

Role of the International Humanitarian Law Committee of Malaysia in the Implementation of International Humanitarian Law

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ABSTRACT

The objective of this article is to study the need for a national International Humanitarian Law (IHL) committee to domesticate the Geneva Conventions of 1949 in Malaysia. This study focuses on the core functions of the national IHL committee as recommended by the International Committee of the Red Cross (ICRC). The methodology to be used is by analysing the Geneva Conventions of 12 August 1949, observing the activities of Jawatankuasa Undang-Undang Kemanusiaan Antarabangsa Malaysia (JUKAM), attending IHL symposiums and conducting interviews. The findings confirm that there is a need to have an active national IHL committee. It is unnecessary to be highly ambitious by creating a complex structured national IHL committee with a high annual budget. It is sufficient for the structure of the national IHL committee to develop gradually or to consider other alternatives. Based on the evidence provided by national IHL committees in other countries, success in domesticating IHL in Malaysia is achievable with an active JUKAM and a strong political will by all stakeholders, including the decision-makers.

Keywords: International Humanitarian Law; National International Humanitarian Law Committee; Geneva Conventions; Malaysia; International Committee of the Red Cross (ICRC)

INTRODUCTION

The national IHL committee of Malaysia, known as “*Jawatankuasa Undang-Undang Kemanusiaan Antarabangsa Malaysia (JUKAM)*” in the Malay language, has the role of advising and assisting the Malaysian government on matters of international humanitarian law (IHL). The idea for Malaysia to establish its own national IHL committee originated when the delegation from Malaysia consisting of representatives from the Attorney General’s Chamber, Ministry of Defence, Ministry of Foreign Affairs (MoFA) and the Malaysian Red Crescent Society (MRCS) as observers attended the Commonwealth Countries National IHL Implementation Committees in Nairobi, Kenya in July 2005. JUKAM was established in December 2007 following the cabinet’s decision in the same month. JUKAM oversees the ratification of IHL treaties, implementation of IHL in Malaysia, dissemination of IHL knowledge and promotion of IHL. JUKAM is also responsible for ensuring that pertinent domestic legislation complies with Malaysia’s obligations under IHL. The funding for JUKAM’s activities is included in the MoFA’s annual budget. JUKAM is chaired by the minister for foreign affairs¹, while the MoFA serves as the secretariat of JUKAM. The methodology to be used in scrutinising the role of JUKAM is by analysing the

Geneva Conventions of 12 August 1949, observing the activities of JUKAM, attending IHL symposiums and conducting interviews.

THE OBLIGATION OF MALAYSIA UNDER IHL

The 24 August 1962 was when Malaya acceded to the Geneva Conventions of 12 August 1949² (GCs).³ This was followed by the Parliament of Malaya passing the Geneva Conventions Act 1962 (GCA)⁴, where the four Geneva Conventions were transformed into national law to enforce the law domestically. The GCA was amended to extend to Sabah and Sarawak on 10 March 1966, after Malaysia was created on 16 September 1963.⁵

Under Common Article 1 of the four Geneva Conventions 1949⁶ (CA 1), the Parties “undertake to respect and to ensure respect for the present Convention in all circumstances”.⁷

This obligation to respect includes the High Contracting Parties, their armed forces, other persons and groups acting on their behalf, and their populations.⁸ Due to the wide range of issues linked to the obligation following CA 1, it is recommended⁹ that a body is created to oversee the entire process of ensuring that IHL is respected at the national level in all circumstances regardless of whether the State is in a period of armed conflict, peace or emerging

from a period of armed conflict. This process includes taking the appropriate steps at the national level to incorporate IHL into laws, regulations, and policy directives, ensure that the armed forces and other national stakeholders understand and respect the rules, and establish mechanisms to ensure respect for the law and appropriate handling of the violations when they occur.¹⁰

JUKAM AS A TOOL FOR THE IMPLEMENTATION OF IHL

Four sub-committees are created to assist JUKAM in fulfilling its obligations. These are the sub-committee on disseminating IHL knowledge, ratifying treaties and legislative measures on IHL, ethics on warfare, and preserving cultural property.

The Ministry of Defence is the chair of the first sub-committee responsible for disseminating knowledge on IHL. The first sub-committee is to conceptualise the national policy framework for disseminating IHL knowledge before it is submitted via JUKAM for the government's approval.

The second sub-committee is responsible for making recommendations to the government via JUKAM for ratifying treaties and legislative initiatives. The Attorney General's Chamber presides over the second sub-committee. The second sub-committee reviews existing legislation to ensure it complies with Malaysia's obligations under IHL.

