

INTRODUCTORY REMARKS BY AMB. DR. WAFIK ZAHER KAMIL, SECRETARY GENERAL, ASIAN AFRICAN LEGAL CONSULTATIVE ORGANISATION AT THE CONFERENCE TO MARK THE PUBLICATION OF THE ICRC STUDY ON “CUSTOMARY INTERNATIONAL HUMANITARIAN LAW”, 8 DECEMBER 2005.

His Excellency Mr. E. Ahamed,

Excellencies, Distinguished Guests, Ladies and Gentlemen

At the outset, on behalf of Asian African Legal Consultative Organization (AALCO) and on my own behalf I would like to welcome all of you to this important conference to mark the publication of the ICRC study on ‘Customary International Humanitarian Law’ which is being jointly organized by the International Committee of the Red Cross (ICRC) and AALCO.

As an Intergovernmental Organisation of 47 Member States, AALCO’s primary function is to promote the development of international law and legal co-operation among the states of the Asian and African region. Since its inception AALCO has given equal importance to issues of human rights and humanitarian law along with other topics of international law. In recent years, it has been focusing its attention on human rights and humanitarian law matters which include Status and Treatment of Refugees, Legal Protection of Migrant Workers, Establishing Cooperation against Trafficking in Women and Children, International Terrorism and Deportation of Palestinians.

On this occasion, AALCO is proud to have a Conference on “Custom as a Source of Humanitarian Law” being jointly organized with the ICRC. It needs no mention that owing to its significant contributions to the development of international humanitarian law, ICRC is rightly recognized as the guardian of international humanitarian law. And AALCO as one of the intergovernmental body is keen to promote and codify international law.

I would also like to take this opportunity to highlight the close association AALCO has with the ICRC (over a period of time). AALCO’s association with ICRC is not new and it started with concrete steps in 1997 when both organizations jointly organized a special meeting in conjunction with AALCO’s thirty-sixth annual session in Tehran on an important item entitled “Inter-related aspects of International Criminal Court and International Humanitarian Law”. This cooperation further continued as the AALCO and ICRC jointly organized a seminar on the various aspects of international humanitarian law on 17th November 2000 in New Delhi on the occasion of AALCO’s Constitution Day. It is the determination to uphold international humanitarian law that continues to remain as the guiding principle for the joint efforts of both the organizations. We have formalized our cooperation by initialing a cooperation agreement in New Delhi on 17 December 2002 and by signing it in Geneva on 7 July 2003. Promotion and development of international humanitarian law is the primary objective of our cooperation agreement.

Further, it may be recalled that during the Forty-Second Annual Session of AALCO held in Seoul, South Korea (2003), we organized a Special Meeting on “ The Relevance of International Humanitarian Law in Today’s Armed Conflicts”, with the full cooperation of the International Committee of the Red Cross (ICRC). The Session adopted the *Seoul Resolution on the Relevance of International Humanitarian Law in Today’s Armed Conflicts* which contains a series of directives for the Member States, and urges all parties in armed conflicts to respect and ensure respect for international humanitarian law whether as treaty law or as customary law, and to comply, *inter alia*, with the principle of distinction and the principle of proportionality during armed conflicts.

International Humanitarian law has been codified to a large extent in the form of treaty law. The developments that started in the late 19th century have been crystallized into important treaty obligations with progressive development in terms of scope of these obligations and also in terms of adherence by States. A series of Declarations, Conventions and Protocols were adopted in the last century that forms the crux of the international humanitarian law. To name a few, 1899 and 1907 Hague Regulations; Geneva Conventions of 1949 and the 1977 Additional Protocols, 1972 Biological Weapons Conventions, 1993 Chemical Weapons Convention, 1997 Ottawa Convention on the Prohibition of Anti-Personnel Mines. 1954 Hague Convention on Protection of Cultural Property and its two Protocols and 1998 Statute of the International Criminal Court have also contributed to the growth of international humanitarian law. The four Geneva Conventions of

1949 and its Protocols of 1977, the Banning of Landmines Convention of 1997 are among the major conventions concluded under the auspices of the ICRC. I would like to highlight the relevance of customary humanitarian law in the present context.

