Detailed biosecurity measures

VERTIC Sample Act

Penal law	Criminalize prohibited activities Establish appropriate penalties
Criminal procedural law	Facilitate law enforcement Establish jurisdiction for national courts
Biosecurity measures (DETAILED)	Licensing activities involving controlled agents/toxins Measures to account for materials Transfer controls (internal/international)
National oversight	“Responsible Authority” Emergency response system
+ Codes of conduct	

VERTIC:

Legislative assistance provider

VERTIC: Independent, non-profit making, NGO (London, UK)
Our funders: Canada, Netherlands, UK and US
(These States do not direct our activities)

Objective: Provide information to States
Cooperate with States to develop new national legislation

International
Obligations: 1972 Biological Weapons Convention
1993 Chemical Weapons Convention
UN Security Council Resolution 1540 (2004)
(and nuclear weapons treaties)

SERVICES ARE FREE OF CHARGE!!

On-site assistance in capitals

Once the survey is completed, we can provide direct legislative assistance in your capital at your Government's request

- Develop a National Implementation Action Plan
- Develop a comprehensive draft bill
- Only takes two days

Follow up:

- Comment on subsequent drafts
- Provide information for Cabinet/inter-ministerial processes
- Another visit, if necessary

➤ ALL AT NO COST TO YOUR GOVERNMENT!!

VERTIC's NIM project tools

- Tools are only a **starting point** - no one size fits all
- ICRC Model Law
- VERTIC Sample Act
- VERTIC Regulatory Guidelines
- Factsheets ... BWC, CWC, 1540
(for Parliamentarians, inter-ministerial processes)



- NIM Website
- Legislation database

Benefits of national implementation

- Manage the spectrum of biological risks
- Deter, prohibit and prevent biological weapons activities
- Investigate, prosecute and punish any offences
- Monitor and supervise activities involving dangerous pathogens and toxins
- Enhance national security, public health and safety, food security
- Encourage investment in biotechnology and research
- BWC/UNSCR 1540 obligations met

Discussion

While answering a question on the availability of consolidated rules in the field of legislation that guide States, Ms Woodward stated that the kind of measures that states would implement is a sovereign decision and the same could not be imposed on any nation. If any guidance was required in this regard, she stated that the same would be explained. As regards the consolidation of rules, the whole set of documents were in two sets and it was up to the states to decide which of the two was of particular importance to them.

She further mentioned that when they developed ICRC model law they looked at the whole range of countries, law and enforcement and different kind of approaches. They went through the penal provisions, penalties, procedural aspects and developed consolidated one. Each of the samples are consolidated whole. The ICRC one is the light one and in developing the VERTIC model, they also looked at national legislations that are already put by States. However, she said that she did not want to say to States that this is the only way to go about, absolutely not, it is a tailored approach.

When a delegate asked about the difference between Model Law and the Sample Act, Ms Woodward said that ICRC model law, according to her was particularly relevant to small States, for e.g. for some pacific island States which did not have a defense laboratory, and they need to prevent terrorists from doing any biological weapon activities. It's also relevant for some for security measures. The VERTIC sample Act is much more detailed on bio-security and that would apply probably to half the States here. The VERTIC national implementation measure website has all of these Sample Acts, chemical, biological and nuclear facts sheets, regulations

and guidelines, in many languages. It also has the reference material, articles about the conventions and about national implementation.

The Chairperson invited **Dr. Siddhartha**, to speak on Indian National legislation on Weapons of Mass Destruction. **Dr. Siddhartha** made the following presentation.

India's corpus of laws dealing with activities relevant to preventing proliferation of WMDs and their means of delivery

Includes, *inter alia*:

- The Atomic Energy Act, 1962
- The Customs Act, 1962
- The Foreign Trade (Development and Regulation) Act, 1992
- The Chemical Weapons Convention Act, 2000
- The Unlawful Activities (Prevention) Amendment Act, 2004

And, most pertinently:

>> The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005

>> Specifically enacted to fulfill India's obligations pursuant to UNSCR 1540, it criminalizes WMD related proliferation activities by non-State actors.

See: IAEA INFCIRC/647 of 29 June 2005

Some salient features of India's WMD Act

Overarching integrated legislation to translate effectively India's commitment to prevent proliferation of WMDs. Besides the prohibitions mandated by UNSCR 1540, the WMD Act fulfills India's obligations pursuant to UNSCR 1540 by, *inter alia*:

- Updating the extant system of export controls – dating to 1992 -- by introducing transit and trans-shipment controls, and end-use based controls (“catch-all”) – the WMD Act prohibits the export of *any* goods or technology if the exporter knows that it is intended to be used in a WMD programme.
- Prohibiting brokering across-the-board for any transaction -- for even those that are only regulated, but not prohibited, under the Act. Applies also to foreigners resident in India.
- Defining 'technology' by reference to *the content of information* - rather than by the means of its transmission. This definition of 'technology' is identical in the WMD Act and in Indian XpC regulations under the FTDR and AE Acts.
- Transfer' controls regulate the flow of sensitive and dual-use 'technology' from India, or by Indian citizens resident abroad. These controls apply also to “deemed exports”, ie to the flow of prohibited or controlled goods and technology to foreigners while in India.



- Provisions apply to citizens of India outside India; Indian companies with branches or subsidiaries abroad; persons in the service of the Government of India, as well as to foreigners while in India.
- The WMD Act is in addition to the extant system of legal and administrative controls. Importantly, whenever any offence is punishable under the WMD Act as well as under any other Act in force, the offender is liable to be punished under that Act which imposes the harsher punishment.

Some juridical issues that might arise

-Appropriate sentence: The 'market value' of a technology – even if this is assessable - is no indicator of its contribution to the illicit acquisition of WMD capability. Its technological “crucialness” – as assessed by experts in the subject – to such acquisition needs to be accepted as the basis of injury to national security.

-Likewise, an instance of unauthorised export of – say - a Trigger List item could cast aspersions on not only India's reputation, but also her ability to import that item needed for her nuclear power programme. How is this kind of damage to be assessed for determining the appropriateness of sentence?

-Evidence: In cases of activities proscribed by the WMD Act, prosecutory evidence is likely to have been garnered by intelligence sources and methods, including foreign ones. Issues of admissibility of such evidence are likely to arise in such cases.

The Chair invited **Mr. Christopher Harland** to speak on various national efforts at BWC implementation

Mr. Christopher Harland stated that he was very pleased to talk about some countries legislation on BWs. He started by noting that some States have enacted comprehensive legislation in order to implement the 1972 BWC, 1925 Geneva Gas Protocol and UNSCR 1540. Some countries legislation make specific reference to all 3, some to just 2 and some with just UNSCR 1540.

He started by referring to the model law, which was mentioned earlier by Ms Woodward. He stated that the idea of model law may be flawed as the legal systems of various countries vary and to that extent a single model law may be an improper phraseology. Even if some nations may be united through a common law system, the individual legal systems of various nations vary a great deal. There are differences such as the placement of the short title of the bill at the beginning

or end of the law and so on. The ICRC Model Law is also known as the VERTIC Law in some places, and VERTIC has made the same more broad based by incorporating provisions pertaining to bio-terrorism.

The core of the Model Law is contained in Section 6 which lays down the prohibition, which is a standard one from the BTWC that no person shall develop the verbs which have covered all of the elements, including in UNSCR 1540, BWC 1972 and Geneva Protocol 1925 verbs. The penalties are mentioned later in the model law.

He noted that 8 out of 10 countries in the South Asia region are attending the conference. India has a WMD Act, which was enacted in 2005 and which contains provisions pertaining to the BWC. As there was only one Act in the region specially dedicated to the prohibitions in Article 1 through Article 4 of the 1972 Convention, this issue was included on the agenda. The speaker stated that he would deal with Gibraltar's legislation which is otherwise part of U.K. and also with Trinidad.

Mr. Harland started with the Singapore Act and explained the basics of the same, which is divided into 5 parts. The act seeks to regulate toxins and agents, in different ways. The preliminary portion contains the definitions. Part II gives details about who is in charge of the Act and Part III contains the prohibitions. The preliminary section contains quite detailed definitions, which is normal for common law states. Singapore is a country that is spending a lot of time on bio-safety. They have scheduled which agents and toxins are included in the list. Division-II deals with the possession of schedule I prohibited items without approval and with much lower punishments, usually a year in jail. The next division covers transshipment, with larger punishments for violations.

Regarding Gibraltar's recent law, it covers biological, chemical and nuclear provisions, as does the Indian legislation. However, on biological weapons, it is relatively uncomplicated and straightforward. It uses the general purpose criterion for prohibitions, and uses the verbs in the BW Convention as prohibitions. The Attorney-General starts prosecutions, and there are provisions relating to search and seizure, which are similar, naturally, to that of the United Kingdom.

A third example comes from Trinidad and Tobago, and its 2009 Bacteriological and Toxins Weapons Act. This adds provisions relating to the possibility of an Authority relating to biological weapons and the BWC in general (later changed to a Committee in the 2010 draft), to be set up by the Minister with responsibilities for national security. This body may of course liaise with the BWC's Implementation

Support Unit. The prohibitions in the Convention are covered, while use does not appear to cover use itself (which is not in the Convention itself). Section 10 contains the prohibitions, with punishments up to life imprisonment and 1 million Trinidad and Tobago dollars. And for persons who violates some of the bio-security provisions of the Act, it is 10 years, and 100,000 dollars. It also applies to citizens of T&T acting outside their country. The Convention is included as a Schedule.

Perhaps the simplest form of legislation which covers the prohibitions is the CARICOM model, based on the 1991 St Kitts and Nevis' Biological Weapons Act of 1991. For States wishing a simple solution, this is one to look at, it covers the prohibitions, offences, search and seizure provisions, and requires DPP involvement.

Mr. Harland closed by saying that the BWC ISU website is a good place to go for more information and examples, as well as vertic.org and icrc.org.

The Chair invited Ms. Angela Woodward to speak on the topic of 'Implementing the 1993 Chemical Weapons Convention-the OPCW Model Law'. Ms Angela Woodward made the following presentation.

CWC: National Implementing Legislation

Chemical Weapons Convention

- Entered into force: 29 April 1997
- Membership:
 - 188 States Parties, 2 Signatory States and 5 outliers
- Treaty Secretariat: OPCW, The Hague
- Treaty website is: www.opcw.org

Overview: National Implementing Legislation

- Article I prohibitions, penalties and enforcement
- Article II definitions (CW, toxic chemical, purposes not prohibited, etc.)
- Extraterritorial application to a State's nationals (Art. VII (1)(c))
- Penalties for:
 - Schedule 1 and Schedule 2 chemicals-related violations
 - Failure to declare scheduled chemicals-related activities
- Enforcement of end-user certificate requirement for Schedule 3 transfers to States not Party

- International legal cooperation and assistance (Article VII (2))
- Designate a National Authority

CWC prohibitions and penal legislation

Under Article I States must prohibit and punish the following acts involving chemical weapons:

- development, production, acquisition stockpiling, retention
- direct and indirect transfers, and
- use of chemical weapons

as well as

- engaging in military preparations to use chemical weapons
- assistance, encouragement, or inducing anyone to engage in prohibited activities
- using riot control agents as a method of warfare

Regulation of scheduled chemicals

Under the CWC, scheduled chemicals must be regulated as follows to ensure the non-proliferation of chemical weapons:

Schedule 1 chemicals: prohibitions on their production, acquisition, retention, transfer or use in relation to States not Party

Schedule 2 chemicals: no transfers to/from States not Party

Schedule 3 chemicals: no transfers to States not Party without an end-user certificate

Legislative assistance providers & tools

Organisation for the Prohibition of Chemical Weapons (OPCW)

- National Legislation Implementation Kit for the Chemical Weapons Convention with commentary
- OPCW model decree on the establishment of a National Authority
- OPCW Penal Provisions
- *ICRC Advisory Service on IHL*

VERTIC

Benefits of national implementation

- Investigate, prosecute and punish any offences, including preparations



- including by non-State actors / terrorists
- Monitor and supervise any activities involving scheduled chemicals
- Enhance national security, chemical security and safety
- Prepared to respond to chemical attack
- Signal to potential investors that your State is a safe and responsible location for chemicals production
- Comply with CWC/UNSCR 1540, including international reporting requirements

The Chair thanked **Ms. Woodward** for the informative assessment on the CWC and for the work done on the subject regarding implementation and asked for questions.

