Star LAW *history*

ICRC and the development of Humanitarian Law

MUHAMMAD ZAMIR

FROM its inception, the International Committee of the Red Cross (ICRC) has taken the initiative, which has by now become a long-standing practice, of working for the development of international humanitarian law, which regulates the conduct of hostilities in order to mitigate their severity.

The ICRC was responsible for initiating the process which led to the conclusion, and later the revision of the Geneva Conventions for the protection of the victims of war of 1864, 1906, 1929 and 1949. In this, they have received special assistance from the Government of Switzerland, the Depositary State of these basic instruments, which convened and organised diplomatic conferences that brought into being these Conventions.

The Geneva Conventions, which have saved innumerable lives, have been in the focus over the last few yeas.

The Conventions, as they exist today, are different from what they were prior to 1949. They were considerably enlarged in 1949 but were subsequently further expanded over the next three decades. The changes in formulation included references to wounded and sick soldiers and to prisoners of war. A Fourth Convention, which was almost entirely new and related to civilians and their protection against arbitrary enemy action was also brought forth to bridge the gap that was so keenly felt during the Second World War.

Another reason for revision related to the law of The Hague, which was concerned with developing rules on hostilities and the use of weapons. Consequently, in agreement with the Government of Netherlands, two subjects arising from The Hague regulations respecting the laws and customs of war on land were placed on the agenda for future development.

It is here that the ICRC played an important role. It had already presented draft rules to the XIXth International Conference of the Red Cross, which convened in New Delhi in 1957. These draft rules were approved in principle at that time but did not receive support from most governments because of the manner in which they had tackled the controversial question of nuclear weapons.

It was left to the XXth Conference of the Red Cross, which took place in Vienna in 1965, to move things forward. It approached the question related to the protection of the civilian population against the dangers of indiscriminate warfare and approved four principles in its resolution No. 28. It also stressed on the need for the ICRC to 'pursue the development of International Humanitarian Law'.

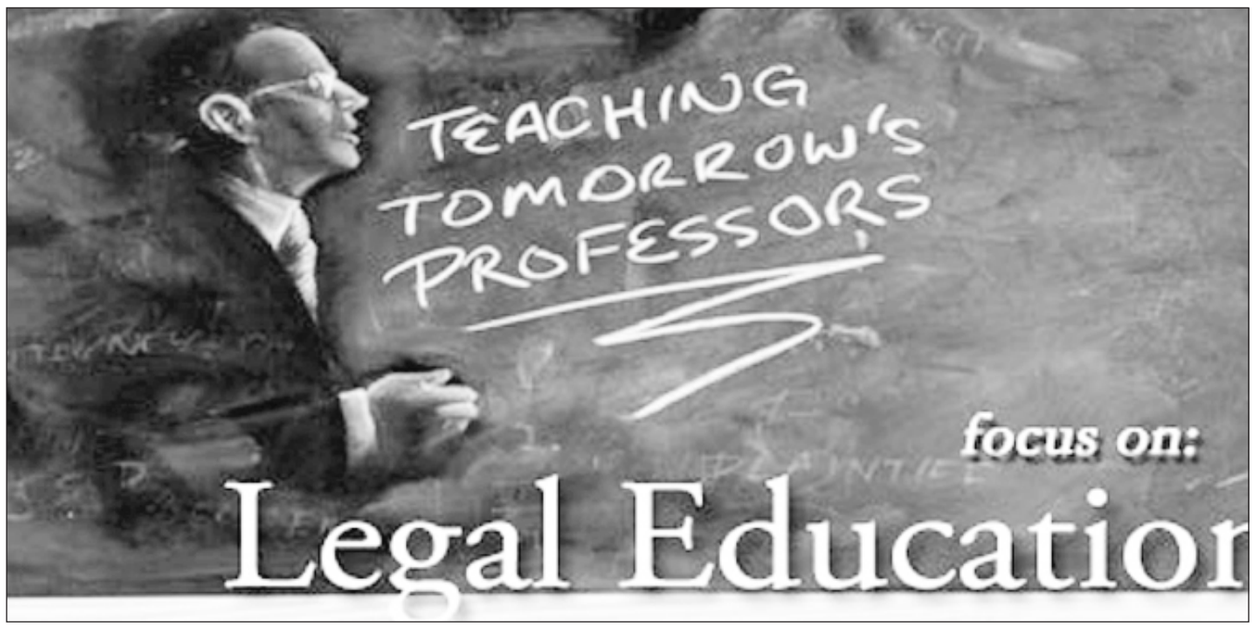
The ICRC was not discouraged by the enormity and difficulty of the task. As a first step, they addressed a Memorandum dated 19 May 1967 to all State Parties to the Geneva Conventions, raising the question of further developing the law of armed conflicts and including a list it had drawn up of the written and customary rules which could be considered to be still in force. This was followed up by the International Conference on Human Rights, Tehran in May 1968 which authorised the United Nations to undertake consultations with the ICRC in this regard. It was also recognised that the best conditions for success could be created by undertaking this sensitive task on neutral ground-Switzerland, to avoid the matter becoming politicised.

