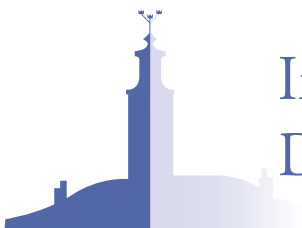


The PLA and International Humanitarian Law: Achievements and Challenges

Wang Wenjuan

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(Translated from Chinese by Kelly Chen)

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Key Abbreviations

PRC	People's Republic of China
PLA	People's Liberation Army
AMS	Academy of Military Science
ICRC	International Committee of the Red Cross
IIHL	International Institute of Humanitarian Law
IHL	International Humanitarian Law
POW	Prisoner of War
ICTY	International Criminal Tribunal for the Former Yugoslavia

Executive Summary

As a branch of international law, the duty to implement international humanitarian law (IHL) lies mainly with the state. The government of the People's Republic of China (PRC) has undertaken a number of legal and practical actions to fulfill its international obligations in this area. The practical measures include organizing and delegating the implementation of tasks to military authorities and academic institutions. The People's Liberation Army (PLA) has a major role in the PRC's aim of ensuring full compliance with this body of law, as well as ensuring that its provisions are fully respected, even in peacetime. Both China and the PLA retain a long humanitarian tradition in this respect. Indeed, principles regarding the humane conduct of armed conflict and lenient treatment of captives were followed by the PLA and preceded the introduction of formal IHL treaties by the international community by more than 20 years. Moreover, at the international level, China is a party to most of the major IHL treaties and is one of the states to have ratified the largest number of IHL instruments. The PLA has established professional agencies, promoted education and training of military personnel, promoted research, and participated in international activities concerning IHL. Remarkable results have been achieved due to these enhanced efforts in recent years. Therefore, major IHL treaties and provisions have become integral parts of the PLA's education and training programs, and, as a result, IHL has been widely disseminated and implemented within the army. However, for the future development of IHL within the PLA, even greater implementation of IHL provisions into PLA regulations needs to be carried out, as well as a strengthening of practical education, training, and research.

Editor's note:

This paper has been edited for greater clarity and may depart in minor instances from the Chinese-language version as well as the original translation.

China's Humanitarian Tradition: An Introduction

While war and humanitarianism are opposites, there is an overlap between the two in international humanitarian law (IHL),¹ the subject of this paper and the practical implementation of which will be examined in greater depth in the case of China, and more specifically the People's Liberation Army (PLA). However, it is first necessary to recognize that the philosophy of IHL is based on the humanitarian spirit, which is rooted in the human consciousness and basic emotions. This so-called humanitarian spirit has gradually developed throughout mankind's history and has existed in various forms and guises in all ancient civilizations and religions.

China has a deep-seated historical tradition of humanitarianism. Confucius' concept of *renai* (love for one's fellow man), Mozi's *jianai* (universal love), and Mencius' *renzheng* (benevolent government), among others, all reflect the Chinese people's respect for human life. Confucius said: "Soldiers must be righteous, violence must be directed at the right targets," meaning that those who are not guilty must not be attacked, and the innocent must not be massacred and slaughtered at will. Mencius also said: "if one is without the heart of compassion, one is not a human," showing that humanitarianism is considered one of the fundamental dictates of human nature.

Other historical concepts that embody the idea of humanitarianism can be found in *Zuo Zhuan* (Zuo Qiu Ming's work about the Spring and Autumn period), in which it is stated: "Ending the fight is the highest form of valor," while *The Han Dynasty Work on Divination* argued that "Senseless killing is heartless and inhumane." Sunzi's *The Art of War* discusses how "to break the enemy's resistance without fighting."² Furthermore, *The Methods of the Sima* stipulates that when entering enemy territory, soldiers are not allowed to profane religious tablets, to hunt, to destroy water conservatory projects, burn down houses, cut down trees, arrogate livestock, food or utensils; when

¹ Defined as "the body of law that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or no longer participating in hostilities and restricts the means and methods of warfare," OECD, "Glossary of Statistical Terms," <http://stats.oecd.org/glossary/detail.asp?ID=7251>.