First, the making of international law is still reserved to states with some allowance for the role of intergovernmental organizations. Thus, treaties apply only to those states that have ratified them. Though the Geneva Conventions have been almost universally ratified, some States are still reluctant to become parties to the two Additional Protocols. This situation leaves considerable area unaddressed within the framework of treaty law. Here lies the relevance of customary international law.

Second, even though non-international armed conflicts represent the majority of present-day armed conflicts treaty law does not regulate them in sufficient detail. The Additional Protocol II, which deals with non-international armed conflicts, contains only basic regulations on the conduct of hostilities and humanitarian relief operations. Further, not many states have ratified it. Thus, the treaty law dealing with non-international armed conflicts and applicable to majority of States is limited to common Article 3 of the four Geneva Conventions, as they have attained almost universal ratification. It is relevant in this respect to underline that in such internal conflicts, both governmental armed forces and rebel forces are bound by these customary rules and can be held accountable in cases of non-compliance.

Third, in order to determine which treaty law applies to a particular conflict, a prior characterization of the conflict as international or non-international is required and this is often difficult or subject to dispute. The customary law can be of great help here. It can guide us in finding rules that may apply equally in international and non-international armed conflicts, for example, the prohibition of attacks on women, children, journalists or humanitarian relief personnel and the prohibition of forced displacement of populations.

The identification of customary law is essential for reaching states as well as non-state actors. This exercise also helps to identify the process of hardening in to custom of the norms stated in the Conventions, which will also enhance respect for these norms and thus their effectiveness. Therefore the task undertaken by the ICRC and completed with due diligence in a decade time is a praiseworthy effort from the point of view of international law in general.

Therefore I take this opportunity to express my appreciation to the International Committee of the Red Cross for the extensive study made by them on customary rules of international humanitarian law applicable in international and non-international armed conflicts. The methodology and organisation of the Study would speak for itself for the amount of labor put in by the ICRC on this work. The Steering Committee of the Study consisted eminent academic experts, which included Professors George Abi-Saab, Djamchid Momtaz and Theodor Meron. Further, apart from the international sources taken from international and regional organizations, national sources collected

from Asia, Africa, America, Australia and Europe had made this study more rich and authentic in content. Research in ICRC archives and Expert consultations has further enhanced the significance of the Study. The study is comprehensive in nature as it attempts to explore the customary nature of humanitarian law principles. These include the principle of distinction; specifically protected persons and objects; specific methods of warfare; weapons; treatment of civilians and persons *Hors de Combat* and Implementation. I am convinced that this study would contribute to the growing literature on the field of international humanitarian law.

It may be underlined in this occasion that identification of customary principles in international law is a difficult exercise involving complex issues such as State practice and *opinio juris*. Thus it becomes necessary to analyze each issue relating to customary nature of a principle in the particular context in which it arises. It is a fact that Additional Protocols have not been adhered to by good number of States. This situation might lead to certain interpretative variations on the customary principles compiled in the present study. Differences of opinion bound to occur as it has been the case with customary international law in general. However, this in no way belittles the significance of the Study. Though the customary principles contained in the study may not be an authoritative assertion, which States shall comply with, they would certainly help as an important guide for the application of customary international humanitarian law.

I am confident that the academic discussions that are going to take place today and tomorrow would further clarify and contribute to the development of humanitarian law. We have a galaxy of eminent speakers with us for the two-day conference. We are happy that Delegates from 18 Asian Member States of AALCO are attending this Conference. Also, Liaison Officers of several AALCO Member States are amidst us.

On behalf of AALCO and on my own behalf, I once again welcome you all to this conference and request you to enrich this occasion with your active participation in the discussions.