In September 1969, the XXIst International Conference of the Red Cross, held in Istanbul, was presented with an important report from the ICRC on this subject. On the basis of this report, the ICRC was urged to actively pursue its efforts 'to draft concrete rules which would supplement the existing humanitarian law'.

The ICRC and the Netherlands Red Cross worked together and were able to convene a Conference of Government Experts on the Development of International Humanitarian Law Applicable in Armed Conflicts in May-June 1971. About forty governments sent nearly 200 representatives to the meeting. The NGOs also contributed their views. One country in particular followed developments with great anxiety -- Pakistan, because of the brutal use of force that had been unleashed on the civilian population in its eastern wing, now Bangladesh.

The second session of the Conference of Government Experts was held in Geneva in May-June 1972. This time, it was participated by 77 Governments.

Following these Sessions, the ICRC drew up the complete text of two draft Protocols additional to the Geneva Conventions, one for cases of international armed conflict, the other for conflicts which were not of an international nature. These were to serve as a basis for discussion in the future Diplomatic Conference which the Swiss Government had decided to convene. In elaborating the basic texts, the ICRC endeavoured to remain



true to the spirit in which it had always sought guarantees for the benefit of victims of conflicts, ever since 1864, as required by humanitarian considerations.

The drafts were sent to all Governments in 1973 along with a detailed commentary. These were subsequently presented at the XXIInd International Conference of the Red Cross held in Tehran in November, the same year. It was also noted by the ICRC that the ICRC did not intend to broach the problems associated with atomic, bacteriological and chemical warfare. It also did not include in the drafts any prohibitions of specific limitations with regard to so-called 'conventional' weapons which cause superfluous injury or unnecessary suffering or strike 'indiscriminately civilian population and combatants alike'.

At this point it was felt that there was need for a fuller examination of conventional weapons. Accordingly, two further meetings of Government Experts were convened in Lucerne in 1974 and in Lugano in 1976. However, agreement could not be reached on various aspects, so that this subject remained one step behind the Protocols. It took nearly four more years before disagreements could be ironed out and adoption completed (on 10 October, 1980) of the Convention of prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injuries or to have indiscriminate effects.

While these efforts were underway, on a parallel track, several Conferences were organised by the Swiss Government in Geneva in 1974, 1975, 1976 and 1977 to discuss the development of international humanitarian law applicable in armed conflicts. States which were Parties to the Geneva Conventions or Members of the United Nations (numbering 155) were invited. However, participants ranged from 107 to 124 in the various Sessions. In addition 11 national liberation movements and 51 intergovernmental or non-governmental organisations also participated. Former President of Bangladesh Abu Sayeed Chowdhury played an important role in these deliberations.

After extensive discussion, the Additional Protocols to the Geneva Conventions of 12 August, 1949 were adopted on 8 June, 1977. It entered into force on 7 December, 1978.

The Geneva Conventions now constitute an impressive monument of 600 articles of which almost 150 are new. This codification, assisted by the ICRC has brought great hope to many victims, in a world constantly involved in obligations arising from the conduct of hostilities. It has also enabled the Red Cross and the Red Crescent to save more lives and help those in distress who would otherwise have remained unassisted.

The character of the Protocols have modified previous law and sometimes even introduced fairly bold innovations.

Because of these Protocols, civilian medical personnel and the personnel of the civil defence services now enjoy safeguards comparable to those which military medical personnel have enjoyed for a long time.

It was a difficult and complex task, but the persistence of the ICRC enabled all Parties to accept the universal nature of the codification. This has also devolved on the ICRC greater responsibilities in their continuous monitoring of conflict affected areas.

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LAW *education*

A competent Judiciary: The ultimate guardian of human rights

BARRISTER AMINUL R. ISLAM

VIOLATION of human rights is not something alien to us or any nation in the world. This is rather a natural phenomenon in human societies. What differentiates us from many other nations on earth is that the phenomenon of violation of human rights are contained correctly in those countries whereas in our country this is tolerated (thought to be justified) with the acceptance that there is no effective apparatus present in our country to contain/effectively contain this evil of violation of human rights.