A question was asked regarding non-lethal weapons. The reply came that through the developments in new weapon, compliance has become a major concern of the CW Convention by citing the use of Fentanyl agents to secure to release the hostages by Russian special forces in 2002. Non-lethal weapons, are also prohibited under the Convention. **Ms. Woodward** added that the ICRC was working on the issue.

Mr. Loye noted that at the ICRC, they have thought about this question over the last 3-4 years on whether chemical incapacitant agents are covered under so-called lethal weapons were or not. He mentioned that there would be an experts meeting at end of March in Geneva where experts from the countries would be invited, on discussion on how far this types of agents are prohibited and on how these threats could be addressed. A clear picture would be hopefully arrived within a span of 2-3 years.

A question was asked regarding OPCW possible assistance regarding issues such as the Bhopal disaster in India or Bangladesh, regarding insufficient preparation. It was replied that OPCW conducts training programmes for states in response to chemical incidents which would facilitate state-to-state training and it could also provide funds in the case of an emergency.

A question was asked with regard to the agents or substances which are not within the category of the things listed by the OPCW and whether there were activities or movement to expand to those categories. It was replied that as per the present understanding, and of the Hague that there does exist challenges for the enforcement of destructions of current chemical weapons. Russia, and the US were mentioned to have huge stocks behind the deadlines which have been a

cause of concern and reason for the states and the technical Advisory Board not being in a position to address new chemical agents, new bio-chemistry agents. With the science advancing quickly, the political and legal understanding is required to cope for the humanity to survive.

The Chairperson then invited **Ms. Salma Benthe Kadir**, Joint Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh to speak on the topic of 'Bangladesh's Chemical Weapons Act'.

Ms. Salma Benthe Kadir said that in 2000, Bangladesh signed, and ratified the convention on the prohibition of development, production, stockpiling and use of chemical weapons and their destruction. In the Bangladesh legal system, if Bangladesh is a party to an international convention, for the implementation of such convention, Bangladesh must enact a law on the particular convention. Being a party to the convention, Bangladesh was under an obligation to give effect to the CWC. The Government enacted the Chemical Weapons (Prohibition) Act, in 2006. This Act is in Bangla, and the Ministry of Law has recently taken steps to translate it in English. This Act is applicable to whole of the Bangladesh. It is also applicable to the territories of the Bangladesh if any offence committed by any citizen of Bangladesh or any person in the service of Bangladesh and any offence committed, by any person staying in or on board any ship or aircraft of Bangladesh. In section 2 of this Act, it defines some terms. I will define only toxic chemicals and chemical weapons. It defined 'toxic chemical' as any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to human or animals and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

'Chemical weapons' means toxic chemical and their precursors, except where intended for purposes not prohibited under the Convention as long as the types and quantities are consistent with such purposes. Section 5 of this Act provides for the prohibition on the development, etc of chemical weapons. It says that no person shall develop, produce, otherwise acquire or stockpile chemical weapon; transfer directly, chemical weapon to any one; engage in any military preparation to use chemical weapon; assist encourage or induce in any way; any other person to engage in any activity prohibited for the State party under the Convention; use a riot control method as a agent of warfare willingly or unlawfully and for the sub-section (1) an object shall not be a chemical weapon, if the person uses the said object only for permitted purposes, and in deciding whether permitted purposes,



and in deciding whether permitted purposes are intended, the types and quantities of objects shall be taken into account.

Premises or equipment for producing chemical weapons are dealt under Section 6 and provides that no premises shall be constructed, no premises shall be altered; no equipment shall be installed or constructed; no equipment shall be altered for the use of chemical weapons, and to decide whether the object was produced and used on the basis of permitted purposes the types and quantities of the object shall taken into consideration.

There are 3 schedules in the Act. The Chemicals are scheduled in I, II, III. Provisions are relating to Production etc of chemicals listed in Schedule I, our laws are in Bangla, but schedules are in English. In section 7, it provides that no person shall produce, acquire, use, retain or transfer chemicals listed in schedule I, unless such chemicals are used for the purpose of research, treatment manufacture of medicine or protection; the types and quantity of such chemicals are limited to that extent as is proper; the quantity of such chemicals does not exceed the limit of maximum one ton per year in the whole country; and such chemicals are enrolled with the National Authority.

In Schedule II, in the case of production of chemicals, under sub-section (1), listed in schedule 1, the following conditions shall apply, namely, such productions are for research, medical, pharmaceutical or protective purposes; such production shall follow the procedure set out in part VI of the Verification Annex; the producer shall be enrolled by the National Authority.

In the case of transfer of chemicals, listed in schedule 1, the following conditions shall apply, namely- it shall follow the conditions specified in clauses (a) to (d) of sub-section (1); the chemicals, acquired or transferred, in compliance with the conditions laid down in this section, shall not be transferred to a third state.

As regards the Prohibition on transfer, etc. of the chemicals listed in Schedule 2 and 3, Section 8 provides that no person shall, transfer or receive the chemicals listed in schedule 2, or transfer the chemicals listed in schedule 3, to a state which is not a Party to the Convention, unless, such transfer of chemicals is permitted under the Convention; and the recipient state provides a certificate in respect of - that they shall only be used for the purposes not prohibited under the Convention; that they shall not be re-transferred; their types and quantities; their end-use; the name and address of the end-user; and those are enrolled by the National Authority.

Under section 9, it provides for the provisions relating to import and export of scheduled chemicals, it provides that no person shall import into or export from Bangladesh a scheduled chemical, except, in accordance with the provisions of the Import or Export Policy Order made by the Government, from time to time, under Import and Export (Control) Act, 1950 (XXXIX of 1950) and, enrolled with the National Authority.

Section 10 provides for the enrolment and it says that: (1) Every person engaged in the production, processing, acquisition, use, transfer, import or export of scheduled chemicals or engaged in the production of any discrete organic chemical including discrete organic chemicals containing elements of phosphorous, sulphur or fluorine shall, within the time specified by the National Authority after the commencement of the Act, be enrolled with the National Authority as a producer, processor, aquirer, user, transferor, importer or exporter of any scheduled chemical or, as the case may be, as a producer of any discrete organic chemicals containing phosphorous, sulphur of fluorine.

To fulfill the purposes of the Act, there is a national authority named as "Bangladesh National Authority on Chemical Weapons Convention comprising several high officials of the Government Ministries and agencies. The Principal Staff Officer of the Armed Force division is its Chairman.

The functions of the National Authority are as provided under section 24, which shall be as follows: to keep all kinds of liaison under this Convention for the purpose of this Act; to ensure proper implementation of this Act; to perform duties applicable on the part of Bangladesh under this Convention; to take measures for inspection in any facility and place in Bangladesh according to the Verification Annex; to arrange training, for the officers and employees including other concerned officers and employees for the purpose of carrying out the functions of the Authority efficiently; to arrange and administer national and international seminar, symposium, conference and work-shop with a view to create awareness among the people; to take necessary measures for protection of sensitive establishment not related with the Convention; to carry out other obligations under the Convention; to advise the Government to nominate permanent representative of Bangladesh in the Head Quarter of the Organization;

Meeting of the National Authority.- There shall be held at least one meeting of the National Authority in every six months: Provided that, in case of emergency, if necessary, with the consent of the Chairman, meeting can be convened by giving a 7 days notice.

According to Section 26, the National Authority may, if necessary, constitute one or more committees to assist to carry out its functions. Every committee under sub-section (1), shall consist of such number of members as the Authority may prescribe and the National Authority may determine the responsibilities of such committee. Section 28 provides that to carry out the functions of the National Authority there shall be an Executive Cell to be called the Chemical Weapons Prohibition and Disarmament Cell National Authority, of which a Director shall be the Chief. The Executive Cell shall be responsible for implementing the decision of the National Authority. Section 30 which says that subject to the provisions of this Act and the rules made thereunder, the National Authority may, for carrying out its functions, issue written direction to any person. Any person being directed under this section shall be bound to carry out such direction. The National Authority may in its order issued under this section fix the time for carrying out the relevant works.

Offence, Penalty and Trial – Section 31 to 42 provide for the offence, penalty, procedure and trial etc. There are different kinds of penalty for contravention of this Act. Penalty may be from one to fourteen years imprisonment or including fine of 3 – 50 thousand taka. The penalty may be imposed if a person shall develop, produce, otherwise acquire, or stockpile chemical weapon; transfer, directly or indirectly, chemical weapon to any one; use chemical weapon; engage in any military preparation to use chemical weapon; assist, encourage or induce, in any way, any other person to engage in any activity prohibited for the State Party under the Convention; use a riot control agent as a method of warfare, willingly or unlawfully.

Then section 44, destruction of chemical weapons, if the National Authority takes decision that any Chemical Weapon or suspicious object seized or removed under sub-section (5) of section 43 is required to be destroyed, the said authority shall take necessary steps to destroy it. The National authority is responsible to submit its Annual Report to the Government on the performance of its functions within two months after the end of every calendar.

Discussion

When enquired about the working of the National Authority, **Brigadier General Abidus Samad** from Bangladesh said that the National Authority has members from different ministries and all other agencies, some NGOs, businesses from the country who are involved in import and export and also the customs authorities which amounted to sixteen members. Bangladesh inspections have been

undertaken within a notice of 5 days by a notice or email or fax which is required to be confirmed. The inspection team might recommend measures for the security aspects of industries. Pharmaceutical industries have also been brought under the ambit of the Act. Training sessions have been organized in Bangladesh along with participation in Regional Conference of the CWC. This is in a nutshell the activities of the National Authority in Bangladesh. It was also mentioned that with the assistance of OPCW Headquarters, it was easier to get everybody harmonized in the National Authority.

The Chairperson invited Mr. Len Blazeby to speak on the 'Work of the OPCW and National Authorities'. What follows is derived from the PowerPoint presentation made.

Overview: OPCW

Established: 1997

Headquarters: The Hague, Netherlands

Membership: 188 States

Budget: EUR 75 million (2009)

Secretariat staff: 500

Director-General: Rogelio Pfirter

Official languages: Arabic, Chinese, English, French, Russian, Spanish

Facts and Figures

- 188 States Party
- 185 National Authorities have been established
- 126 States Parties - informed OPCW of legislative and administrative measures taken to implement the Convention.
- 83 States Parties have legislation covering all key areas.