The Ministry of Defence serves as the chair for the third sub-committee, which deals with warfare ethics. The sub-committee in warfare ethics role is to assess national policies for applying IHL on armaments before making any necessary recommendation to JUKAM. This sub-committee is expected to collaborate with the sub-committee on the ratification of treaties and legislative measures to provide pertinent information on the production, use, stockpiling reduction, and destruction of weapons in accordance with Malaysia's obligations.

Cultural property protection is the responsibility of the fourth sub-committee. The Malaysian Ministry of Communications and Multimedia presides as the Chairperson of the Sub-Committee on Cultural Property Protection. The primary responsibility of the Sub-Committee on Cultural Property Protection is as follows:

"... prepare in time of peace for the safeguarding of cultural property situated within their territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate."¹¹

This is done by compiling a comprehensive database of all the cultural properties that must be protected in Malaysia.

DEFENCE OF MALAYSIA

Communism and National Security

Malaysia's link to IHL can be understood by scrutinising the threat of communism and Malaysia's relationship with the United Kingdom (UK). When Malaya was a British colony and had sought independence from the UK, the UK initially hesitated unless several issues were discussed and resolved. These issues were the ongoing security threat caused by the communist insurgency¹² occurring internally within Malaya and whether Malaya could financially maintain the armed forces to protect Malaya unaided. These issues led to further questions on whether Malaya was capable of self-government.¹³ Another issue was the external threat faced by Malaya due to its geographical features and proximity to China, a communist country.¹⁴ Malaya and the UK reached an agreement in 1956, which stipulated that while Malaya would be conferred independence on 31 August 1957 and be internally self-governing, the UK would be responsible for maintaining the armed forces necessary to secure Malaya. The Anglo-Malayan Defence Agreement¹⁵ (AMD), signed on 12 October 1957, stipulated that the UK would provide all reasonable military assistance to meet any external aggression, and the UK could use its bases within Malaya. The authors would like to emphasise that IHL applies to any armed conflict in which the UK military forces are engaged while protecting Malaya because the UK acceded to the GCs on 23 September 1957¹⁶, or approximately three weeks before the AMD was signed. The Five Power Defence Agreement¹⁷ (FPD) later replaced the AMD in 1971.¹⁸

Although the UK only agreed to provide reasonable military assistance against external aggression under the agreement, the UK had provided military assistance against external and internal aggression. The military assistance against internal aggression was during the Communist Party of Malaya's insurgency between 1948 and 1960.¹⁹

When Malaya proposed the creation of Malaysia,²⁰ consisting of a merger between Malaya, Singapore, Brunei²¹, North Borneo²² and Sarawak, the neighbouring countries of Indonesia²³ and the Philippines objected. President Soekarno of Indonesia then declared a policy of political,

economic, and military confrontation against Malaya,²⁴ known in Indonesia as “*konfrontasi dalam semua bentuk*” (confrontation in all forms)²⁵ and later announced a campaign to “*Ganyang Malaysia*” (Crush Malaysia)²⁶ on 27 July 1963.²⁷ Indonesia’s military incursion into Borneo, Singapore and Peninsular Malaysia lasted until 1966²⁸ when the Malaysian soldiers defeated the incursion with the support of the UK, Australian and New Zealand troops (ANZAC).²⁹

The Armed Conflict in Vietnam and the Threat to National Security

During the armed conflict in Vietnam³⁰, many fled as refugees to escape resettlement, starting the mass exodus of ‘boat people’, which was to become a major problem for the region.³¹ Malaysia provided refuge to more than 160,000 Vietnamese Boat People from the 1970s to 1990s. The Vietnamese Boat People who came to Malaysia landed in groups and consisting of civilians and former governmental armed forces³² and members of non-State armed groups (NSAGs)³³. Malaysia had no means of vetting their backgrounds.

From the standpoint of Malaysia’s national security, there was the possibility that the Vietnamese Boat People might enter Malaysia with arms and ammunition. The laws on the possession, carrying, or using arms and ammunition in Malaysia are governed by the Arms Act of 1960 and the Firearms (Increased Penalties) Act 1971.³⁴ Except for the Head of State, it is against the law to own, carry, or use weapons or ammunition without a license or permit under the Arms Act of 1960. The Arms Act of 1960 outlines the categories of people eligible to apply for a license.³⁵

Another issue that may be looked upon from Malaysia’s national security perspective would include the likelihood of the armed conflict in Vietnam spreading internally in Malaysia. This is because former governmental armed forces³⁶ and NSAGs³⁷ members were among the Vietnamese Boat People who were seeking refuge in Malaysia in addition to civilians. Thus, although the armed conflict in Vietnam did not spread to Malaysia, there was always the likelihood that what had occurred in Vietnam may spread to Malaysia between the former governmental armed forces³⁸ and members of NSAGs³⁹ who entered Malaysia as Vietnamese Boat People.