What happens in Bangladesh is that when this violation occurs then there is no social disgust against such violation and, consequently, no one (including the victim) feels any need to seek redress against such violation. Let me give some examples of violations of human rights which will help to clarify my point. When a child goes to learn basic Islamic knowledge from a mullah them whenever the mullah feels that the child is not learning according to his expectation he uses his cane on the child with liberty and the people think that this is not only right but also necessary. When somebody is arrested by the police on the accusation of committing a crime, say theft, the police beat up the accused with liberty and the people around the scene enjoy this. When a young maidservant makes a mistake the employer slaps her with liberty and people feel that this is justified.

We cannot expect the general people of our country to change overnight or even to change at all. This must be done by those of us who understand/feel right from wrong and who are actually responsible to bring about the change. There are many sections/apparatus of our society who can contribute towards doing this but, in my opinion, it is the judiciary who must play the ultimate role in bringing about the required change.

Make no mistake, the law is there. We do not need any change/major change in the law. Assault is illegal. The constitution guarantees the physical integrity of its citizens. What we need is to change ourselves so that whenever such violation occurs we prosecute them and hand them out the appropriate punishments. Once we started to do this then the general public would start to change their attitude towards physical abuse and gradually come to feel disgust/abhorrence towards physical abuse. If this were done then the whole culture would be against physical abuse of any kind.

The theory is simple. Then why this is not happening? There could be and are multitude of reasons. One of the reasons is the degree of competence of the judiciary and its mechanisms. The mechanism include the officers of the courts. Lawyers are the officers of the courts.

We understand the social and other barriers in successfully prosecuting those who are routinely (with impunity) committing the crimes of physical abuse. We also know that it could be extremely difficult to bring about convictions of those who are guilty of physical abuse. But what about a skilled lawyer? To a skilled lawyer this might not be difficult at all. A skilled lawyer is a lawyer who has/created a natural ability to face all kind of lies, forgeries and conspiracies and bring out the real picture of what actually happened before the court. Obviously, we do need and, I believe that we do have a reasonable bench to comprehend what are being shown by the lawyer and deliver judgements accordingly.

I am not saying that there is no scope of improvement in the bench. This is always the case about every profession. What I am saying is that with the current quality of bench we could manage things if we could get the quality lawyers in the courts.

We have got a system of educating and training our lawyers. This system

was given to us by the British government. But whereas the British system of educating and training the lawyers has been improving to make it more and more practical we are still living in a world of academia where we learn unnecessary details (such as memorising what sections of Criminal Procedure Code relate to what offences) of different acts.

In the UK they do not test you as to whether you could remember the section number of a particular offence/law. They test to as to whether you know the law. They test you as to whether you could digest the facts and apply the law to the facts properly. They test you as to whether you could analyse an intricate situation and present your case accordingly. You do not need to memorise the section numbers. This is because as a lawyer you will have the benefit of having your books in your library (both private and public) and, in practice, a British lawyer does carry some law books in his bag into the courts.

In order to become an advocate a law degree is not good enough. One has got to do the Bar Vocational Course in order to become an advocate (barrister). This course enhances the skills of the lawyer in many ways and prepares him to properly face the practical life as a lawyer. This article is not intended to go into the details of the course. But I would give some idea of what happens during the course.

Almost every day of the course the students are given difficult (mostly absolutely difficult) cases and are given specific tasks of advocating in favour of specific parties. The students take their cases, research them and then, on the following class, they perform advocacy in front of the whole class. It happens that students do this more than once on a single day. Now imagine what happens to such students by going through such training. I can tell what happened to me and my friends who went through such training. Even on the first day of my appearing before the court I had no nervousness at all. The same goes to my friends. This is because we learnt/prepared ourselves more than what we practically needed to face when we appeared before the courts.

The Law Society (which is responsible for solicitors who does have rights of audience in lower courts) gives some substantial exemption to lawyers who are educated/trained in Bangladesh and who practised in Bangladesh. One sad truth came to my notice when I saw them perform before courts in the UK. They, like students of law as opposed to practitioners, cite law after law before the courts. This is wholly unnecessary and agitating to the judges. Most cases do not involve dispute involving the interpretations of law. They involve facts and evidence of cases. The lawyer needs to concentrate on facts and evidence of the case. He does not need to lecture the judge on the law. The law is there, open to everybody, everyone understand this. It is wrong to assume that lawyers and judges do not understand the laws. If one is not capable of understanding the law then the universities must not pass him when he does his law degree. If it is the case in Bangladesh that people who are not capable of understanding the law are passed by their universities in their law degrees then it is an urgent matter for us to take immediate and drastic action in relation to law degree courses and the universities. We cannot bypass this problem. This must be handled face on.