Mandate

“ . . . to achieve the object and purpose of [the] Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.”

Bodies

Technical Secretariat - is responsible for the day-to-day administration and implementation of the Convention, including inspections,



Executive Council and Conference of the States Parties - decision-making organs - designed to determine questions of policy and resolve matters arising between the States Parties on technical issues or on interpretations of the Convention.

The chairs of the Executive Council and the Conference are appointed by each body's membership. The Technical Secretariat is headed by a Director-General, who is appointed by the Conference on the recommendation of the Council.

The Scientific Advisory Board (SAB):

- Group of independent experts
- Mandated to assess relevant scientific and technological developments and report on such subjects to the Director-General.
- Provides expert advice on proposed changes to the Schedules of Chemicals plus other advice - including on verification methodologies and equipment.

Advisory Body on Administrative and Financial Issues (ABAF)

- meets regularly to advise both Technical Secretariat and the States Parties on issues relating to the OPCW programme and budgets.
- Reviews draft budgets prepared by the Technical Secretariat before they are submitted to the Council and the Conference for approval.

Confidentiality Commission

- A subsidiary organ of the Conference of the States Parties
- Main function is to settle any disputes between States Parties related to confidentiality.

Obligations

On becoming a party to the Convention:

must undertake a variety of internal measures to comply with the Convention - enable the verification mechanism to function properly.

Range from:

- Preparing and conducting the destruction of chemical weapons arsenals
- Surveying and regulating chemical industries
- Amending a number of domestic laws and administrative rules.

Obligation to submit an initial declaration, not later than 30 days after the treaty enters into force for a given State.

Other notifications to facilitate the conduct of inspections

The initial declaration = any past or present chemical weapons programmes pursued by a State Party - declaring the presence of any old and/or abandoned chemical weapons on its territory, or which it has abandoned on the territory of another State.

Destruction of all such chemical weapons must be completed within ten years from 2007 - the entry into force of the Convention.

Any Production facilities declared by a State Party must be closed down within 90 days of the Convention entering into force for that State Party and the destruction of such facilities must also be completed by 2007.

These former production facilities, following their inactivation, must be destroyed or converted to peaceful purposes.

One-time, five year extension of final destruction deadlines for chemical weapons stockpiles up to 2012.

A request for extension must be made to the Executive Council and approved by the Conference of the States Parties.

National Authority

Article VII, paragraph 4 CWC:

“In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.”

At the time the CWC enters into force for a State, it must establish the National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties and notify the OPCW of that creation.

The main tasks of the National Authority:

- coordination of the submission of declarations to the OPCW
- monitoring of national trade in scheduled chemicals and
- oversight of any chemical weapons destruction programme.



- Facilitate communication with the OPCW,
- cooperate with other States Parties
- facilitate OPCW inspections,
- respond to OPCW requests for assistance,
- protect the confidentiality of classified information,
- monitor and enforce national compliance
- cooperate in the peaceful uses of chemistry.

Codifying the CWC, its prohibitions/obligations, nationally by working with other branches of national government or legislature on drafting and enactment of proper implementing legislation, may be another responsibility of a National Authority.

Preferable therefore to have a link between the National Authority and the National IHL Committee.

OPCW organises:

Basic and advanced courses for personnel of National Authorities involved in the national implementation of the CWC.

Regional workshops.

Specialist workshops: customs officials, chemists etc.

Assistance and protection workshops

Regional meeting Nov 2008, Dhaka

Bhutan, Iran, Maldives, Nepal, Pakistan, Sri Lanka – attended meeting of Nat Authorities in Viet Nam in Oct 2009

Myanmar is not a party but attended the meeting.

Discussion

When asked about bringing the perpetrators to justice, Mr. Blazeby said that prosecutions take place under national legislation. When asked about the international cooperation for transnational export cases, he said that OPCW constantly monitors what is being produced, and they have a document continuously updated as to what drafts exist and what specific implementation measures States were undertaking.



DAY4 (17 February 2010)

Mr. Christopher Harland chaired the session and invited **Mohd. Shahidul Hoque**, Secretary, Legislative and Parliamentary division of the Ministry of Law, Justice and Parliamentary Affairs of Bangladesh to speak on the topic of '**Judicial and Non-judicial Post-Conflict Responses**'. He spoke on the Bangladesh International Crimes Tribunal Act, 1973 and its recent amendment. He said that this Act was enacted to try war criminals for crimes committed during the war of liberation in 1971.

The International Criminal Tribunals (Amendment) Act, 2009, included forces placed under the control of the armed forces for operational, administrative, strategic and other purposes. However, armed forces was not defined. So, an additional clause defines armed forces and includes an additional clause (a); "armed forces" means the forces raised and maintained under the Army Act, 1952 (XXXIX of 1952), the Air Force Act, 1953 (VI of 1953), or the Navy Ordinance, 1961 (XXXV of 1961). Then clause (g) in the same section which says, 'service law' means the Army Act, Air Force Act or the Navy Ordinance and includes the rules and regulations made under any of them.

Under Section 3, jurisdiction of tribunal and crimes, sub-section (1) provides that the Tribunal shall have the power to try and punish any person, irrespective of his nationality, who being a member of any armed, defence or auxiliary forces commits or has committed in the territory of Bangladesh whether before or after commencement of this Act, any of the following crimes. The amended provision says: the "Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces". This amendment, therefore, adds only 'any individual or group of individuals' which was not included in the original act. So, by way of amendment, by substituting a sub-section (1) of Section 3, any individual or group of individuals are added. This was because there were many incidents committed by individuals and groups of individuals rather than by armed forces or auxiliary forces. One new provision was added to bring in the need for the neutrality, impartiality and independence of the tribunal. The amendment adds that the Tribunal shall be independent in the exercise of judicial functions and shall ensure fair trials. Then comes small change in Section 10. Because, you know, according to our Constitution, and subsequently by an Act, the official language of Bangladesh is Bangla and Bangla is to be used in all spheres of life, unless the communication is made to foreigners and expatriates where it is necessary. So Bangla has been added by amending Section 10.

The right of appeal in Section 21. A person convicted of any crime specified in Section 3 and sentenced by tribunals shall have the right of appeal to the appellate division of the Supreme Court of Bangladesh against such conviction and sentence, provided that such appeal may be preferred within 60 days from the date of order of conviction and sentence. The whole section has been substituted by a new Section, sub-section 1. The person convicted of any crime specified in s.3 and sentenced by tribunal shall have the right of appeal to the appellate division of the Supreme Court of Bangladesh against such convictions and sentence. The right of appeal was given to the offender and by way of amendment, the government was given the right of appeal against acquittal to the appellate division. He said that these were the changes that were brought in through amendment to the International Tribunals Act, 1973.

Discussion

When asked as to whether there was any prosecution launched under the original 1973 Act, **Mr. Hoque** said nobody was yet brought to trial. He further clarified that, in Bangladesh you could not try any offender by a law providing higher punishment than what it was at the time of committing the offence. However, this was passed in 1973 intending to hold trial of the offences committed in 1971. Therefore, a constitutional amendment was made to facilitate the application of the Act.

Chairperson invited **Mr. Patrick Burgess**, Asia Director, International Centre for Transitional Justice to speak on the 'Work of the ICTJ worldwide and Asia'.

Mr. Patrick Burgess made the following presentation (in PowerPoint form).

Transitional Justice

An Overview

What is Transitional Justice?

Definition

Confronting the legacies of past human rights abuse and atrocity to build a stable, peaceful, and democratic future.

Why Confront the Past?

- Learn from the past
- Establish accountability as a key principle for the future
- Restore the rule of law



- Ensure non-repetition
- Promote lasting peace

TJ Approaches to Dealing with the Past

- Prosecutions
- Truth-seeking
- Reparations
- Institutional reform

Truth-seeking

Truth commissions

- South Africa, Timor-Leste, Sierra Leone, Peru, etc.
- Unofficial truth projects
- Documentation of violations, unofficial investigations.
- Broad civil society efforts
- Oral history projects
- Documentaries
- The arts

Truth Commissions

FUNCTIONS

Truth seeking

Public Hearings

Victim assistance

Produce a Report

Promote reconciliation

Make recommendations

Prosecutions

- Domestic prosecutions
- International prosecutions
- Ad Hoc Tribunals
- ICC
- Hybrid courts
- Sierra Leone, Cambodia, Lebanon, etc.
- Universal jurisdiction

TJ Cross-cutting Themes

- Gender
- Reconciliation
- Impunity/Amnesty

Reparations

- Monetary Payments
- Access to Services
(Health, education, etc.)
- Memorials
(Museums, monuments, etc.)

Institutional Reform

- Those implicated in serious violations should not be in positions of responsibility
- Systems should be in place to support accountability and fight impunity
- Vetting
- Military
- Police
- Judiciary
- Oversight institutions

Gender

- Innocent women civilians are a significant portion of victims in any conflict
- Secondary effect of violations on women

Distinguishing Characteristics of TJ

- Holistic- combination of truth, accountability, caring for victims
- Timing and sequencing important
- Each context is different, so needs a different mix of solutions
- Rebuilds broken relationships and trust

International Center for Transitional Justice (ICTJ)

- International Non Profit Organisation
- Based in New York
- Works in Over 30 Post Conflict Settings
- Has Regional, Country and Thematic Teams
- Has a Deep Knowledge and Experience n TJ Issues
- Staff Have Worked on All International and Hybrid Tribunals, a Significant Number of TRC's, As Well as Reparations Programs, Peace Processes, Reconciliation, Institutional Reform.



ICTJ's work

- Provides technical assistance to governments, civil society, victims groups
- Advises on drafting legislation, policies.
- Provides training to judges, prosecutors, lawyers, civil society, victims groups, journalists
- Produces analysis and reports
- Conducts conferences, workshops etc
- Conducts advocacy on accountability issues
- Facilitates learning exchanges, fellowships etc

Examples of ICTJ's activities

- ICTJ has addressed the UNSC seven times on TJ
- Assisted drafting UN principles, OHCHR TJ tools
- Held major international conferences on TJ
- Published range of books, articles and fact sheets on TJ
- Produced handbooks on trial monitoring, journalists and TJ etc
- Participated in peace negotiations, for example in Kenya
- Provided technical assistance to international tribunals and TRC's, Commissions of Inquiry, documentation efforts, civil society networks

He thanked the participants for patient hearing and invited further questions on his presentations.

Mr. Christopher Harland then invited the special guest, the **Hon'ble State Minister Adv. Promode Mankin**, M.P., Ministry of Cultural Affairs, People's Republic of Bangladesh to speak.

Hon'ble State Minister Adv. Promode Mankin thanked the organizers for inviting him. He said that joining to the Conference helped Bangladesh share experiences with other countries in the field of IHL and its implementation. He said that the Ministry of Cultural Affairs is responsible for preservation, research and development of national cultural heritage and fine arts of Bangladesh and pointed out that present Government is keenly interested for the protection, promotion, development of national culture in the very unique colorful, indigenous people of the country. The cultural heritage of a country reflects of a life, history and identity of the people of the country. Its preservation would help to build and establish their identities and linked their past, present and the future, he emphasized.