RECOMMENDATIONS OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)⁴⁰

The ICRC published a document entitled “National Committees and Similar Entities on IHL: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law”⁴¹ (hereinafter referred to as “document”). The document⁴² recommended the core functions that would make a national IHL committee successful. This article will analyse some of the main core functions recommended from Malaysia’s perspective.

The dissemination of IHL knowledge is one of the core functions specified in the document.⁴³ According to the “Commentary on the First Geneva Convention”,⁴⁴

“Dissemination of international humanitarian law by the High Contracting Parties within their respective countries sends an important signal of a State’s support for the law and can thus enhance its respect”⁴⁵

and

“Eventhough the responsibility for dissemination primarily rests with States, dissemination of international humanitarian law represents one of the functions of the ICRC, as well as being a responsibility of National Societies⁴⁶, of their own accord or as assistance in cooperation with their respective States.”⁴⁷

Knowledge of IHL is to be disseminated to three main groups. These are the military, students, and civilians. Among others, dissemination of IHL knowledge among the Malaysian Armed Forces is usually conducted internally with the support of the Joint Military Warfare, otherwise known in Malay as *Pusat Peperangan Bersama* (PESAMA), the Centre for Military and International Humanitarian Law⁴⁸ and in cooperation with the ICRC.⁴⁹

The dissemination towards the Malaysian Armed Forces is vital as Malaysia has been a member of the United Nations (UNs) since 17 September 1957.⁵⁰ The dissemination of IHL knowledge towards the Malaysian Armed Forces is essential because, since 1960, Malaysia has contributed with over 29,000 peacekeepers from the Malaysian Armed Forces and the Royal Malaysian Police.⁵¹ The Malaysian Armed Forces have been involved in over thirty UNs peacekeeping operations. The Malaysian Armed Forces have also participated in

UNs-mandated NATO-led peacekeeping operations in Bosnia Herzegovina, East Timor, Afghanistan and Mindanao, the Philippines. Malaysia has also dispatched a medical team as part of NATO's operation in Afghanistan.⁵²

The students are the second group to which IHL knowledge is disseminated. In Malaysia, students must join one of the uniform bodies in their schools, including the Malaysian Red Crescent Society (MRCS). IHL is part of the syllabus taught to members of the MRCS. IHL knowledge is also taught as one of the subjects for undergraduate law students and masters' level at several universities in Malaysia. In addition to formal education on IHL, IHL role-play competitions and moot court competitions⁵³ are organised to disseminate IHL knowledge among students at higher learning institutions. For example, the IHL role-play competition is co-organised between the ICRC and a local university to encourage IHL learning among students from various universities throughout Malaysia.

The third group are the civilians. One of the main distinctions between disseminating IHL knowledge to civilians compared to the military and students at higher learning institutions is that professional experts usually disseminate the subject matter among the military and students at higher education institutions. On the other hand, dissemination to civilians is the responsibility of MRCS. As a national society and a member of the International Federation of the Red Cross and Red Crescent Societies, the MRCS is obligated to disseminate and assist the Malaysian government in disseminating IHL. This is stipulated in the third paragraph of Article 3.2, Statutes of the International Red Cross and Red Crescent Movement.⁵⁴ It is essential to highlight that the MRCS is a non-profit humanitarian organisation whose members are volunteers and do not receive financial remuneration. Therefore, there is a lack of professionals, including those from a legal background, willing to join as members of the MRCS and contribute their time to disseminate IHL knowledge. Those usually involved in disseminating IHL knowledge are volunteer members of the MRCS, consisting mostly of teachers or retirees. The authors believe that disseminating IHL knowledge to civilians can become more effective when conducted by professional experts, especially those from legal backgrounds. Additionally, many MRCS members encounter difficulties due to the language barrier because most of the reading materials on

IHL are in English. Additional support is needed to produce reading materials on IHL in Malay.

Realistically, to ensure that Malaysia successfully discharges its obligation of disseminating IHL knowledge to the military, students and civilians, strong support from an active JUKAM is needed. JUKAM should also lead a formal discussion and produce a practical methodology and strategy for the way IHL knowledge dissemination among civilians is to be conducted. The discussion needs to be led by JUKAM because it has the authority to submit any proposals for decisions to the government for its approval.

Dissemination can also be conducted through joint exercises between the military and civilians. Under the Five Power Defence Arrangements (FPD), the armed forces from Australia, Malaysia, New Zealand, Singapore, and the UK⁵⁵ have annual joint military exercises in either Malaysia or Singapore. It is recommended that the JUKAM sub-committee on the dissemination of international humanitarian law coordinates so that participants in the annual FPD exercises consist not only of the military from the five States but also international organisations, non-government organisations and statutory bodies responsible for providing humanitarian assistance during armed conflict. Such joint exercises will be highly beneficial because the working culture between the military and the civilian volunteers is different, and friction is bound to happen during the exercises. Through such joint exercises, the participants will be able to learn how to coordinate with those from different working cultures and the effectiveness of the IHL theories they have learnt.

