



Asia-Pacific Roundtable

30 May - 1 June 2011 | Kuala Lumpur, Malaysia



LT 2

Tuesday, May 31, 2011

Luncheon Talk 2

Recent Trends in Armed Conflicts: New Challenges for Humanitarian Actors

by

Mr Alain AESCHLIMANN
Head of Operations for East Asia
South-East Asia and the Pacific
International Committee of the Red Cross

Official Telecommunications Provider



JAPAN FOUNDATION 



25th Asia Pacific Roundtable

Luncheon Talk 2, May 31, 2011

"Recent Trends in Armed Conflicts: New Challenges for Humanitarian Actors"

Alain Aeschlimann,

Head of Operations for East Asia, South-East Asia and the Pacific,

International Committee of the Red Cross

Excellencies, Ladies and Gentlemen,

First of all let me thank ISIS Malaysia and ASEAN-ISIS to give me the opportunity to address this august assembly. It is an honour and a privilege.

My aim is to give some thoughts on evolving armed conflicts. It is a very broad topic. Several speakers during the last two days referred to conflict prevention and conflict resolution. On my side, I will speak more of conflict management and the reality of conflicts. These thoughts are based on the observations of an organisation whose mission is to respond to the needs of people adversely affected by situations of humanitarian concern, in particular armed conflicts and violence. An independent and non-political organisation, the ICRC is present in some 80 countries throughout the world with a large scope of activities. Our objective is not to settle conflicts or bring any country to an end state of a stable and fair society. We aim to protect human dignity, to save lives and to alleviate human suffering. We also have a special relationship with and responsibilities as regards international humanitarian law

While referring to the region, I wish also to broaden the scope and focus on current challenges situated beyond the generally accepted borders of Asia and Pacific and having global implications.

Nurtured by our neutral, impartial and independent approach and by a tradition of discretion and confidentiality, I will undoubtedly have more reserve on some issues than a political science expert would have.

In our analysis of the primary characteristics of current armed conflicts and other situations of violence, the following features emerge particularly strongly:

First feature, **diversity of conflicts and situations of violence**. There is no question that today's world is much more complex and that today's conflict environment has become increasingly heterogeneous and less and less predictable. These range from contexts where the most advanced technology and weapons systems are deployed in asymmetric confrontations, to an assortment of conflicts characterised by low technology in which a variety of groups generate extensive insecurity, without forgetting terrorist-like actions.

The predominant form of conflict today, the non-international armed conflict, often involves a plethora of actors. It usually involves some degree of regional or international interference and often stems from State weakness that leaves room for local militias and armed groups to take matters into their own hands. This includes a large range of non-state actors, trans-national clandestine networks, private militias and security companies. Their chain of command is not always well organised and their structure may be highly volatile.

Today's conflicts are increasingly economic in nature and revolve primarily around competition for access to critical energy resources. They may also have tribal, ethnic or religious dimensions, and may be characterized by the coexistence of political and non-political players. The easy availability of arms, particularly small arms, is also an important factor to consider.

Multiple factors - local, national, regional and global- often coexist and have overlapping impact on populations at risk. Here I have notably in mind, beside open hostilities, issues such as environmental degradation, drought, floods or pandemics. This also refer to the contexts affected by the interplay of local issues and wider-reaching concerns relating to the "fight against terrorism"

This can lead to an environment where looting and trafficking, including human trafficking and drug smuggling, extortion, piracy and kidnapping, turn into profitable economic strategies, sustained by violence. The violence is primarily against civilians, with direct confrontations between armed groups or with State armed forces tending to be rare. Armed groups live off the population and engage in appalling acts of brutality to instil fear, ensure control and obtain new recruits. There is also a blurring of identity between combatants and "civilians"

Some of these characteristics are also very present in situations which fall short of armed conflicts and where force and collective violence are used. In some places, urban violence may sometimes have similar consequences as conflicts. This trend is apparently becoming more widespread, notably in South America.

Such a variety of situations makes it particularly difficult to define an appropriate response in humanitarian terms. What is demanded is flexibility and a wide scope of activities.

Second important feature, **high fragmentation**. The various natures of conflicts and their increasingly economical prominent features lead to more and more fragmentation within armed groups. For example, in Eastern Democratic Republic of Congo, the ICRC has to deal with 40 different armed groups or fractions and in Darfur/Sudan, more than twenty. Cases in point in Asia Pacific region are notably Afghanistan, Myanmar and the Philippines.