He pointed out the importance of protecting cultural property during armed conflict. He recalled the excellent role of the ICRC during the war of liberation in 1971 in protecting the country's people and culture. Cultural property has to be protected because it is civilian property and it is the identity of the people and the nation, he observed. He further said that the protection is provided under customary law and the 1954 Hague Convention for the protection of cultural property during armed conflicts which was the first international treaty, which exclusively deals with the protection of cultural property in the event of armed conflict. In 1999, Protocol II to the Hague Convention was adopted which provides for the enhanced protection of cultural property. He informed the participants that Bangladesh became a party of the 1954 Hague Convention and its Protocol I on 23 June 2006.

He further appreciated highly the work of the ICRC in the protection of cultural property and observed that its fact sheets and other documents are very useful. He said that the States should strive for the inclusion of provision pertaining to the protection of cultural property in the event of armed conflict in the military manuals. At the end he thanked all and concluded his remarks.

Mr. Christopher Harland thanked **Minister Adv. Promode Mankin** and invited questions and comments for **Mr. Burgess** on his presentation on Transitional Justice.

A question was asked about the mechanism of prosecution under a TRC and further about any benchmark or ideal in such prosecution that can be followed as a case study.

Mr. Burgess, while answering a question said that prosecution under a TRC is very much driven by the desire of the country. He said that the International Centre for Transitional Justice is available to advise based on the lessons learned from other countries and that is key to the success or failure of this processes. He further observed that the entire field of accountability of international justice should be looked at as a whole and noted that the world is in a process of driving towards more accountability and justice. For the international community, it is a slow, laborious, torturous task. He further observed that the International Criminal Court, the international tribunals and all the mechanisms developed in the last 20 years have been enormous advances and since the end of the cold war, major developments have taken place. He pointed out that the TRC in many countries recommended prosecution and in many cases, it has not led to action immediately, but establishing the truth and having the community and the

country look at what has happened in the past is important. He further said that it is a long process to move forward on the said principles.

While responding to a question on the work of the ICTJ in Afghanistan, **Mr. Burgess** said that ICTJ is doing some work with NHRC in Afghanistan. He pointed out that in the context of Afghanistan, ICTJ has been trying to help NHRC to increase their skills. He pointed out that ICTJ produced handbook for journalists about crimes against humanity and war crimes and further also ran a number of programs to educate journalists. He further pointed out that in Afghanistan, recently, ICTJ had a collaboration to do theatre in the regions to bring up people on their stories of what had happened. Therefore, there are number of tools that could be used in civil society to help express and bring out the stories.

Mr. Burgess, while replying to another question observed that the TRC would be designed according to what is needed in the country, but all of them until now have had one common process, that is the statement-taking process. He said that truth-seeking process undertaken in the TRC takes quite a long period of time. One has to send teams all over the villages, under a tree, building or somewhere to collect statements. He further observed that people came forward and started to tell their stories. He further pointed out that 8000 and 17000 statements were taken in Timor Leste and South Africa respectively. All these statements are further recorded in a computer database and categorized in various sorts of violations as per the statements made. He said that, at the year end, the entire story of the place became ready and could be used to lead to prosecutions. In reply to another question **Mr. Burgess** said that the ICTJ generally provided options to the countries that want to pursue prosecutions. He further pointed out that the process should be nationally driven and ICTJ only provides assistance. While replying to a question on Bangladesh, **Mr. Burgess** said that ICTJ was approached on the issue of an anti-corruption commission and said that ICTJ was then still in dialogue with the government officials of Bangladesh.

Captain Ismail Waheed from Maldives was in the chair for the next Session. The Chairperson invited **Mr. YSR Murthy** to speak on '**First review Conference and stocktaking issues to be discussed in Kampala Conference 2010**' (information here given from the PowerPoint presentation).

Overview of presentation

- Significance of Rome Statute of the ICC and Review Conference
- Art. 124 concerning 7 year opt-out clause for war crimes
- Proposals concerning Crime of Aggression

- Proposals to expand the weapons prohibited in article 8 [War Crimes]
- Crimes of terrorism ? Drug crimes ?

Significance of the Review Conference

- UN SG, "Timely opportunity for States to take stock of what has been achieved" since 1 July 2002 and to reflect on the Court's future course".
- President of ASP, "first Review Conference is a significant milestone for the International Criminal Court. It constitutes a unique opportunity for States to reaffirm their commitment to combating impunity for the most serious crimes of concern to the international community."
- Conference is taking place in Uganda, a country currently under investigation by the ICC.
- President of ASP, "it would give a voice to those who are affected by the crimes being investigated by the court."
- First review conference and not necessarily last occasion to consider all amendments.

Proposals for amendments on table

- i) Belgium
- ii) Mexico
- iii) Netherlands
- iv) Norway
- v) Trinidad and Tobago
- In addition, the proposals on aggression elaborated by the Special Working Group on the Crime of Aggression have been submitted by Liechtenstein as former Chair of the Special Working Group.

Amendments to Rome Statute

Article 121

- 1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments....
- 2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
- 3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.

- 4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.
- 5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.

Review of the Rome Statute

- Art. 123
- 1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5.
- The Conference shall be open to those participating in the Assembly of States Parties ...

Background

- The first review Conference of the Rome Statute will now meet in Kampala, Uganda on 31 May – 11 June, 2010.
- It is expected to review the Statute and consider amendments to it.
- In 2009, the 8th Session of the Assembly of States Parties considered proposals for amendments to be taken up at the review conference.

Agenda for review Conference

- Deletion of Art. 124 which provides for seven year opt-out clause on war crimes
- Adoption of the crime of aggression
- Govt. of Belgium sought extension of certain of prohibited weapons in international armed conflict to non-international conflicts.

Art. 124 regarding 7 year opt-out clause for war crimes

- Transitional provision
- War crimes have been defined in detail, criminalized and yet in the same statute, there is an opt-out clause.
- Congenital abnormality. Rome Statute does not provide for any reservations and yet Art. 124 limits obligations of States which make declarations.

- Current options: Retention, deletion, reformulation. As no consensus has been reached, matter deferred for review conference.

Art 5 of the Rome Statute:

Crimes within jurisdiction of ICC

- The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations. [Art 5[2]]

Article 8 bis

Crime of aggression

- 1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
- 2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

Acts constituting Crime of Aggression

- Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Comment

- In other words, invasion, attacking another State, or the military occupation of another State, however temporary, constitute crimes of aggression as also bombardments against another State, carrying out blockades, allowing another State to perpetrate acts of aggression against a third State, or sending armed bands to carry out grave acts against other States.
- Proposed definition does not include acts of terrorism performed by non-State actors
- Some delegations argued that threshold clause would limit Court's jurisdiction to cases where the act of aggression "by its character, gravity and scale constitutes manifest violation" of the Charter of the UN. Some expressed support for this clause as it would provide important guidance for the Court and prevent it from addressing borderline cases.
- Current text retains new definitional layer.

Role of Security Council

- States parties still in disagreement over role of UN SC which under the UN Charter has the power to determine matters relating to acts of aggression.
- P 5 Members consistently took position that determination of aggression belonged exclusively to the Security Council.

Article 15 bis

Exercise of jurisdiction over the crime of aggression

- 1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, subject to the provisions of this article.
- 2. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first

ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

- 3. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.
- 4. **(Alternative 1)** In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression,
 - **Option 1 – end the paragraph here.**
 - **Option 2 – add:** unless the Security Council has, in a resolution adopted under Chapter VII of the Charter of the United Nations, requested the Prosecutor to proceed with the investigation in respect of a crime of aggression.
- 4. **(Alternative 2)** Where no such determination is made within [6] months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression,
 - **Option 1 – end the paragraph here.**
 - **Option 2 – add:** provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15;
 - **Option 3 – add: provided that the General Assembly has determined that an act of aggression has** been committed by the State referred to in article 8 bis;
 - **Option 4 – add: provided that the International Court of Justice has determined that an act of** aggression has been committed by the State referred to in article 8 bis.
- 5. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.
- 6. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

Individual Criminal Responsibility

Art. 25

- *The following text is inserted after article 25, paragraph 3 of the Statute:*
- **3 bis. In respect of the crime of aggression, the provisions of this article shall apply only to persons** in a position effectively to exercise control over or to direct the political or military action of a State.



Activation of ICC's subject matter jurisdiction on aggression with respect to UN Security Council referrals

- After adoption of the relevant amendments by the Review Conference or
- After their entry into force or
- The Security Council referral which may include the crime of aggression does not depend on the consent of the State concerned, as was the case with any other SC referral.

Proposals in non-paper

- Implications of article 121, paragraph 5, second sentence, for State referrals and *proprio motu* investigations. There was a strong view that the application of article 121, paragraph 5, second sentence, should not lead to differential treatment between non-States Parties and States Parties that have not accepted the amendment on aggression.

The leadership crime of aggression and territoriality

- Broad support was expressed for the view that “concurrent jurisdiction arises where the perpetrator acts in one State and the consequences are felt in another”. In the non-paper, following formulation was proposed:
- *It is understood that the notion of “conduct” in article 12, paragraph 2 (a), of the Statute encompasses both the conduct in question and its consequence.*

Proposals introduced by Belgium

- Add to article 8, paragraph 2, e), the following: xvii) Employing poison or poisoned weapons;
- xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- The use of the weapons listed in this draft amendment is already incriminated by article 8, paragraph 2, b), xvii) to xix) of the Statute in case of an international armed conflict.
- This amendment extends the jurisdiction of the Court for these crimes in case of an armed conflict not of an international character (article 8, paragraph 2, e).

Topics for stocktaking

- a) Complementarity
- b) Cooperation

- c) The impact of the Rome Statute system on victims and affected communities
- d) Peace and justice

Discussion

While answering a question **Mr. YSR Murthy** said that the only acts committed after 1 July 2002 (from the date of coming into force of the ICC) could be tried before the ICC. He further replied that war crimes could be dealt with national procedures. He pointed out that if a national system is unwilling or unable to do it, then it creates a problem. About the crime of aggression, he said, there are a few live examples, like bombardment, attack, etc which go against the UN Charter.

Another delegate asked that in the absence of Security Council's resolution, if there is an aggression, how could prosecution proceed. In reply **Mr. Murthy** said that the Security Council could refer a situation to ICC. One of the options is that when the UN Security Council makes a determination that crime of aggression has occurred, it is straight-forward and the Prosecutor could proceed. However, where the UN Security Council does not make, but it makes referral to the ICC. That is one option. He further mentioned that most of the options are not accepted to the international human rights groups, like Amnesty International feel that the Court is a legal body and its effectiveness should not be limited to, because it is supposed to be independent.

Another delegate observed that the *proprio motu* powers of the Prosecutor, have been criticized to a great deal. This use of power has been criticized for partially initiating prosecution particularly in Africa and most of the accused from Africa and some countries also gone to the extent of saying why not have regional ICCs.

Mr. Murthy replied that if the ICC power is only left with State party referral, it would not work out because, in most of the crimes which have occurred world over, States themselves were responsible. They committed atrocities on their own population and they would not refer the matter to the ICC, he added. He said that certain safeguards are provided for politically inspired prosecutions. He mentioned that there were some conditions, such as Prosecutor has to take approval from the Pre-trial Chamber, then only he could proceed. Keeping in view the pre-conditions, he said that having a *proprio motu* powers for the Prosecutor is a good feature, in the Rome Statute. So far, there was no evidence on the claim that it could lead to selective prosecutions and on the other hand, it also enables individuals and NGO's to approach prosecutor with details and to trigger the court mechanism.