The second core function that ICRC recommended is the capacity to promote and facilitate the ratification and/or accession of IHL treaties⁵⁶ and other related treaties while harmonising national legislation, regulations, and practise with the IHL instruments to which the State is a party.⁵⁷ In Malaysia, these responsibilities are under the scope of JUKAM's sub-committee on ratification of treaties and legislative initiatives, which is presided over by the Attorney General's Chamber.

The Malaysian Parliament passed the GCA after Malaysia had acceded to the GCs. In April 1962, these Conventions (GCs) became part of the domestic law of the Federation of Malaya by virtue of the Malayan Geneva Conventions Act, 1962 (GCA).⁵⁸ The Malaysian legal framework can only enforce the GCs at the State level when the Malaysian Parliament passes the GCA. Since

the passing of the GCA, Malaysia has also ratified or acceded to other IHL treaties and other related treaties, as follows:

“Convention on the Rights of the Child 1989 and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000. These are followed by the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 and the First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1954. In relation to IHL and weapons, Malaysia is a state party to the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare 1925, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997, and Treaty on the Prohibition of Nuclear Weapons 2017 (TPNW)”.⁵⁹

After the relevant IHL treaties and related treaties have been ratified or acceded to by the Malaysian government, international law shall be implemented into national law by the legislative organ. Only after international law is transformed into national law can the relevant IHL and other related treaties be enforced domestically. An example is Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (GC I), which states that the staff of the National Red Cross Societies, which is duly recognised and authorised by their government, may be positioned in the same capacity as the healthcare workers who are involved in delivering service of the medical units during armed conflict. To domesticate Article 26 of the GC I, the Malaysian legislative passed the Malaysian Red Crescent Society (Incorporation) Act 1965⁶⁰ and the Malaysian Red Cross Society (Change of Name) Act 1975⁶¹, creating the MRCS.

Another example of domestication relates to the red crescent and red cross emblems. The emblems serve two purposes⁶², identification and protection, as indicated in the GCs.⁶³ Currently, the emblem law in Malaysia is contained in the GCA⁶⁴, the Malaysian Red Cross Society (Change of Name) Act 1975⁶⁵, and the Trade Marks Regulations 1997. Although the emblem law has been domesticated

into Malaysian law, further improvements can be conducted by the second sub-committee of JUKAM responsible for ratifying treaties and legislative initiatives. The emblem law should not be in the Acts of Parliament pertaining to the MRCS. According to CA 1⁶⁶, the High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances.⁶⁷ Although the MRCS can use the red crescent emblem for identification purposes, the Malaysian government oversees the protection and implementation of the law governing the emblems at the domestic level. National societies, including MRCS, are not State parties to the GCs. The inclusion of the emblem laws in the Acts of Parliament pertaining to MRCS⁶⁸ may give the impression that MRCS is responsible for maintaining and administering the emblem law within Malaysia. The authors hold the view that the government of Malaysia should introduce a separate Act of Parliament for the emblem law from the Acts of Parliament pertaining to MRCS.

Additionally, violators of the law governing the emblems shall be liable to a fine not exceeding three hundred ringgit and any goods upon or in connection with the emblem or words can be forfeited under the Malaysian Red Cross Society (Change of Name) Act 1975.⁶⁹ The authors are of the opinion that a fine for the sum of three hundred ringgit may be effective in 1975 but no longer in 2023 as a form of deterrence.

The third recommended core function is for the national IHL committee⁷⁰ to be a platform and privileged space for discussion and collaboration between various national stakeholders⁷¹ on IHL issues. Although no such forum is known to have been formally arranged by JUKAM, the MoFA, as the secretariat of JUKAM, has always been willing to coordinate, collaborate and provide the necessary support to all stakeholders. This was proven when in 2011, the MoFA was approached for Malaysia to host the Third Commonwealth Red Cross and Red Crescent IHL Conference.⁷² Upon the consent of the Malaysian cabinet via the MoFA, Malaysia hosted the conference.⁷⁴ Similarly, through the support and collaboration of the MoFA as the secretariat of JUKAM, whenever the International Red Cross and Red Crescent Movement⁷⁵ Conference⁷⁶ takes place every four years in Switzerland, the delegation from the various government ministries, together with the delegation from the MRCS, will attend the conference as a team. This achievement is rare as few national societies and their respective States would attend the conference as a team.