² In Chinese, *bu zhan er qu ren zhi bing* 不战而屈人之兵, from the section on "Attacking by Stratagem" in Sunzi: *The Art of War* 孙子兵法 *Sunzi bingfa*, trans. Lin Wusun (Beijing, Foreign Languages Press, 2011), pp. 16-17.

meeting the elderly and young, the soldiers should escort them home; when encountering strong youths, if they do not resist, they should not be treated as enemies; wounded enemies must first be treated and then released to return home.³ Such fundamental humanitarian philosophies have had a profound impact on the thinking and practices of the Chinese military.

Since ancient times, therefore, the Chinese military has always aimed to conform to the ideas of benevolence and righteousness, to be courteous envoys, to treat captives kindly, and to care about the people and properties of the defeated state. These traditional ideologies are highly compatible with the modern discipline of IHL. Indeed, these traditions have been passed down in the Chinese army for centuries and thus provide a solid foundation for the PLA's implementation of IHL in the twenty-first century. Before examining these, however, an overview is provided of the PRC's accession to IHL treaties as well as how these relate to nationally implemented legislation.

³ *Zhong-mei-e-ri-ying wu guo zhangzhengfa lilun yu shiji yanjiu* 中美俄日印五国战争法理论与实际研究 [Theory and Practical Research on the Law of War in China, the United States of America, Russia, Japan and India], PLA Xian Academy of Politics, June 2003, p. 35.

The PRC and International Humanitarian Law: Treaties and Legislation

The Chinese government attaches great importance to international humanitarian law (IHL) and has undertaken a variety of actions at the international and national level to fulfill its obligations with respect to IHL. These measures have provided a solid foundation for the PLA to further disseminate and implement the relevant IHL provisions within the military.

Ratification of and Accession to Major IHL Treaties

Table 1. Chinese Ratification/Accession to Main IHL treaties

Treaties	Signature	Ratification Accession Succession	Reservation Declaration Notification
Hague Convention (IV) (1907)	-	May 10, 1917	-
Geneva Convention (I-IV) (1949)	July 13, 1952	December 28, 1956	R
Additional Protocol I	-	September 14, 1983	R
Additional Protocol II	-	September 14, 1983	-
The Hague Cultural Property Convention (1954)	May 14, 1954	January 5, 2000	-
<i>Protocol (1954)</i>	May 14, 1954	January 5, 2000	-
Treaties on the Use of Certain Weapons			
Geneva Gas Protocol (1925)	-	July 13, 1952	R

At the international level, China is a party to most of the main treaties and is one of the states that has ratified the largest number of IHL instruments. Among the permanent members of the United Nations Security Council,

China was the first state to become a full party to the Geneva Conventions and the Additional Protocols.⁴

At the same time, China is highly supportive of the advancement and development of IHL instruments. For example, China actively supports the Biological Weapons Convention, the Chemical Weapons Convention, and the Comprehensive Nuclear Test Ban Treaty, all of which were concluded after extensive petitioning by China and other countries. In addition, China is an active participant in international humanitarian organizations.

Implementing National Legislation

Implementing national legislation in the PRC is necessary for the IHL treaties to have legal effect under China's domestic law. Recognition of the international commitments by which the PRC is bound can be found in the National Defense Law of the PRC, which was first enacted in 1997. Article 67 states: "in its military relations with other countries, the PRC should observe the relevant international treaties and agreements that the PRC has concluded, acceded to or accepted."⁵

An important aspect of the national implementation of IHL obligations is the enactment of legal frameworks for the punishment of war crimes. There are strict penalties for offences committed in armed conflict, which are regarded as war crimes according to the Criminal Law of the PRC. Articles 444–448 provide for offences such as the mutilation of civilians in wartime, plundering of civilians' properties, and abuse of Prisoners of War (POWs).

Other laws relate to compliance with and enforcement of the IHL conventions on the use of biological and chemical weapons. For example, China has enacted legislation on "Export Control of Dual Use Biological Agents and Related Equipment and Technologies Regulation" and "Export Control of Chemical Products and Related Equipment and Technologies Regulation."

⁴ In 1956, China ratified the main treaties of the Geneva Convention of 1949. In 1983, China ratified the two Additional Protocols to the Geneva Conventions of 1977, and thus became the only state of the five permanent members of the UN Security Council to ratify both protocols. The United States of America, Great Britain, and Russia have yet to accede to the protocols; France has only acceded to the first additional protocol.