Lunch Break

The Chairperson invited **Mr. Len Blazeby** to speak on implementation of the ICC Statute. He said that States have the obligation to search for those who have alleged to have committed grave breaches and bring them before or extradite them for trial. The obligation to prosecute grave breaches is recognized and reflected in the ICC Statute under the principle of complementarity. He said that the Geneva Conventions expressly say that these grave breaches must be prosecuted.

He further pointed out that the ICC has jurisdiction over genocide, war crimes, crimes against humanity and eventually aggression. There is no requirement under the ICC Statute that the States should enact implementing legislation for these crimes. However, the Court could very well determine that it has jurisdiction over a case under the complementarity principle, because the absence of domestic law could be seen by the Court as the inability for the State to prosecute, he emphasized. So, it is one reason for States to ensure that they have either an ICC Act or otherwise the ability to prosecute war crimes, he observed. So, most States who have done the implementation of the Statute have provided the domestic prosecution of the crimes. War crimes are defined in the Statute as grave breaches of the Geneva Conventions and serious violations of either common Article 3 or of the laws applicable either in international or non-international armed conflict.

He further observed that Article 8 (a) and 8 (b) are the grave breach provisions and the others are the serious violations provisions. He said that there are some gaps in the Statute and referred to the act of willful launching of attacks against works or installation containing dangerous forces and said that this does not appear in the ICC Statute.

There are others offences like the crime of apartheid, which is a grave breach again under Additional Protocol I of the Geneva Conventions, but which does not appear as a war crime or as crimes against humanity in the ICC Statute. Those are cases of serious violations of the laws applicable in armed conflict but some of those are not included in the ICC Statute, he mentioned. He further gave a list for such examples.

As far as prosecution is concerned, he observed that one has to ensure that prosecution should also point those who are indirectly responsible for making offences. Therefore, that means the concept of superior orders and command responsibility in the statute, he added. The other issue is the temporal jurisdiction

is of whether prospective or retrospective nature. He said that there is an argument for retrospective jurisdiction based on Article 15 (2) of ICCPR that allowed the trial for committing of an act which is criminal according to the general principles of international law recognized by the UN. He said that the core crimes within the ICC statute could be seen as falling under the category of these crimes as outlined in Article 15 (2). Therefore, retrospective jurisdiction would be permissible, he observed.

He said that the ICC is not explicit but there is a strong argument for providing universal jurisdiction for the crimes under the ICC into domestic law. He observed that grave breaches provide obligation requiring States to search for and initiate proceedings against the suspected offenders regardless of their nationality or where the offence was committed. It is logical therefore, he mentioned, when dealing with grave breaches whether it is within ICC or otherwise, the universal jurisdiction pertains to anything which is a grave breach.

He noted that the same logic would extend to the jurisdiction for the war crimes other than grave breaches which appear in the crimes. Therefore, there is an increasing body of State practice, he observed. Academic opinion, reference in IHL treaties supports the view that the form of extraterritorial jurisdiction including universal jurisdiction is not only permitted but required to check certain international crimes. It could be argued that it is not only for the case of war crimes, but also for crimes against humanity and genocide, he emphasized. As a result of this, States have not limited themselves to the crimes that were reflected in the Statute and have added other crimes to the ICC law. He further pointed about the elements of crimes document which runs along side with ICC Statute which lists what is required as an element of each of the acts.

He said that IHL crimes under domestic law also provide for judicial guarantees, by way of appeals, representation of accused etc. He said that Some States have made both Geneva Conventions Act and the ICC Statute Act. In terms of jurisdiction and in terms of the acts covered, these both should not be in conflict.

At the end he observed that grave breaches and other violations under the Geneva Conventions and Additional Protocols need to be implemented. It is an obligation for all the States to ensure that they are in domestic law. The ICC Statute does not make such a requirement about war crimes, but these are already obligations under the Geneva Conventions. Therefore, because it is an obligation and countries need to ensure that they are in their domestic law. For this, there are



various ways and it can be done either by having Geneva Conventions Act in one place and ICC Act in another or to ensure that one Act puts them all in one place.

The Chairperson invited **Syed Muntasir Mamun** to speak on IHL and Peacekeeping Operations followed by **Brigadier General Qazi Abidus Samad**, who spoke on military aspects of UN Peacekeeping forces.

Syed Muntasir Mamun made the following presentation.

Significance

- Changing state system (reversion from post-Westphalian republican paradigm ???)
- Supremacy of Supra-national entities and systems
- Precedence of multinational/transnational/multilateral legal instruments/ obligations over domestic percussions

Concept of Peacekeeping

United Nations, defines Peacekeeping as “a way to help countries torn by conflict create conditions for sustainable peace”

The United Nations itself was established to “save succeeding generations from the scourge of war”

Conceptual Cornerstones

- The Charter
 - Chapter VI: “Pacific Settlement of Disputes”
 - Chapter VII: “(Enforcement) Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression” (Art. 39, 40, 42, 42 and 48)
 - Chapter VIII : “Involvement of regional arrangements and agencies in the maintenance of international peace and security, provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter”
- Uniting for Peace Resolution (1950): General Assembly resolution 377 (V) of 3 November 1950

Evolution of Peacekeeping

First-pitch

- Consent of the parties
- Impartiality
- Non-use of force except in self-defence and defence of the mandate

Terminological Sequence

Peacekeeping
Peacemaking
Peace Enforcement
Peace Building
From Doctrine Stabilization
To Doctrine Command
Into Doctrine Projection

Fact-sheet

Peacekeeping Operations since 1948: 63

Current Peacekeeping Operations: 16

Current peace operations directed and supported by the Department of Peacekeeping Operations: 19

Uniformed personnel* = 88,754 (UN Volunteers* = 2,044)

(Including 74,656 troops; 11,529 police and 2,596 military observers)

Countries contributing uniformed personnel = 119

International civilian personnel* (30 August 2008) = 5,542

Local civilian personnel* (30 August 2008) = 13,106

Total number of personnel serving in 16 peacekeeping operations* = 109,107

(*Numbers include 16 peacekeeping operations only)

Total number of personnel serving in 19 DPKO-led peace operations** = 111,612

(**This figure includes the total number of uniformed and civilian personnel serving in 16 peacekeeping operations and three DPKO-led special political and/or peacebuilding missions—UNAMA, UNIOSIL and BINUB.)

Total number of fatalities in peace operations since 1948*** = 2,518

(***Includes fatalities for all UN peace operations.)

Approved budgets for the period from 1 July 2008 to 30 June 2009 = About \$7.1 billion****

(****Includes requirements for the support account for peacekeeping operations and the UN Logistics Base in Brindisi (Italy).)

Estimated total cost of operations from 1948 to 30 June 2008 = About \$54 billion

Outstanding contributions to peacekeeping (31 May 2008) = About \$1.8 billion

Core Functions of UN PKO

- a) Create a secure and stable environment while strengthening the State's ability to provide security, with full respect for the rule of law and human rights;
- b) Facilitate the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance;



- c) Provide a framework for ensuring that all United Nations and other international actors pursue their activities at the country-level in a coherent and coordinated manner.

Conditions for Sustainable Peace...

Four critical areas :

- a) Restoring the State's ability to provide security and maintain public order;
- b) Strengthening the rule of law and respect for human rights;
- c) Support Core Functions of UN PKO including the emergence of legitimate political institutions and participatory processes;
- d) Promoting social and economic recovery and development, including the safe return or resettlement of internally displaced persons and refugees uprooted by conflict.

From PKO to Peacebuilding

Critical peacebuilding activities:

- Disarmament, demobilization and reintegration (DDR) of combatants;
- Mine action;
- Security Sector Reform (SSR) and other rule of law-related activities;
- Protection and promotion of human rights;
- Electoral assistance;
- Support to the restoration and extension of State authority.

Challenge Spectrum

Administrative

Personnel

Finding, Training, Retaining

The need to restore basic services and government

Law and order

Elections and restoration of democracy

Security

Collective action

HIV/AIDS

Sexual Exploitation

Human Rights Abuse

Human Trafficking / Smuggling

Women (in deployment)

Cooperation with Other Organizations

Legal Evolution of UN Peacekeeping

First generation or traditional

Invented during the Suez Crisis by Prime Minister Lester B. Pearson, the President of the General Assembly at that time, Secretary-General Dag Hammarskjöld and Under-Secretary-General Ralph Bunche when the United Nations Emergency Force (UNEF I) was established by the General Assembly
Dag Hammarskjöld referred to this UN effort as the mythical 'chapter VI and a half'

Second generation or multi-dimensional

Election monitoring, demobilisation and reintegration of former combatants, human rights monitoring, partial civil administration or mine clearance... often consisting of a military component, civilian experts and civilian police.

E.g.: UN Transition Assistance Group in Namibia (UNTAG, 1989-90), the United Nations Transitional Authority in Cambodia (UNTAC, 1992-93) and the UN Observer Mission in El Salvador (ONUSAL, 1991-95)

Still based on the consent of the parties

Third Generation

Combines military and humanitarian components... called robust, enlarged, quasi-enforcement peacekeeping or muscular peacekeeping .

E.g.: the United Nations Operation in Somalia II (UNOSOM II, 1992-94) and the United Nations Protection Force in the Former Yugoslavia (UNPROFOR, 1992-95) .

Authorised to take enforcement actions under chapter VII of the UN Charter and are no longer based on the consent of the parties to the conflict. However, before deciding on an enforcement action, the Security Council is obliged to determine the existence of 'any threat to peace, breach of the peace, or act of aggression' under article 39 of the Charter

Fourth Generation

E.g.: the United Nations Transitional Administration in East Timor (UNTAET, 1999-2002) and the United Nations Interim Administration in Kosovo (UNMIK, 1999-to date)

Chapter VII : Art 41: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decision, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

Chapter VII : Art 42

a variety of new mechanisms under chapter VII like the subsidiary organs (the UN Boundary Commission, the United Nations Special Commission and the United Nations Compensation Commission) created pursuant to Security Council resolution 687 (1991) which Iraq had to accept to end the second Gulf War, as well as the establishment of International Criminal Tribunal for the Former Yugoslavia (ICTY) by resolution 827 (1993) and the International Tribunal for Rwanda (ICTR) by resolution 955 (1994). Further support can be found in the decision of the Appeals Chamber of the International Tribunal for the Former Yugoslavia in the Tadic Case

Peacekeeping-Post-Brahimi

Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305-S/2000/809, 21 August 2000

The rationale for the traditional concept of peacekeeping was explained by UN Secretary-General Boutros Boutros-Ghali in the 'Supplement to the Agenda for Peace' of 1995, where he argued that 'the logic of peacekeeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel'.

However, after the experience in Srebrenica and Rwanda, Secretary-General Kofi Annan in 1998 stated that 'we learned, the hard way, that lightly armed troops in white vehicles and blue helmets are not the solution to every conflict. Sometimes peace has to be made – or enforced – before it can be kept'.

Panel recommends that 'rules of engagement should not limit contingents to stroke-for-stroke response but should allow ripostes sufficient to silence a deadly force that is directed at United Nations troops or the people they are charged to protect and in particularly dangerous situations, should not force United Nations contingents to cede the initiatives to the attackers'.