Another example of good collaboration by the secretariat of JUKAM was when the MoFA organised an outreach session on nuclear disarmament and non-proliferation.⁷⁷ The invitees include stakeholders from non-governmental organisations, civil societies, academia and international organisations. The most recent coordination and support were when the MoFA, the International Islamic University of Malaysia (IIUM), the MRCS and the ICRC co-organised a closed roundtable⁷⁸ on the TPNW.⁷⁹

Various stakeholders, including the Malaysian Armed Forces, have also collaborated and supported the implementation and increasing respect for IHL. The Health Service Division of the Malaysian Armed Forces has invited other stakeholders on IHL, such as non-governmental organisations⁸⁰, statutory bodies⁸¹ and State armed forces from neighbouring countries⁸², to participate in their activities, such as the Regional Law of Armed Conflict⁸³ workshops. This was followed by the Malaysian Armed Forces' invitation for the MRCS to participate in the 'BERSAMA LIMA' military exercise⁸⁴ of 2019.

The fourth recommended core function is for the national IHL committee to act as a technical advisory body that can formulate and submit advisory opinions to the national authorities on questions and issues such as IHL implementation and harmonisation of national legislation. This is in addition to having the authority to formulate recommendations and proposals for its own initiatives.⁸⁵ Concerning the fourth recommended core function, the authors strongly believe that it is a greater priority for Malaysia to develop more IHL experts with significant experience before implementing the fourth recommendation. JUKAM needs to have a long-term plan and invest in developing experts on IHL. A significant fund is also required to purchase books and journals on IHL and for the experts to participate in the conferences and meetings on IHL at the international level, such as the annual Sanremo Round Table on Current Issues on IHL, where experts on IHL will meet and discuss the latest contemporary issues and development of IHL.⁸⁶

In addition to offering recommendations for the core functions of the national IHL committees, the ICRC's "National Committees and Similar Entities on IHL: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law"⁷⁷ also provides updates on the activities carried out by the various national IHL committees including JUKAM. According to the document, the JUKAM's

sub-committee on dissemination is working with the armed forces and police in reviewing the military doctrine on law enforcement,⁸⁷ The report also stated that JUKAM's sub-committee on means and methods of warfare had submitted reports on matters pertaining to several weapons treaties, including chemical weapons.⁸⁸ Despite the updates provided by JUKAM, it has to be mentioned that the last formal meeting held by JUKAM's sub-committee on cultural property protection was in 2010 when the discussion was on compiling a database of all the cultural properties on land or in the water which need to be protected.⁸⁹

Although there is no record showing the list of all the national IHL committees from other States that need to be re-established or reactivated, the ICRC's report⁹⁰ indicated that four national IHL committees from Côte d'Ivoire, Gambia, Italy, and Japan were reestablished or reactivated.⁹¹ As the report was only recently published in May 2022, the success of re-establishing or reactivating these four national IHL committees is yet to be known. Be that as it may, there is sufficient proof from many other States to show that IHL can be successfully implemented at the national level with the support of an active national IHL committee. For example, in Switzerland, the main function of the national IHL committee is to provide a platform for coordination and discussion on initiatives by different national stakeholders.⁹² Belarus, Georgia, Kyrgyzstan, the UAE, Egypt, Morocco and Bangladesh national IHL committees have formulated their action plans.⁹³ Also, the national IHL committees or similar entities of Egypt, Madagascar, Belarus⁹⁴, Indonesia⁹⁵ and Moldova⁹⁶ have drafted or oversaw the approval of the emblem laws in their respective countries.

The document also shows that the Canadian Red Cross⁹⁷ and the New Zealand Red Cross⁹⁸ are the secretariats to their national IHL committees. Hence, another alternative is for the decision-makers from within the government of Malaysia to consider the possibility of the MRCS being the secretariat to JUKAM. The authors are of the opinion that there are several challenges to MRCS being the secretariat of JUKAM. MRCS consists of volunteers with minimal full-time paid employees and a limited budget. These factors make it unlikely that sustainability in the long term is achievable. At the same time, the context of the Canadian Red Cross⁹⁹ and the New Zealand Red Cross¹⁰⁰ may differ significantly from that of the MRCS. It is also unknown whether the government of Canada and New Zealand provide the

financial and other necessary support they need to serve as the secretariat for their respective national IHL committees.

On the other hand, the MRCS does have its own IHL Committee, which consists of representatives from the MoFA, the Ministry of Education, the Health Service Division of the Malaysian Armed Forces, the Joint Military Warfare (PESAMA), several universities and the ICRC. The Chairperson of the MRCS' IHL Committee is a volunteer and an elected member of the MRCS' Governing Board who reports to the Governing Board of the MRCS on matters pertaining to IHL. Based on this experience, the MRCS do have the potential to be the secretariat of JUKAM to support the Malaysian government's obligations in ensuring that IHL is respected in all circumstances as required under CA 1.