⁵ He Xiaodong, "The Chinese humanitarian heritage and the dissemination of and education in international humanitarian law in the Chinese People's Liberation Army," March 31, 2001, *International Review of the Red Cross*, No. 841, <http://www.icrc.org/eng/resources/documents/article/other/57jqyz.htm>

These regulations provide specific rules concerning strict limitations on the export of biological and chemical products, and have established a comprehensive legal system to ensure the non-proliferation of nuclear, biological, and chemical weapons, as well as missiles. In order to comply with and enforce the IHL provisions on the use of landmines, moreover, China has implemented new military standards based on the revision of The Landmine Protocol.

In addition, to comply with and execute the regulations on the protection of children participating in armed conflicts, China has enacted the Military Service Law of the PRC, the Criminal Law of the PRC, and the Law on the Protection of Minors of the PRC, as well as other related laws that provide regulations on the minimum age for conscription, supervisory measures, penalties for violating regulations, and so on.

China's National Committee on International Humanitarian Law

In November 2007, China established the National Committee on International Humanitarian Law. It serves as the national IHL advisory body for the coordination of IHL dissemination and implementation for the Chinese government, the military, and the Red Cross Society of China. The committee members consist of, among others, representatives from the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Justice, the State Administration for Cultural Heritage, the PLA's General Staff Department, the PLA's General Political Department, the Legal Affairs Bureau of the Central Military Commission, and the Red Cross Society of China. Its tasks include promoting research on major IHL issues and providing coordination for IHL dissemination activities, international exchanges, and cooperation with relevant organizations.⁶ In the white paper *China's National Defense in 2008*, it is clearly stated that "under the [coordination] of the National Committee on International Humanitarian Law, the relevant military units

⁶ "Zhonghua renmin gongheguo guanyu 'ertong quanli gongyue guanyu ertong juan ru wuzhuang chongtu wenti de ren ze yidingshu' zhi hang qingkuang de shou qi baogao," "中华人民共和国关于《儿童权利公约关于儿童卷入武装冲突问题的任择议定书》执行情况的首期报告" [The People's Republic of China's First Report on the Implementation of 'Optional Protocol on the Rights of the Child on the Involvement of Children in Armed Conflict'], http://www.fmprc.gov.cn/mfa_chn/ziliao_611306/tytj_611312/tyfg_611314/t812061.shtml.

should carefully fulfill the work of the Chinese PLA to disseminate and implement IHL.”⁷

Chinese Participation in International Criminal Justice

The PRC also actively participates in international criminal justice. In 1993, 1994, and 2000, respectively, China voted in favor of the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone. China has also participated in the drawing up of respective tribunal statutes and other related legal documents.⁸ In addition, China has nominated well-known experts to international tribunals as judges and prosecutors. For instance, Professor Li Haopei, Professor Wang Tieya, and Ambassador Liu Daqun served as judges in the ICTY, while Professor Zhu Wenqi served as assistant prosecutor appeals clerk in the tribunals for both Yugoslavia and Rwanda, his work being considered a major contribution to both tribunals. Moreover, Judge Shi Jiuyong was elected as President of the International Court of Justice in February 2003. In sum, therefore, China has been very active in the international arena in terms of IHL.

⁷ See: http://www.china.org.cn/government/whitepaper/2009-01/21/content_17162870.htm.

⁸ Chen Gang 陈刚, “Xin zhongguo dui guojirendaofa de gongxian” 新中国对国际人道法的贡献 [New China’s Contribution to International Humanitarian Law], *Xian zhengzhi xueyuan xuebao* 西安政治学院学报 [Journal of the Xi’an Institute for Politics], vol. 6, no. 4 (2003), p. 54.

The PLA and International Humanitarian Law: Tradition, Training, and Enforcement

Having set out the context of the PRC's history and enactment of IHL more generally as well as outlined the main treaties and functions of its coordinating bodies, this section more specifically considers its adoption and implementation by the PLA.

The Humanitarian Tradition of the PLA

It should first be noted that the core principles of IHL, as defined in the introduction, are consistent with the PLA's nature, purpose, and function. The PLA has always promoted humanitarianism, and consciously practiced and implemented relevant IHL provisions. At the time of the founding of the PLA in 1927, disciplinary regulations and a basic code of conduct for every member were set out in "The Three Main Rules of Discipline" and "The Eight Points for Attention," as outlined below.⁹ The main focus was on the protection of civilians and the lenient treatment of captives.