-However, 'mandates should specify an operation's authority to use force'.

The Panel on United Nations Peace Operations defines impartiality no longer as the equal treatment of the parties to a conflict under all circumstances but as 'adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles'.

IHL for Peacekeepers

Principles of IHL

1. Prevention of unnecessary suffering (Originating in 1874 it was passed on through the Hague Conventions of 1899 and 1907 to Additional Protocol I of 1977)
2. Military necessity (Article 52(2), Additional Protocol I of 1977; objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage)
3. Proportionality (Article 51(5)(b) Additional Protocol I of 1977)
4. Distinction (Article 52(2) Additional Protocol I of 1977)

Theoretical Debate over IHL for Peacekeeping Forces

The question of the applicability of IHL to the Peacekeeping Forces has two aspects:

- (a) The respect for IHL shown by these forces; and
- (b) The part they can play in ensuring respect for the law.

If IHL is applicable, is it from the perspective of:

- (a) International Armed Conflict (IAC) – full board
- (b) Non-International Armed Conflict (NIAC) – Common Article 3 to all 4GCs

The legal texts go a long way towards accepting the applicability of the law of international armed conflict.

First, the 1999 Bulletin of the UN Secretary-General on "Observance by United Nations forces of international humanitarian law" is also applicable to peacekeeping forces, and the rules it lays down are based on the law of international armed conflict.

Second, Article 2.2 of the UN Convention on the Safety of United Nations and Associated Personnel (1994) provides that: "This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies."



Codes of Conduct in Peacekeeping and International Humanitarian Law

Some remarkable documents:

- 1994 Convention on the “Safety of United Nations and Associated Personnel”
- Security Council resolution 1325 (2000) on women, peace and security
- Security Council resolution 1612 (2005) on children and armed conflict
- Security Council resolution 1674 (2006) on the protection of civilians in armed conflict

Two key documents:

- Secretary-General's Bulletin, ST/SGB/1999/13, 6 August 1999 (effective: 12 August 1999)
- Capstone Doctrine (January 2008)

Brigadier General Qazi Abidus Samad made the following presentation.

Brigadier General Qazi Abidus Samad said that UN Peacekeeping has never been as large, complex and demanding as it is today. As of now 117,000 peacekeepers are deployed across the globe, where Bangladesh has consistently been one of the most significant and frontline troops and police contributing countries. As of now, we are the second largest troops contributing country.

Peace Support Operations (PSO) are multi-functional operations conducted impartially in support of a UN mandate, involving military forces and diplomatic and humanitarian agencies. They are designed to achieve a long-term political settlement or other conditions specified in the mandate. They include peacekeeping and peace enforcement as well as conflict prevention, peace making, peace building and humanitarian operations. Over the years, UN peacekeeping has evolved to meet the demands of different conflicts and changing political landscapes. In addition to military functions, today's UN peacekeeping undertakes a wide gamut of other complex tasks. Peacekeepers now are administrators and economists, police officers and legal experts, deminers and electoral observers, human rights monitors and specialists in civil affairs, gender, governance, humanitarian workers and experts in communications and public information. UN peacekeeping continues to evolve, rising to meet new challenges and political realities. The characteristic of Peacekeeping Forces (PKFs) which directly raises the question of applicability of International Humanitarian Law (IHL) is that its members are armed. The question of the applicability of IHL to PKFs thus has two aspects: first, the respect for IHL shown by these forces; and secondly, the part they can play in ensuring respect for the law.

Bangladesh has participated in 45 UN missions, which includes 30 completed missions and 11 ongoing ones. So far 82,099 peacekeepers from Bangladesh have completed UN Missions and 10,431 peacekeepers are currently deployed, which includes the members from both the Bangladesh Armed Forces and the Police. Bangladesh has come a long way in the pursuit of peacekeeping, where they had spectacular success, built tremendous capability in different fields and served humanity in distant corners as a force reckonable. Besides our success stories, there were also occasions where they faced debacles, suffered casualties, identified their own weaknesses and took resolve for future improvement.

Aim

To highlight the implementation of International Humanitarian Law (Laws of War) in United Nations Peace Support Operations in a Bangladesh perspective.

Scope

- a. Growing Complexity of Armed Conflicts and the Law governing them.
- b. The UN Human Rights Treaties.
- c. Observance of IHL in UN Environment- a Bangladesh Perspective.
- d. Some Success Stories Because of Humanitarian Concern.
- e. Humanitarian Activities besides the UN Mandates.
- f. Adherence to the International Humanitarian Law.

Growing Complexity of Armed Conflicts and the Law Governing them

Armed conflicts in modern times are becoming more and more complex. The once classic distinction between international and non-international wars is increasingly getting blurred. Technical developments in weapons continue to advance and their destructive power, their sophistication, velocity and range have not ceased to grow.

Only a hundred years ago, fighting took place exclusively between soldiers and did not affect civilians as much, apart from the very few who had the misfortune to be near a battlefield. But since then, and especially since the Second World War, civilian casualties have increasingly outnumbered military. A natural sequence to the development of the methods and means employed in war, has been that the law of armed conflicts has also continued to grow in complexity. The First Geneva Convention concluded in 1864 was clear and succinct which set forth the basic principles of equal treatment of the wounded, irrespective of whether they were friend or foe, of the right of civilians to treat wounded soldiers, of the neutrality of military medical services and of the distinctive sign of the red cross. Since that

time, several sets of Geneva and Hague conventions have been drawn up. The provisions concerning the conduct of hostilities were drafted in 1907, while the rules for the benefit of the victims of hostilities contained in the Geneva conventions, were revised in 1949 and were based on the experience derived from the second world war, as also was the 1954 Hague convention for the protection of cultural property.

The conventions, being so widely separated in time, bear the marks of their epoch. Terminologies and definitions have also undergone sea change. For instance, in 1907 one still spoke of "undefended towns, villages, dwellings, or buildings", referring to difference, between towns surrounded by fortifications recognizable as such from afar, and open localities which were neither fortified nor defended. Today, the more usual terms are "military objective" and "non-military or civilian object". It is therefore necessary to know the modern meanings of expressions of an earlier period. The new conventions are, moreover, much more detailed. They still state a considerable number of essential principles, but the provisions in respect of particular cases are much more numerous. It has become difficult to pick out the more significant clauses among the six hundred articles (not to mention the annexes) of the main conventions still in force.

UN Human Rights Treaties

The UN human rights treaties are at the core of the international system for the promotion and protection of human rights. Every UN member state is a party to one or more of the eight major human rights treaties. It is a universal human rights legal system, which applies to virtually every child, woman or man in the world. Acting for the protection of man in time of armed conflict, accords with the aims of the United Nations, no less than does the maintenance of international peace and security. The Organization showed its concern in two main ways: first, by its participation in the process of reaffirming and developing international humanitarian law; secondly, by its resolutions on the applicability of humanitarian law and requiring its application to given situations or categories of persons, and also by issuing reports evaluating the application and respect of that law. The United Nations actions to which Article 89 refers, may therefore consist of issuing an appeal to respect humanitarian law, just as well as, for example, setting up enquiries on compliance with the Conventions and the Protocol.

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 sets out a list of fundamental principles and rules of humanitarian law. These principles 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. The obligation for UN forces to respect these fundamental principles and rules has also been included in the most recent agreements, concluded between the United Nations and the countries in whose territory UN troops are deployed.

Observance of IHL in a UN Environment-Bangladesh Perspective

In considering the applicability of humanitarian law to UN operations, a number of questions arise for consideration. First, what international law applies to the conflict or situation in the country, where the UN force is deployed? Second, what international law regulates the conduct of the UN force itself and how is this determined? And third, what can or should the UN force do, when it becomes aware that parties in the country where it is deployed are violating applicable international law? (The answer to these questions will be dependent partially, on the mandate of the force.) The question may also be posed, as to whether there is any useful purpose served, in applying humanitarian law to peacekeeping and similar forces, whose mission is to restore, or maintain a peaceful environment in a crisis area? And if these principles of law have a role, how can this be evaluated and improved, to make it an accepted part of the conduct of all those either international or non-international in character. The answer to these questions is of direct relevance to Bangladeshi Peacekeepers, as it will determine the standards, that they will be required to uphold, in order to comply with the relevant international obligations.

Bangladesh is a peace-loving country. Being one of the key exponents of United Nations, Bangladesh is always committed to establish and maintain peace and stability in conflict-ridden areas around the globe, under the auspices of UN. Presently Bangladesh has stepped into the 22nd year of its participation in the noble task of promoting global peace. Since 1988 Bangladesh is participating in the UN under clause 25 of our Constitution for International Peace, Security and Solidarity. The journey began by sending 15 UNMOs in UNIIMOG (Iran-Iraq) in 1988. Since then Bangladeshi peacekeepers have successfully proved their credibility under trying conditions. This is well recognized and appreciated by United Nations and international community. Bangladesh Military being one of

the key stakeholders, always maintained the International Humanitarian Law under UN mandates, which led to a great success. Some of the examples are:

Some Success Stories

UNOSOM (Somalia). The Bangladesh Government deployed peacekeepers to Somalia, UNOSOM in June 1992 and two contingents successively participated in the UNPKO in this impoverished African country in 1993-1995. In addition to Bangladesh, 15 other countries also sent their peacekeepers to Somalia. The situation became complex and volatile with the vengeance of the Somalis to eliminate other conflicting parties, as well as those peacekeepers who were considered unfriendly. The constant mistrust between the United Nations forces and the parties in conflict created an uncertain situation about the fate of the mission. Relatively, Bangladeshi peacekeepers were more acceptable to the Somalis due to the appropriate conduct of our commanders and members of the contingent. In a volatile and complex situation in Somalia in 1993, many peacekeepers were killed and the fate of the mission became uncertain. In such a challenging environment, European and American forces decided to withdraw. But Bangladesh contingents, displaying their courage and determination continued to do their duties till the closer of Somalia mission, having ensured safe passage for other United Nations contingents.

UNAMSIL (Sierra Leone). In 1999, when the mission in Sierra Leone was at its lowest ebb and India and Jordan had decided to withdraw their troops, it was Bangladesh's commitment to the United Nations, which helped UNAMSIL to flourish once again. Bangladesh contingents were the pioneers in taking full control of rebel (RUF) held territories of KONO, MEKINI, MAGBURAKA, MILE 91, LUNSAR and KOINADUGU. The overwhelming influence of our peace operations in Sierra Leone was followed up by the visit of its President later to Bangladesh to pay his gratitude.

MONUC (Congo). In a sudden twist of events, more than 10,000 lives perished in a span of months in early 2003 in the Ituri Region of North-eastern DRC, Congo. Bangladesh responded instantaneously to the call of United Nations and deployed a Task Force in MONUC. It led the deployment of United Nations troops in the region and assumed responsibility from the French led International Emergency Multi-national Force (IEMF). Subsequently, Bangladesh Task Force prepared the ground for the deployment of the presently deployed multinational brigade. Henceforth, Bangladeshi peacekeepers participated in many successful

joint operations. It may be mentioned that the largest joint operations of the United Nations history was in Congo under the leadership of a Bangladeshi Commander, where more than a division size force including Bangladeshi peacekeepers, after conducting 50 kilometer approach march, attacked and captured 200 square kilometer objective area supported by air and naval components. As a result, 15,000 militias surrendered with 7,000 weapons and 600,000 ammunitions and explosives. Today, peace in the region is truly in sight.

