

**CO-CHAIRS' SUMMARY
REGIONAL WORKSHOP
INTERNATIONAL HUMANITARIAN LAW AND THE PROTECTION OF CIVILIANS
JAKARTA, INDONESIA
8-9 NOVEMBER 2010**

- A regional workshop on international humanitarian law (IHL) and the protection of civilians was held in Jakarta on 8-9 November 2010, co-hosted by the Government of the Republic of Indonesia and the Kingdom of Norway. In addition to Indonesia and Norway, participants from 12 countries in the region, the ICRC, academics, military, non-governmental organizations, and national human rights institutions attended the workshop. A list of participants and the program of the workshop are attached to this summary.
- The workshop was formally opened by the Minister of Foreign Affairs of the Kingdom of Norway, H.E. Mr. Jonas Gahr Støre and the Minister for Foreign Affairs of the Republic of Indonesia, H.E. Dr. R.M. Marty M. Natalegawa. Foreign Minister Støre emphasized Norway's strong commitment to reclaim the protection of civilians in armed conflict, and underlined the value of IHL as a global achievement and responsibility, as well as the importance of applying IHL in all situations of armed conflict irrespective of the underlying causes, of applying this law to all parties to armed conflict, and of promoting knowledge of IHL. Foreign Minister Natalegawa underlined three approaches to enhance protection of civilians in time of armed conflict, which include a clear, purposeful and strong political will; simultaneous efforts to strengthen the capacity of the military through education and training; and the observance of the notions of human rights, security and development, while reiterating Indonesia's commitment to comply with IHL.

Main causes of civilian harm during hostilities, qualification of armed conflicts and the applicable legal framework.

- IHL applies to all parties to armed conflict and is applicable irrespective of the underlying cause of conflict. IHL establishes a comprehensive framework for the protection of civilians in armed conflict obligating all parties to protect civilians from harm resulting from hostilities. However, a serious gap remains between the protection that civilians are entitled to under international law and the reality that they face on the ground. Civilians face grave risks in contemporary armed conflicts, and women and children are particularly vulnerable. Strengthening the protection of civilians requires improved implementation of and compliance with IHL.
- The treaty rules pertaining to non-international armed conflicts are less developed than the treaty rules governing international armed conflict. However, customary IHL complements treaty law in situations of non-international armed conflict.
- It can be challenging to determine whether a situation can be characterized as an armed conflict. Regardless of how the situation is defined, there are legal frameworks that afford protection to civilians. IHL - applicable in armed conflict -, international human rights law, and domestic law complement each other.

The rule of distinction and the identification of legitimate 'military objectives'.

- The rule of distinction, which applies to all parties to armed conflict, is the most fundamental principle of IHL and essential to ensuring the protection of civilians from the effects of hostilities.

- Recent developments complicate implementation of the principle of distinction, including the fact that hostilities frequently take place in densely populated areas, the increasingly asymmetric nature of conflicts and development of new technologies in warfare (e.g. cyber warfare, drones). There is also growing involvement of private contractors in armed conflict. Parties to conflict do not always clearly distinguish themselves from the civilian population, but intermingle with civilians. This increases the risk of civilian harm and measures to address these challenges should be considered.
- Further operationalization of certain key concepts in the rules on the conduct of hostilities could be useful as interpretation is not consistent.

The rule of proportionality and the meaning of ‘excessive’ civilian losses and damage in the course of hostilities.

- IHL also requires that an attack must be in line with the rule of proportionality: expected civilian loss must not be excessive in relation to the direct and concrete military advantage anticipated.
- The proportionality assessment under IHL is different from the proportionality assessment under other applicable law, such as international law on the use of force and human rights law. The lawfulness or legitimacy of the war (*jus ad bellum*) is not relevant for the proportionality assessment under IHL (*jus in bello*).
- Efforts to strengthen implementation of the rule of proportionality and minimize civilian harm can include measures such as better integration of IHL into military doctrine and procedures, education and training in IHL at all levels within the military, making legal advisors available to armed forces and the use of more precise weaponry.

The rules on precautions and the meaning of ‘feasible’ precautions to avoid or minimize civilian harm.

- Strengthening implementation of the rules of distinction and proportionality and minimizing risk to civilians can be achieved by increased focus on precautions in attack and the choice of means and methods of warfare. In this regard, a strong will of all parties involved is needed.
- “Feasible” is a flexible standard which is determined based on a case-by-case approach. A high degree of discretion is entrusted to the military commander with respect to the assessment of facts. A certain degree of discretion is also given to the soldiers in the battlefield. However, parties to the conflict are obliged to always comply with the highest attainable standard of precautions given the best available information and *in situ* circumstances.
- Obtaining accurate information regarding the nature of the selected target and expected civilian loss may be difficult for a number of reasons. In order to better enable the military commander to make accurate assessments, increased focus should be given to data-gathering of experiences from previous military operations and their effects.

Jakarta, 9 November 2010