CONCLUDING REMARKS AND RECOMMENDATIONS

The authors are recommending that JUKAM be re-established or reactivated. This can be gradually done without the need to have a complex structure and a very high annual budget.¹⁰¹ It is perfectly understandable if the MoFA, which serves as the JUKAM's secretariat, has other more critical priorities to attend to. If necessary, the government of Malaysia may consider other alternatives, such as the appointment of the MRCS as the secretariat to JUKAM.

To conclude, there is also the need for a strong political will to realise IHL in Malaysia. The political will can be revitalised if all the relevant stakeholders appreciate and recognise the benefits of having an active and functioning national IHL committee as a forum to put IHL into effect at the State level. This is proven in the third last paragraph in the above sub-section on the "Recommendations of the International Committee of the Red Cross (ICRC)", where examples were provided of States that had successfully implemented IHL with the support of their national IHL committee. More importantly, the vital need for a strong political will is not merely limited to civil servants but also other stakeholders, including the decision-makers.

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Lastly, the authors would like to state that all views expressed in this article are entirely that of the authors and do not represent the views of the organisation or institution to which the authors are/were employed nor the views of any other individuals or legal entity.

NOTES

- ¹ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementation International Humanitarian Law*, p 40.
- ² ICRC, *The Geneva Conventions of 12 August 1949*, ICRC, Geneva.
- ³ The Geneva Conventions 1949 consist of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (GC I), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (GC II), Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (GC III) and Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GC IV).
- ⁴ Geneva Conventions Act 1962 (Act 512 Rev 1993) (Malaysia).
- ⁵ Ibid.
- ⁶ ICRC, *The Geneva Conventions of 12 August 1949*, ICRC, Geneva. p 35, 61, 81 and 151.
- ⁷ K. Dörmann, L. Lijnzaad, M. Sassòli & P. Spoorri (eds), *Commentary of the First Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Cambridge University Press, Cambridge, 2016, p 36.
- ⁸ Ibid.
- ⁹ This initiative was supported by resolution 1 of the 26th International Conference of the Red Cross and Red Crescent Movement of 1995. According to Annex II of this resolution, States are encouraged to establish a national IHL committee.
- ¹⁰ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementation International Humanitarian Law*, p 5.
- ¹¹ Art 3, Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954.
- ¹² Souchou, Y, *The Malayan Emergency; A Small, Distant War*, Nordic Institute of Asian Studies Press, Copenhagen, 2016, p 14.
- ¹³ J. M. Fernando, *The Alliance Road to Independence*, University of Malaya Press, Kuala Lumpur, 2009, p 109.
- ¹⁴ Ibid.
- ¹⁵ Abdullah Ahmad, *Conversations with Tunku Abdul Rahman*, Marshall Cavendish International, Singapore, 2016, p 85.
- ¹⁶ ICRC, *State Party to the Main Treaties*. ICRC, Geneva, 2022, <https://ihl-databases.icrc.org/ihl> [7 December 2022].