Humanitarian Activities besides the UN Mandates

Our Peacekeepers have their mark of achievements not only by fulfilling the UN mandate under Chapter VI and VII, but also pursuing a high standard of humanitarian activities in the mission areas of the war torn countries. Some of the programmes are highlighted:

- Medical Outreach Programme.
- Renovation of old buildings, shelters, schools, playground etc.
- Agro base programme.
- Distribution of drinking water.
- Build up new schools, infrastructures etc.
- Construction of roads and tracks.

Adherence to the International Humanitarian Law

Peacekeeping Operation is no more a simple task as it was in 1948. Now, it is divided into various phases such as conflict prevention, peacemaking, peacekeeping, peace enforcement and peace-building with the boundaries between them have become increasingly blurred. Because of changing nature of conflicts over the years, UN peacekeeping operation originally designed as a means for dealing with inter-state conflict, has been increasingly applied to intra-state conflicts and civil wars. In dealing with the increasing challenges of present day peace keeping, Bangladesh Military strictly follows the issues described below:

- a. The Armed Forces Personnel strictly abide by the mandate.
- b. All are respectful to the human rights.
- c. Dedicated to the service of the humanity despite of race, religion, colours etc.
- d. Maintain a high standard of impartiality.
- e. Our employment in Humanitarian Operations within the country proved vital in yielding positive results in all our operations around the globe.



- f. Institutional training in Bangladesh Institution of Peace Support Operation Training (BIPSOT) has been instrumental. All officers and men are well trained in BIPSOT about the humanitarian law, conduct, mandate, culture and human rights.
- g. Our socio-religious background also helps us in maintaining high standard so far it relates to human rights and humanitarian law.
- h. Strict compliance of Military Law also restricts the Armed Forces personnel from violating humanitarian law, human rights and mandates.

While concluding his presentation he said that Bangladesh understands the competitiveness and the challenges that accompany today's PKOs. Being a major TCC and PCC, Bangladesh gives due emphasis on her preparation in undertaking PKOs. In many cases, we could successfully offset inadequacy of resources with the experience and expertise in PKOs effectively. We feel proud for the global reorganization secured through our contribution and sacrifices made for world peace. The status of a leading developing country and our experience on PKOs gives us an inbuilt advantage in undertaking PKOs instantly anywhere in the world. Bangladesh Military is motivated to continue in pursuing our aim with utmost dedication and sincerity to keep our mark in promoting international peace and security by training the peacekeepers.

Coffee Break

Brigadier General Qazi Abidus Samad from Bangladesh was in the Chair. He invited Mr. **Dominique Loye**, Deputy Head of Arms Unit of the ICRC, Geneva, to speak on the topic 'Current Issues related to Conventional Weapons and IHL'.

Mr. Dominique Loye made the following presentation (from a Wound ballistics DVD)

OVERVIEW

Implementing and operationalizing Protocol V to the CCW

Cluster Munitions

Towards an Arms Trade Treaty

Wound Ballistics DVD

IMPLEMENTING AND OPERATIONALIZING PROTOCOL V ON EXPLOSIVE REMNANTS OF WAR

- explosive munitions fail to function as intended shells, grenades, bombs, ...

used or fired

left behind on the battlefield

- a war is over, but civilians continue to be threatened by unexploded munitions
- "risk reduction tool" for past and future armed conflicts

Protocol V on ERW

- adopted in December 2003
- 63 States Parties
- India and Pakistan are States Parties
- 7 countries affected by ERW

Protocol V on ERW – Core provisions

- Clearance of ERW (art. 3)
 - survey of the problem
 - prioritization of needs
 - marking
 - clearance
- Recording, retaining and transmission of information (art. 4)

Protocol V on ERW – Core provisions

- Assistance with respect to existing ERW (art. 7)
- Co-operation and assistance (art. 8)
- Generic preventive measures (art. 9)
- informal meetings of experts on:
 - clearance
 - generic preventive measures
 - reporting
 - requests for assistance
 -
- Important issues of implementation at national level related to articles 3 and 4

- Recording and retaining of information (art. 4 (1))

a Party to a conflict shall to the maximum extent possible and as far as practicable record and retain information on the use of explosive ordnance...

How will that be done "in the field"?

What are the difficulties to do it?

Where is the information stored?



At what level?

How is it centralized?

Information transfer

Article 4 (2): subject to the Party legitimate security interests it shall make available such information to the party in control of the affected area,... or to other relevant organizations.

How will it be made available?

How would demining agencies like to receive it?

What are the difficulties to do it?

"User" assistance

Article 3 (1):... where the user does not exercise control of the affected territory it shall provide where feasible *inter alia* technical, financial, material or human resources assistance.

What kind of resources could be available?

What can be expected realistically?

In which timeframe can it happen?

All these questions should be addressed at national level during peacetime!

- military manuals / procedures should be adapted
- military training should be adapted

CLUSTER MUNITIONS

- The humanitarian problem
- Solutions to this problem
- Convention on Cluster Munitions
- Negotiations in the framework of the Convention on Certain Conventional Weapons

Cluster Munitions- The humanitarian problem

- 20 countries affected
 - Afghanistan
 - Laos
 - Lebanon
- billions of stockpiled submunitions
 - most are old and unreliable
- wide area effects and high numbers

- huge humanitarian problems when used against military objectives near or in populated areas
- ICRC call to prohibit unreliable and inaccurate cluster munitions

Cluster Munitions – Solutions to the problem

Convention on Cluster Munitions prohibits the use, development, production, acquisition, stockpiling, retention and transfer of cluster munitions and assistance to anyone to do the above.

Convention on Cluster Munitions - Definitions

- The "excluded" cluster munitions (including their submunitions) address
 - the numbers
less than ten
 - the accuracy
designed to detect and engage a single target object
 - the reliability
equipped with an electronic self-destruction mechanism
equipped with an electronic self-deactivating feature

Convention on Cluster Munitions

- Stockpile destruction (art. 3)
within 8 years
- Clearance (art. 4)
within 10 years
- Victim assistance (art. 5)
- International cooperation and assistance (art. 6)
- National implementation measures (art. 9)
- Provides a response to the humanitarian problems caused by the use of cluster munitions
- Prevents in an efficient manner the occurrence of future similar humanitarian problems

27 States Parties

104 Signatories

end of 2010 1st Meeting of States Parties in Laos

Cluster Munitions – Solutions to the problem

Negotiations in the framework of the Convention on Certain Conventional Weapons



CCW negotiations on Cluster Munitions

- Important military powers are part of CCW
- It could adopt complementary measures
- but while taking into account military and national security aspects it has to respond to the humanitarian problem

Current draft text

- does not provide a response to the humanitarian problem
- technical solutions
- vague and undefined terms used
- unreliable solutions proposed
- issue of high numbers not addressed
- very long transition periods
- would "legalize" a weapon already prohibited in another IHL treaty

TOWARDS AN ARMS TRADE TREATY

UN GA Resolution of 2009

- decides to convene a Conference in 2012 to elaborate a legally binding instrument
- 2010 + 2011 : open-ended working groups as a preparatory committee
- An issue for IHL?
Unregulated availability of weapons
facilitates violations of IHL
hampers the delivery of assistance to victims
- Users of weapons should
be trained
be disciplined
employ their arms in accordance with IHL

Scope of an ATT should be large

- all conventional weapons and their ammunition
- transit, trans-shipment to be included
- State and broker activities
- Transfer decisions assessment
- "Respect for IHL" should be one of the fundamental criteria

"Measuring" recipient's likely respect for IHL

- past and present record of IHL respect ?
- recipient's intentions as expressed through formal commitments ?

- legal, judicial and administrative measures in place ?
- programs of IHL disseminations and integration ?

WOUND BALLISTICS

- Interaction of bullets and fragments with human tissue
to treat of wounded people
to implement or develop IHL in relation to weapons



Closing Session

Ms. Rumana Binte Masud, *ICRC Dhaka*, welcomed all and gave the brief overview of the Conference. She specially welcomed Hon'ble Minister for law, **Barrister Shafique Ahmed**, *Minister of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh* as the chief guest. She further invited Mr. Christopher Harland, *Regional Legal Adviser for South Asia from ICRC, New Delhi* to share the outcome of the Conference.

Outcome of the Conference

Mr. Christopher Harland presented a brief outcome of the Conference. He mentioned the topics that were discussed in the Conference and pointed out the need for encouraging States in the region to adopt more IHL treaties and conventions. He highlighted some of the important recent developments in respect of IHL that took place in the South Asian region. He mentioned the progress that Afghanistan and Bhutan made in respect of the Additional Protocols to the Geneva Conventions and the Child soldiers Protocol respectively. He also mentioned the Maldivian Act on the Maldivian Red Crescent Society.

Concluding Remarks

Hon'ble Minister **Barrister Shafique Ahmed**, *Minister of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh* expressed his pleasure to be there in the concluding ceremony. He mentioned the atrocities committed during both the World Wars and the concurrent developments in IHL as a part of international law. He said that the four Conventions and the Protocols open the path to the civilized world to think and make permanent solution to the problems that are emerge from the armed conflict. He pointed out the problem of implementation and execution of IHL treaties. He acknowledged, with full gratitude, the role played by the ICRC during Bangladesh liberation war.

Vote of Thanks

Mr. Christoph Vogt, *Head of Mission Dhaka*, delivered vote of thanks to all. He thanked all on behalf of ICRC and hoped that the Second South Asian Humanitarian Law Conference would definitely help the respective countries to make progress on the related issues. He commended the hard work of the participants that continued for more than three days and wished all of them a happy course ahead.