For humanitarian organizations, this means having to adapt working modalities and may have direct consequences on the management of their own security.

Third feature, the **duration of armed conflicts**. Israelis and Palestinians, Afghanis, Filipinos, Columbians, Somalis and Sudanese, to name a few, have all been enduring conflict for two, three or four decades. Protracted situations of conflict exist in many contexts, which fluctuate between phases of high and low intensity and instability, often without solutions for lasting peace, and with huge impact on people in terms of immediate survival needs but also in terms of longer term chronic needs. .

For humanitarian organisations, this means the requirement to have the stamina to work on certain issues in the medium and long term and the flexibility to respond decisively to rapid-onset or emergency situations.

Fourth feature, **easier access to information, connectivity of people and globalisation of issues**: in general, the community of states and the people in general know much better what is going on and in particular if and when atrocities are committed. With the new means of communication, mobile phones and social media, spreading of news and pictures is incredibly quick. A case in point in the region is the massacre which occurred in Maguindanao/South Philippines in November 2009. It is

also widely documented that new means of communication played a central role in Middle East and North Africa, the so called Arab spring, particularly in Tunisia, Egypt, Libya, Bahrain, Yemen and Syria. Problems affecting one country cross border and become regional or even international concerns, hence the need often mentioned in this conference to strengthen regional cooperation, as it is the case with ASEAN and other related constructs in Asia Pacific.

It also happens now that humanitarian organisations are directly contacted by victims and affected persons, including with regard to the aid provided or which should be provided. This also means that humanitarian organisations are more exposed to media scrutiny and questioning and are required to justify more often what they do or do not do.

Fifth feature, **heightened security challenges facing humanitarian organizations.** Humanitarian action appears to be rejected with growing frequency by a wide range of armed groups, including for the reason of being perceived as insufficiently independent of political and military agendas and being instrumentalized.

Attacks on humanitarian workers have been numerous in many contexts. There were also many instances of banditry, with a particular increase in kidnappings for ransom. All this means reduced access for humanitarian organisations in places where the population may be in dire need of strictly humanitarian assistance. Looking at countries in which the ICRC currently runs some of its largest operations — Afghanistan, Iraq, Somalia, Yemen, Libya and recently also Ivory Coast— it is striking how few aid agencies are actually able to gain regular access to populations and run independent operations.

Deliberate attacks against humanitarian personnel are clearly illegal and unacceptable and must be condemned in the strongest terms. They take place against the backdrop of blatant lack of respect for international humanitarian law by states and non-state actors, which lies at the heart of large-scale suffering we are witnessing. We however also see the rejection of humanitarians as the by-product of policies that integrate humanitarian aid into political and military strategies. Indeed, in various contexts, we witness an increased instrumentalisation, politicisation and militarisation of humanitarian aid.

Libya is also a case in point where humanitarian issues and aid were invoked to justify intervention. I will come back on this later.

The humanitarian world has evolved rapidly over the past few years as more and more players enter the arena, often with different objectives, operating standards and activities. We can mention states acting within their own territory; states acting abroad on their own, mainly under the form of foreign military assistance, or within international forces or missions, particularly under UN or regional organisations umbrellas such as ASEAN; intergovernmental organisations such as the UN humanitarian bodies; private companies and charities, secular and religious NGOs; and National Red Cross and Red Crescent Societies.

The ICRC has been very consistent in raising concern in the “blurring of lines” debate about the appropriateness for armed forces to be involved in humanitarian activities.

On this, we make a clear distinction between situations of natural disasters and armed conflicts and other situations of violence.

For us, the question is not whether the military can contribute to humanitarian efforts; it, for example, has an obligation under international humanitarian law to evacuate wounded civilians. We are also very aware that there is not only one way to help and that people are often grateful for help from a range of sources. Neither does the ICRC claim that there is only one definition of humanitarian efforts. No one has a monopoly on humanitarian action. There are also situations where humanitarian organizations are not in a position to carry out their activities, for example for security reasons, and where the willingness of states to commit troops is obviously the only possibility to do humanitarian work and save lives.

However, aid becoming part of counter-insurgency strategies, as in Afghanistan, is much more problematic. This includes the exploitation of aid by states as a tool for conflict management and as an instrument to promote their own interests. In the case of Libya, the political, military and humanitarian agendas of the key international players may be difficult to separate clearly, at least in the public perception.

Such developments lead parties to conflicts and affected populations to associate all humanitarians with specific political and military goals. When humanitarian action becomes part of strategies aimed at defeating an enemy, the risks for aid agencies in the field grow exponentially. This is when a bright red line must be drawn.