- ¹⁷ Pek, W K, *The FPDA: A Contemporary Assessment*, Ministry of Defence, Pointer Journal of the Singapore Armed Forces, Vol 42, No 4, Singapore, 2016, p 2. <https://www.mindef.gov.sg/oms/safti/pointer/documents/pdf/V42N4%20A1.pdf> [14 December 2022].
- ¹⁸ Under the FPD, the five Commonwealth State parties agreed to consult each other immediately and reach the appropriate decision should a situation arise that tantamount to an armed invasion or a threat to an armed invasion towards Singapore or Malaysia.
- ¹⁹ The Communist Party of Malaya was driven into a haven within the border region of the northern part of Peninsular Malaysia and Southern Thailand in the 1960s. A peace agreement between Malaysia and the Communist Party of Malaya wasn't signed until 2 December 1989, in Thailand.
- ²⁰ Despite the confrontation, Malaysia was formed with the integration of North Borneo, Sarawak, and Singapore with Malaya on 16 September 1963.
- ²¹ Brunei refused to form part of the merger as the Sultan of Brunei perceived the merger would not reflect his seniority as a Ruler. Sultan Omar of Brunei preferred to seek internal autonomy while retaining British protection.
- ²² Today, North Borneo is known as Sabah.
- ²³ The formation of Malaysia and the signing of the AMD was perceived by Indonesia as the UK's neo-colonialism project, a threat to 'the structure of Indonesia', and perceived as contending the influence of the Indonesian Communist Party, the then largest Communist party within Asia outside of China.
- ²⁴ Abdullah Ahmad, *Conversations with Tunku Abdul Rahman*, p 54.
- ²⁵ Ibid.
- ²⁶ Syed Husin Ali, *A People's History of Malaysia: With Emphasis on the Development of Nationalism*, Strategic Information and Research Development Centre, Petaling Jaya, 2018, p 130.
- ²⁷ Show, Y X and Ngoi G P, *Revisiting Malaya: Uncovering Historical and Political Thoughts in Nusantara*, Strategic Information and Research Development Centre, Petaling Jaya, 2020. p 433.
- ²⁸ N. Tarling, *The Cambridge History of Southeast Asia; Volume Four; From World War II to the Present*, Cambridge University Press, Cambridge, 1999, p 51.
- ²⁹ Syed Husin Ali, *A People's History of Malaysia: With Emphasis on the Development of Nationalism*, p 131.
- ³⁰ N. Tarling, *The Cambridge History of Southeast Asia; Volume Four; From World War II to the Present*, p 303.
- ³¹ Ibid.
- ³² ICRC, *ICRC Explainer: What Does International Law Say About Universal Jurisdiction for War Crimes Committed in Non-International Armed Conflicts?*, ICRC, Geneva, 2022, p 1.
- ³³ Ibid.
- ³⁴ Security Plus Academy, 'Laws of Malaysia (Arms Act 1960)', *Security Plus Academy*, 2021, <https://securityplusacademy.edu.my/laws-of-malaysia-arms-act-1960/> [accessed on 18 January 2023].
- ³⁵ The eligible people include licensed arms dealers and repairers, military personnel, ship armament, auctioneers, and operators of permitted shooting galleries.
- ³⁶ ICRC, *ICRC Explainer: What Does International Law Say About Universal Jurisdiction for War Crimes Committed in Non-International Armed Conflicts?*, ICRC, Geneva, 2022, p 1.
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ Ibid.
- ⁴⁰ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 14 to 21.
- ⁴¹ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*.
- ⁴² Ibid.
- ⁴³ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 17.
- ⁴⁴ K. Dörmann et al (eds), *Commentary of the First Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, p 981.
- ⁴⁵ Ibid.
- ⁴⁶ The Malaysian Red Crescent Society (MRCS) is the national society of Malaysia.
- ⁴⁷ K. Dörmann et al (eds), *Commentary of the First Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, p 981.
- ⁴⁸ ICRC, 'Malaysia Opens First Ever Regional Centre for Military and International Humanitarian Law', *ICRC*, 2017, <https://www.icrc.org/en/document/malaysia-opens-first-ever-regional-centre-military-and-international-humanitarian-law> [19 January 2023].
- ⁴⁹ Ibid.
- ⁵⁰ United Nations, 'Member States', *United Nations*, <https://www.un.org/en/about-us/member-states#gotoM> [19 January 2023].
- ⁵¹ United Nations, 'MINURSO'S Peacekeepers: National Day of the Republic of Malaysia', *United Nations*, 2022, <https://peacekeeping.un.org/en/minursos-peacekeepers-national-day-of-republic-of-malaysia> [19 January 2023].
- ⁵² Presentation by Murni Abdul Hamid, Undersecretary, Human Rights and Humanitarian Division, Ministry of Foreign Affairs during the Roundtable Discussion on "60 Years on: Malaysia, the 1949 Geneva Conventions and Promoting Respect for International Humanitarian Law" on 19th May 2022 co-organized by Malaysia's Ministry of Foreign Affairs, ICRC, Malaysian Red Crescent Society and the Institute for Political Reform and Democracy at the Malaysian Parliament, Kuala Lumpur. The Roundtable was held as part of the official launching of the book on "Promoting Respect for International Humanitarian Law: A Handbook for Malaysian Parliamentarians".
- ⁵³ The year 2022 is the 19th year that the IHL moot court competition Malaysia is being co-organised between ICRC and universities in Malaysia.
- ⁵⁴ Article 3.2, Statutes of the International Red Cross and Red Crescent Movement (Adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006).
- ⁵⁵ Pek, W K, *The FPDA: A Contemporary Assessment*, Ministry of Defence, Pointer Journal of the Singapore Armed Forces, Vol 42, No 4, Singapore, 2016, p 2. <https://www.mindef.gov.sg/oms/safti/pointer/documents/pdf/V42N4%20A1.pdf> [14 December 2022].