ANNEX-I**Second South Asian Conference on International Humanitarian Law
14th - 18th February 2010, Dhaka, Bangladesh****LIST OF PARTICIPANTS**

	Country	Representatives	Address
1.	Afghanistan	Mr. Mir Ahmad Joyenda	Member of International Relations Commission, National Assembly (Parliament), Afghanistan
		Ms. Abeda Osman	Director, Human Rights and Women International Affairs, Ministry of Foreign Affairs, Afghanistan
2.	Bangladesh	Ms. Tarana Halim	Member of Parliament, Bangladesh
		Brig Gen Qazi Abidus Samad, ndc,psc	Director of Operations and Plan, Bangladesh
		Ms. Salma Benthe Kadir	Joint Secretary, Legislative and Parliamentary Affairs, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh
		Mr. Sayed Muntasir Mamun	Sr. Assistant Secretary, SSP, P&O and Rules, Ministry of Foreign Affairs, Bangladesh
3.	Bhutan	Mr. Ugyen Wangdi	Member of Parliament, Bhutan
		Major Tshewang Rinzin	Royal Bhutan Police, Thimphu, Bhutan
		Mr Namgay Dorji	Legal Officer, Bureau of Law and Order, Ministry of Home and Cultural Affairs, Bhutan
		Mr Karma Dorji	Registrar, Thimphu District Court, Royal Court of Justice, Bhutan

Country	Representatives	Address
	Mr Chitem Tenzin	Chief of Division, Ministry of Foreign Affairs, Bhutan
4. Iran, Islamic Republic of	Dr Said Mansouri	Head of the Secretariat of the Iranian National Humanitarian Law Committee, Iran
	Mr Taghi Mohammad Pour Ferami	Expert on Disarmament and International Issues, Ministry of Foreign Affairs, Iran
	Dr Reza Mousazadeh	Deputy of the MFA School of International Relations, Iran
5. Maldives	Uz. Ahmed Rasheed	Member, Judicial Service Commission, Maldives
	Captain Ismail Waheed	Maldives National Defence Force, Maldives
	Mr Ali Shujau	Assistant Director, Ministry of Foreign Affairs, Maldives
6. Myanmar	Mr Kyaw Swe Tint	Director, International Organisations Division, International Organisations and Economic Department, Ministry of Foreign Affairs, Myanmar
	Mr Moe Kyaw Aung	Deputy Director, International Organisations Division, International Organisations and Economic Department, Ministry of Foreign Affairs, Myanmar
	Mr Ko Ko Oo	District Judge, Kawkareik District Court, Supreme Court, Myanmar

Country	Representatives	Address
	Mr Kyaw Kyaw Naing	Assistant Director, Legal Advice Department, Office of the Attorney General, Myanmar
7. Nepal	Mr Jhaindra Prasad	Guragain Section Officer, Human Rights Promotion Section, Office of the Prime Minister and Council of Ministers, Nepal
	Brigadier General Nirendra Prasad Aryal	Director, Human Rights Directorate, Nepal Army, Nepal
	Mr Ramji Danai	Section Officer, Ministry of Law and Justice, Nepal
8. Sri Lanka	Mr Ravindran Arunthavanathan	Additional Secretary, Ministry of Defence, Public Security, Law and Order, Sri Lanka
	Ms Dayani Sumithra Panagoda	Consultant on Reintegration of Ex-Combatants into Civilian life in Sri Lanka, Ministry of Human Rights and Disaster Management, Nugegoda, Sri Lanka
	Mr Abdul Hameed Mohamed Dhilip Nawaz	Senior State Counsel, Attorney General's Department, Colombo-12, Sri Lanka, Sri Lanka
Experts/ Resource persons	Ms Huynh Ngoc Phoung	BWC Implementation Support Unit, UN Office for Disarmament Affairs, Geneva

Country	Representatives	Address
	Mr YSR Murthy	Executive Director of Centre for Human Rights Studies, Jindal Global Law School, India
	Dr. V.Siddhartha	Former United Nations Security Council 1540 Committee of Experts, India
	Ms Angela Woodward	Programme Director, National Implementation Measures Programme, VERTIC, London
	Mr Patrick Burgess	Asia Director, International Centre for Transitional Justice, Jakarta, Indonesia
ICRC, Geneva	Mr. Leonard Blazeby	Legal Adviser, Advisory Service on IHL
	Mr Dominique Loye	Deputy Head of the Weapons Unit, Legal Division
ICRC, Dhaka	Mr. Christoph Vogt	Head of Mission,
	Ms. Rumana Binte Masud	Communication Officer
ICRC, Tehran	Mr Pouria Askary	Communication Officer
ICRC, New Delhi	Mr Christopher Harland	Regional Legal Adviser
	Mr Srinivas Burra	Legal Adviser
	Ms Sowmya K C	Legal Officer
ICRC, Yangon	Mr Nyunt Ohn	Communication and Cooperation Officer
ICRC, Colombo	Ms Lakmini Seneviratne	Head of Communication



ANNEX-II

Second South Asian Conference on International Humanitarian Law

Theme - From Law to Action: IHL Implementing Legislation

14 -18 February 2010, Dhaka, Bangladesh

Agenda

Sunday, 14 February

6.00pm-6.30.00pm	Registration
6.30pm-7.30pm	Inaugural Session
Chair	Len Blazeby, Legal Adviser, Advisory Service on IHL, ICRC Geneva
Welcome Address	Christoph Vogt, Head of Mission, ICRC, Dhaka
Objective of the	Christopher Harland, Regional Legal Adviser for South Asia, ICRC
Conference	New Delhi
Special Guest	Mohammad Zamir, Former Secretary, Ministry of Foreign Affairs and Ambassador, Government of Bangladesh
Chief Guest	Dr. Dipu Moni, MP, Honourable Minister of Foreign Affairs, Government of the People's Republic of Bangladesh
7.30 pm onwards	Dinner at Dhaka Sheraton

Monday, 15 February

Implementation and Accession Overview- Worldwide and Regional

9.15am-10.15am	Implementation and Accession of IHL Treaties Len Blazeby, Legal Adviser, Advisory Service on IHL, ICRC Geneva and Christopher Harland, Regional Legal Adviser for South Asia, ICRC New Delhi
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10.15 am-10.45am	Presentation by Country Representatives (approx. 20-30 minutes for each country) IHL treaty accessions recently made Implementation measures undertaken, including legislation Training on IHL of the armed forces and other bodies Work of the National IHL Committees (for those countries with IHL committees)
10.45am-11.15am Chair:	Coffee Break Christopher Harland, Regional Legal Adviser for South Asia, ICRC New Delhi, India
11.15am-12.45pm	Country Presentations continue Afghanistan Bangladesh Bhutan India
12.45pm-1.45pm Chair:	Lunch Break Len Blazeby, Legal Adviser, Advisory Service on IHL, ICRC, Geneva
1.45pm-3.15pm	Country Presentations continue Iran Maldives Myanmar
3.15pm-3.45pm Chair:	Coffee Break Christopher Harland, Regional Legal Adviser for South Asia, ICRC New Delhi, India
3.45pm-5.15pm	Country presentations continue Nepal Pakistan Sri Lanka
7.30pm onwards	Dinner at Westin Hotel



Tuesday, 16 February

Accession to and Implementation of the 1972 Biological Weapons Convention

- Chair: Brig. Gen. Nirendra Prasad Aryal, Director, Human Rights Department, Directorate, Nepal Army, Nepal
- 9.15am-10.45am **Evolutions in Biotechnology and other Scientific or Technological Fields and IHL**
- Ngoc Phuong Huynh, BWC Implementation Support Unit, UN Office for Disarmament Affairs, Geneva
- Dominique Loye, Deputy Head, Arms Unit, Legal Division, ICRC, Geneva
- Discussion
- 10.45-11.15am Coffee Break
- Chair: Dr Reza Mousazadeh, Deputy of the MFA School of International Relations, Islamic Republic of Iran
- 11.15-12.45pm **Work of the UNSC 1540 Committee**
- Dr. V. Siddhartha, Former United Nations 1540 Committee Expert, India
- Angela Woodward, Programme Director, National Implementation Measures Programme, VERTIC, London
- Discussion
- 12.45pm-1.45pm Lunch Break
- Chair: Mr. Mir Ahmad Joyenda, Member of International Relations Commission, National Assembly, Afghanistan

1.45pm-3.15pm **Indian National Legislation on Weapons of Mass Destruction**
Dr. V. Siddhartha, Former United Nations 1540 Committee Expert, India

Singapore National Legislation and that of other countries

Christopher Harland, Regional Legal Adviser for South Asia, ICRC New Delhi

Discussion

3.15pm-3-45pm Coffee Break

Chair: Ravindran Aruthavanathan, Additional Secretary Ministry of Defence, Sri Lanka

3.45pm-5-00pm **Implementing the 1993 Chemical Weapons Convention – the OPCW Model Law**
Christopher Harland, Regional Legal Adviser for South Asia, ICRC, New Delhi, India

Bangladesh's Chemical Weapons Convention Act
Ms. Salma Benthe Kadir, Joint Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh

The work of the OPCW and National Authorities
Len Blazeby, Advisory Service on IHL, ICRC, Geneva

7.00pm onwards Dinner at Hotel Lake Shore

Wednesday, 17 February

Chair: Christopher Harland, Regional Legal Adviser, ICRC, New Delhi, India



9.15am-10.45am	<p>Judicial and Non-judicial Post-Conflict Responses Waliur Rahman, Director, Bangladesh Institute of Law and International Affairs, Bangladesh</p> <p>Md Shahidul Hoque, Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh</p> <p>The Work of the ICTJ worldwide and in Asia Patrick Burgess, Asia Director, International Center for Transitional Justice, Jakarta, Indonesia</p> <p>Discussion Speech by the Special Guest: Hon'ble State Minister Adv. Promode Mankin MP, Ministry of Cultural Affairs, Government of People's Republic of Bangladesh</p>
10.45 am-11.15am	Coffee Break
Chair:	Captain Ismail Waheed , Maldives National Defence Force, Maldives
11.15am-12.45am	<p>First Review Conference "Stocktaking" and Issues to be Discussed in Kampala 2010 YSR Murthy, Executive Director of Centre for Human Rights Studies, Jindal Global Law School, India</p> <p>Discussion</p>
12.45pm-1.45pm	Lunch Break
Chair:	<p>1949 Geneva Conventions and their Additional Protocols</p> <p>Dr. Borhan Uddin Khan, Professor and Dean, Faculty of Law, University of Dhaka</p>
1.45pm-3.00pm	<p>Implementing Legislation and integration with ICC Legislation Len Blazeby, Legal Adviser, ICRC, Geneva</p>

IHL and Peacekeeping Operations: Bangladesh perspective

Syed Muntasir Mamun, Ministry of Foreign Affairs, Government of Bangladesh

Brig. Gen. Qazi Abidus Samad ndc, psc, Director of Operations and Plan, Armed Division, Government of Bangladesh

Discussion

3.00pm-3.30pm

Coffee Break

Weapons treaties and their implementation

Chair:

Brig. Gen. Qazi Abidus Samad ndc, psc, Director of Operations and Plan, Bangladesh

3.30pm-5.00pm

Current Issues related to Conventional Weapons and IHL

Dominique Loye, Deputy Head, Arms Unit, Legal Division, ICRC, Geneva

Discussion

5.15pm-6.00pm

Closing Ceremony

Outcome of the Conference Christopher Harland, Regional Legal Adviser for South Asia, ICRC, New Delhi, India

Address by Chief Guest

Barrister Shafique Ahmed, Honourable Minister of Law, Justice and Parliamentary Affairs, Government of Bangladesh

Vote of Thanks

Christoph Vogt, Head of Mission, ICRC, Dhaka

7.15 pm onwards

Dinner at Dhaka Club

Thursday, 18 February

Sightseeing and Departure of Participants



Mr. Len Blazeby, Legal Adviser, ICRC; Geneva and Mr. Christopher Harland, Regional Legal Adviser for South Asia, ICRC, New Delhi, Speaking on the National Implementation of IHL Treaties in South Asia.



Dr. V. Siddhartha, Former United Nations 1540 Committee Expert speaking on the work of the UNSC 1540 Committee.



Delegation from Myanmar



Dominique Loye, Deputy Head, Arms Unit, Legal Division, ICRC, Geneva speaking on the Biological Weapons Convention.



Ms. Ngoc Phuong Huynh, BWC Implementation Support Unit (ISU)



Delegations from Nepal and Sri Lanka



Delegation from Iran



Delegation from Bhutan



Delegation from Bangladesh



Barrister Shafique Ahmed, Honourable Minister of Law, Justice and Parliamentary Affairs, Government of Bangladesh, is addressing the closing ceremony of the Conference

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