Considering the risks inherent to humanitarian activities not carried out by humanitarian actors, States should at least refrain from giving a humanitarian label to the activities of their armed forces. For example, when military engage in activities of a humanitarian nature, they should clearly identify themselves as military and avoid any misunderstanding with truly humanitarian workers.

Some may question the value of independent, neutral and impartial humanitarianism in today's wars. However, as an organization present and active in conflict for close to 160 years, including in those fought by insurgents, we know that these very principles enable us to reach, assist and seek to protect those caught in armed conflict.

A little known facet of our activities in Afghanistan illustrates the value of independent humanitarian action. Since 2007, the ICRC has been able to organize safe passage for Afghan Ministry of Health and World Health Organization workers who carry out polio vaccinations for children in the south of the country. This safe space is negotiated with the Taliban and respected by U.S., NATO, and Afghan security forces. The ICRC regularly facilitates the transfer of wounded and handover operations for released hostages. Operations of this kind are only possible because all parties to the Afghan conflict know that we do not take sides and intervene on strictly humanitarian grounds. In Libya, the fact that we operate both from Tripoli and from Benghazi is also an expression of neutrality and independence.

The aid community is very diverse in its approaches. In fact, our experience tells us that there is simply no such thing as a pre-established, protected "humanitarian space". In today's armed conflicts, particularly when protracted and fragmented, the space needed for action is created daily and over time: by building relations, by trying

to talk to a very large diversity of persons, including some very difficult groups and people who do not necessarily immediately recognize the principles that we work with; by not taking acceptance for granted; by matching words with deeds; by adopting a principled approach and following it with great discipline. The ICRC, for one, believes in consistent neutrality and independence as a way to build trust. It wants its own action to be clearly understood as separate, and recognized for its distinct added-value.

Sixth feature, **the importance, but also the difficulty, to acknowledge the applicability of the appropriate legal framework and work for its implementation.** Irrespective of the changes in their forms and nature, conflicts and situations of violence always mean suffering for the individuals caught in it. People are killed or injured, they witness the suffering of their families, they are separated from their loved ones, displaced and dispossessed. The world witnesses today too many conflicts where civilian are deliberately targeted.

With regard to armed conflicts, the use of force is governed by two distinct bodies of law. On one side, there is the law directly governing the resort to force, also called *jus ad bellum*. In internal or intra state situations, the relevant law is national law, which must be in conformity with international law and which basically prohibits the use of force, except for law enforcement and other authorities. In international or inter states conflicts, the UN charter is nowadays the basis for the use of force. Basically, such use is possible only in the case of a threat to international peace and security.

In the case, of Libya, the use of force was authorised by UN SC resolution 1973 under some conditions. The resolution authorises to take all necessary measures to establish a no fly zone and protect civilians under attack, while excluding a foreign occupation force of any form.

On the other side, there is the law applicable to situations of armed conflict, also called *jus in bello* which regulates the use of means and methods of warfare and protects civilian objects and the persons who do not participate in hostilities. This is International humanitarian law, also known as the law of armed conflict, mainly contained in the Geneva Conventions and their Additional Protocols. International humanitarian law applies equally to all sides of an armed conflict, regardless of the reasons for resort to force or its legality. Accordingly, once an armed conflict exists, all parties involved must comply with the relevant provisions of IHL, in particular at a minimum by adhering to the principles of distinction, proportionality, and military necessity.

Over years, we noted reluctance by states to acknowledge that a situation amounts to armed conflict, mainly in case of intra state conflict.

Setting and applying the appropriate legal framework is key to turn legal provisions into reality, take seriously ones obligations to protect civilians, reduce the number of victims and address their needs. History also teaches that respect for International humanitarian law during conflict helps paving way to reconciliation and the limitation of atrocities prepares for conflict resolution.

With regard to Libya, shortly after the adoption of UN SC resolution 1973, the ICRC handed over a reminder of humanitarian law applicable in military operations

between the members of the coalition in the making and the Libyan government. Even if the stated aim of these operations was the protection of civilians, international humanitarian law applies with regard to the way military operations are conducted, the treatment of possible prisoners, the limitation of collateral damages, etc..

Another case in point in the region are the military clashes between Thailand and Cambodia in February and April which undoubtedly were an armed conflict in the sense of the Geneva Conventions between the armed forces of two sovereign countries, irrespective of the reasons behind the fighting.