- ⁵⁶ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 15.
- ⁵⁷ Ibid.
- ⁵⁸ Kevin Y L T (ed), *Singapore & International Law: The Early Years, Essays in Memory of S Tiwari*, Centre for International Law, Singapore, p 39.
- ⁵⁹ ICRC, 'States Party to the Following International Humanitarian Law and Other Related Treaties as of 9 January 2023', ICRC, 2023, https://ihl-databases.icrc.org/public/refdocs/IHL_and_other_related_Treaties.pdf [19 January 2023].
- ⁶⁰ Malaysian Red Crescent Society (Incorporation) Act 1965 (Act 540 Rev 1995) (Malaysia).
- ⁶¹ Malaysian Red Crescent Society (Change of Name) Act 1975 (Act 162) (Malaysia).
- ⁶² N. Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2016, p 152.
- ⁶³ Article 38 to Article 44 and 53 of GC I, Article 41 to Article 45 of GC II and Articles 18 and 20 of GC IV.
- ⁶⁴ Geneva Conventions Act 1962 (Act 512 Rev 1993) (Malaysia) s 8, 9, 10, 11 and 12.
- ⁶⁵ Malaysian Red Crescent Society (Change of Name) Act 1975 (Act 162) (Malaysia) s 4 and 5.
- ⁶⁶ Geneva Conventions 1949, Common Article 1.
- ⁶⁷ Ibid.
- ⁶⁸ Malaysian Red Crescent Society (Change of Name) Act 1975 (Act 162) (Malaysia).
- ⁶⁹ Section 5(2), Malaysian Red Cross Society (Change of Name) Act 1975 (Act 162) (Malaysia).
- ⁷⁰ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 19.
- ⁷¹ Ibid.
- ⁷² ICRC, '3rd Commonwealth Red Cross and Red Crescent International Humanitarian Law Conference', ICRC, 2011, <https://www.icrc.org/en/doc/resources/documents/event/ihl-kuala-lumpur-event-2011-05-19.htm> [19 January 2023].
- ⁷³ Ibid.
- ⁷⁴ The event was organised by the government of Malaysia, the MRCS, the British Red Cross Society, the UK Foreign and Commonwealth Office and the ICRC.
- ⁷⁵ International Red Cross and Red Crescent Movement, '32nd International Conference of the Red Cross and Red Crescent', International Red Cross and Red Crescent Movement, 2015, <https://rcrcconference.org/about/previous-conferences/32nd-international-conference/> [19 January 2023]; International Red Cross and Red Crescent Movement, '33rd International Conference of the Red Cross and Red Crescent', International Red Cross and Red Crescent Movement, 2019, <https://rcrcconference.org/about/33rd-international-conference/> [19 January 2023].
- ⁷⁶ During the International Conference of the Red Cross and Red Crescent Movement, issues and the latest development and challenges on IHL and other humanitarian issues are discussed, and decisions are reached through resolutions.
- ⁷⁷ Event was held on 27 February 2020 at the Institute of Strategic & International Studies (ISIS) Malaysia and attended by the main author.
- ⁷⁸ Event was held on 2 August 2022 at the IIUM entitled 'TPNW and Malaysia: Humanitarian and Multidisciplinary Approaches in Post-Ratification' and moderated by the main author while one of the panellists was the co-author. This was to discuss and share views on the next steps which may be taken following Malaysia's ratification of the TPNW on the 30th of September 2020.
- ⁷⁹ Treaty on the Prohibition of Nuclear Weapons, New York, 7 July 2017.
- ⁸⁰ Mercy Malaysia.
- ⁸¹ The MRCS.
- ⁸² Singapore Armed Forces and Royal Brunei Armed Forces.
- ⁸³ The main author participated in the event which was co-organised between the Health Service Division of the Malaysian Armed Forces together with the International Committee of Military Medicine (ICMM) from 11th to 15th June 2012.
- ⁸⁴ The BERSAMA LIMA exercise is a military exercise which arose out of the FPD.
- ⁸⁵ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementation International Humanitarian Law*, p 20.
- ⁸⁶ The main author attended the 2011 Round Table on Current Issues of IHL held in Sanremo from the 8 to 10 September 2011 on 'IHL and New Weapons Technologies'.
- ⁸⁷ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 18.
- ⁸⁸ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 25.
- ⁸⁹ The main author attended the meeting representing one of the organisations invited to participate in the meeting as an observer.
- ⁹⁰ ICRC, *Fifth Universal Meeting of National Committees and Similar Entities on IHL: Bringing IHL Home Through Domestic Law and Policy*, ICRC, Geneva, 2022.
- ⁹¹ Ibid. p 5.
- ⁹² ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 20.
- ⁹³ Ibid, p 54.
- ⁹⁴ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 16.
- ⁹⁵ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 15.
- ⁹⁶ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 17.
- ⁹⁷ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success Towards Respecting and Implementing International Humanitarian Law*, p 33.
- ⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Dr Anne Quintin, Head of the Advisory Service on IHL, ICRC, Geneva, Interviewed by the main author, Geneva, 24 June 2022.

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