Taking into the whole scenario into context I am absolutely respectful and nurture a very warm feeling towards the justice in the High Court of Bangladesh. There are so many things that they deserve to be praised on. Their tolerance is absolutely commendable. There are many facets of their virtues when compared to that of the justices in the UK. A very substantial number of them, in my opinion, are bestowed with higher virtues.

I was overwhelmed to see how easily the justices in Bangladesh managed, with smiling and serene face, the lawyers who did not know what they were talking about and who became pure nuisance to the courts. The justices deserve better lawyers. This is utterly unfair on them to require them to conduct their affairs with sub-competent lawyers. The degree courses and the trainings in the first place should flush out sub-competent lawyers.

If we can achieve the objective of making sure that people with relevant education and training come to the profession of lawyers and conduct the affairs of the courts only then we can hope that the whole mechanism would start to run properly and once the whole mechanism starts to run properly we, who are part of the mechanisms of the judiciary, will become the ultimate force in safeguarding properly the human rights.

The author is specialising in Human rights cases in UK.

FACT *file*

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Don't close the doors to justice

There cannot be reconciliation and sustainable peace in former Yugoslavia without justice for the victims of the wars in the 1990s, Amnesty International said today. The organisation calls on the UN Security Council to extend the mandate of the International Criminal Tribunal for former Yugoslavia beyond the date of 2010 set under the Tribunal's "completion strategy" and provide sufficient funds for it to carry out its mandate effectively.

"Thousands of people are yet to be tried for the war crimes, crimes against humanity and genocide committed during the violent break-up of Yugoslavia. Hundreds of thousands of refugees are still not able to return to their homes and to obtain full compensation for the damage," Nicola Duckworth, Director of Amnesty International's Europe and Central Asia Programme, said as the Security Council prepares to consider reports by the Tribunal President and Prosecutor on the implementation of the "completion strategy".

The Tribunal has played a major role in addressing impunity for such crimes and, through its judgements and decisions, has contributed significantly to the development of international, humanitarian and criminal law. Yet to date only 37 people have received a final sentence for their crimes in the Yugoslav wars. Under the "completion strategy", laid down by the Security Council, the Tribunal has completed all investigations and indictments for war crimes, crimes against humanity and genocide at the end of 2004 and is expected to complete all cases, including appeals, by 2010. Prosecutors have recently asked for the transfer of 18 cases to local courts in the former Yugoslavia, a step that appears to be dictated by the tight deadline imposed by the "completion strategy".

"While Amnesty International welcomes the recent surrender of a number of prominent indictees to the Tribunal including for the first time from the Republika Srpska, ten people publicly indicted by the Tribunal are still at large. Three of them, Radovan Karadzic, Ratko Mladic and Ante Gotovina, are key indictees mentioned repeatedly in Security Council resolutions. The Tribunal's Prosecutor has clearly stated that if they are not arrested and transferred in the months to come, it may be necessary to revise the target dates of the 'completion strategy'," Nicola Duckworth said.

Amnesty International believes that the Tribunal's "completion strategy" appears to be mostly dictated by financial constraints influenced by a changing geopolitical setting, and based on the assumption that local courts in former Yugoslav countries have the capacity to continue the Tribunal's tasks. It believes that the target date of 2010, when the Tribunal is expected to complete its work, may seriously compromise the delivery of justice, and urges that the "completion strategy" should be reviewed as it ignores crucial facts:

Countries in the former Yugoslavia have failed to abide by their obligation to arrest and surrender indicted suspects or to provide other assistance to the Tribunal. There continues to be a lack of political will to investigate all crimes committed during the violent break-up of Yugoslavia and to prosecute all suspects.

Domestic legal frameworks define crimes and principles of criminal responsibility in a manner that is inconsistent with international law and with the Statute of the Tribunal. Victim and witness protection is generally non-existent or insufficient to permit effective investigations or successful prosecutions. Provisions on reparations, including compensation to victims and families of the victims, are inadequate.

They urge the Security Council and UN member states to extend the Tribunal activities beyond the originally set deadline of 2010; to ensure that the Tribunal's budget is adequate to its task; and to develop a long-term, comprehensive action plan to end impunity in the countries of the former Yugoslavia.

Source: Amnesty International.