Seventh feature, **protection of civilians, human security and responsibility to protect.**

The ICRC was in the past one of the few organisations implementing protection activities. Now, there are many. This notion stays at the heart of our mandate. We define protection as efforts which aim at ensuring that the authorities and arm carriers respect their obligations and the rights of the individuals in accordance with international humanitarian law and other relevant bodies of law, in order to preserve the lives, safety, integrity and dignity of those affected.

The ICRC has some special features in its protection work which make it unique, because of its principles and working methods and the large scope and nature of possible activities implemented.

The challenge of protecting civilians – in all its various dimensions – is a daunting one. The protection work of a humanitarian organization cannot be undertaken in isolation and is an element contributing to a favorable environment along with other intervening parties. The various parties which bear different responsibilities and carry out a variety of activities include:

- the authorities, who have a primary responsibility and whose shortcomings or abuses trigger the need for separate but complementary action by others;
- the persons and communities affected or potentially affected who can take certain independent measures to avoid risks and protect themselves
- states other than that of the authorities concerned which have a responsibility to ensure respect of International humanitarian law and various other duties embodied in the UN charter;
- regulatory or helping mechanisms, in particular groups and components of civil society, international tribunals, media, NGOs, UN agencies, the ICRC, etc.

In general, one may consider that a comprehensive response to protect people involves different roles and responsibilities for the political power, for the military forces and police, for the judicial power and rule of law and for humanitarian actors. It is important that action be taken in distinct protection domains as required and that there is no confusion and blurring of lines between each other.

With a proliferation of actors claiming to carry out protection work, effective and meaningful coordination must be based more on genuine respect of certain basic principles than on ever-more refined mechanisms and procedures of coordination.

With the emergence of the human security concept, the ICRC felt pretty comfortable, as the concept was overarching and as the ICRC did not see any contradiction between this concept, irrespective of the debate about definitions and scope, and its

own practice, priorities and concerns. Our constant practice has been to put emphasis on the individuals, to consider a given situation globally, to assess needs, risks and threats as globally as possible and to feel concerned by all the needs of all persons affected by armed conflicts and other situations of violence, of course within the scope of our mandate.

The protection of civilians has been on the agenda of the UN Security Council for a thematic yearly debate for the last 10 years. Another development has been the emergence of the concept of responsibility to protect which requests states to take action in case of occurrence of four major crimes (genocide, war crimes, crimes against humanity and ethnic cleansing), based on the UN Charter. When this political concept was endorsed by the 2005 World Summit, it was divided into three pillars, the third one being the most sensitive or contentious with the possibility to take collective coercive measures to ensure a failing authority comply with its obligations. (As an aside, it is perhaps timely that the CSCAP Steering Committee will this week consider the report of the CSCAP Study Group on the Responsibility to Protect, the recommendations from which will be delivered to the July meeting of the ASEAN Regional Forum.)

In the Libyan case, the “Responsibility to Protect” construct has been discussed. Indeed, UN SC Resolution 1970, that imposes sanctions and refers the situation to the International Criminal Court, recalls “*the Libyan authorities’ responsibility to protect its population*”. UN SC resolution 1973 does not refer expressly to the “Responsibility to Protect” but has been widely seen as a case of application. As mentioned before, this resolution belongs to jus ad bellum. The operations it authorizes may ultimately aim at improving the situation and protection of civilians, but do not directly improve their physical protection and has generated collateral damage. These operations appear nonetheless to have wider objectives. Civilian deaths and injury have undoubtedly been prevented, but concerns have been raised in terms of the potential undermining of the protection of civilians agenda.

Despite – or because of – these initiatives to protect civilians, the challenge of providing impartial and neutral humanitarian aid to the people in the midst of this armed conflict has become even more difficult. The international humanitarian community has been severely put to the test in Libya, where the humanitarian situation is dire and continuing to get worse.

Ladies and Gentlemen,

In conclusion, armed conflicts or other situations of violence are by definition highly sensitive matters.

States appear willing to participate in any future dialogue on new avenues to strengthen international humanitarian law. It is my fervent hope that the challenges I have outlined today will spur you to engage in the debate. You will find my colleagues in the ICRC delegations and office throughout Asia and the Pacific eager to support you in these endeavours. As the Roundtable draws to a close tomorrow, I also hope that your assessment of the security challenges facing the region will focus not only on those of a political-security nature, but will take into account the humanitarian dimension. The security policies of States are meaningless if they are not directed, first and foremost, to protect their people.

Thank you!