Three Main Rules of Discipline:

- Obey orders in all your actions
- Do not take a single needle or piece of thread from the masses
- Turn in everything captured

Eight Points for Attention:

- Speak politely
- Pay fairly for what you buy
- Return everything you have borrowed
- Pay for anything you damage
- Do not hit or swear at people
- Do not damage crops
- Do not take liberties with women

⁹ See the following website link: <http://english.peopledaily.com.cn/dengxp/vol2/note/B0060.html>.

- Do not mistreat captives

These sets of rules and codes were inculcated by different means, such as theatrical performances, posters, and combat simulations, and were enforced through severe punishment. Thus, they became deeply rooted in the army. The lenient treatment of captives and the safeguarding of the masses in war zones has, therefore, always been a strict rule by which the army has abided. Even now, every member of the PLA still has to firmly remember the rules and points outlined above.

In 1945, furthermore, Mao Zedong affirmed in the report “On Coalition Government” that the lenient treatment of captive soldiers was one of the PLA’s main objectives. He pointed out that: “this army has a correct policy for winning over enemy officers and men and for dealing with prisoners of war. Without exception all members of the enemy forces who surrender, who come over to our side or who, after laying down their arms, wish to join in fighting the common foe, are welcomed and given proper education. It is forbidden to kill, maltreat or insult any prisoner of war.”¹⁰ There have also been many provisions in the PLA’s regulations governing the punishment of those guilty of killing or robbing civilians during war. For example, article 7 of “The Provisional Rewards and Punishment Regulations of the Northeast People’s Revolutionary Army” from 1934 stated that “[those guilty of] unauthorized killing shall be sentenced to death.” Article 10 of “The Provisional Military Regulation of Jinchaji Military Region” from 1948 also stipulated that anyone “raping women or showing severe disobedience of the military discipline regulations and thus causing severe political losses for our army shall be sentenced to death.” Article 28 of “The Provisional Rewards and Punishment Regulations of the East China Military Region” from 1949 further stated that anyone engaging in “robbery or extortion of civilians or public property and thus causing severe political losses for our army shall be sentenced to death.”¹¹

It is interesting to note that these regulations were adopted long before the four Geneva Conventions of 1949. Thus, the IHL principles on the

¹⁰ Mao Zedong, “On Coalition Government,” April 24, 1945, http://www.marxists.org/reference/archive/mao/selected-works/volume-3/mswv3_25.htm

¹¹ Xu Qiping 徐其萍, “Zhanzheng yu zhongguo jundui” 战争法与中国军队 [The Law of War and the Chinese Army], *Xian zhengzi xueyuan xuebao* 西安政治学院学报 [Journal of the Xi’an Institute of Politics], no. 1 (1992), p. 38.

humane conduct of armed conflict and lenient treatment of captives were pursued by the PLA and preceded the introduction of formal IHL treaties by the international community by more than 20 years.¹²

Practice of IHL in Past Wars

Historically, the PLA has sought to abide by the basic principles and relevant provisions of IHL with its focus on safeguarding humanity. This section considers three wars in particular in which practices of IHL were implemented.

During the War of Liberation (1946-1950), Mao Zedong clearly instructed soldiers to protect historical relics. He said: "In this battle, precise plans should be made to avoid damages to the Forbidden City, universities and other significant historic monuments of great cultural value. In order to secure this, the plans must be scrupulously abided [by] ... A thorough search of the city should be made by each unit in order to completely understand where to strike or not to strike. The results of the search should be labeled in the field map and followed as disciplinary rules."¹³ By contrast, the international community had yet to adopt the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts.

During the Korean War, for the purpose of securing the situation on the Korean Peninsula and protecting its own national security, but also to prevent an official war with the United States, the PRC chose to deploy a volunteer army in compliance with customary international law.¹⁴ The Chinese People's Volunteer Army strictly followed the Geneva Convention relative to the Treatment of Prisoners of War. Some of the army's practices even surpassed the provisions of the convention. All captured officers and soldiers were humanely treated. This included average food costs for prisoners being higher than those for the army (for soldiers the average was 13,000 RMB per month, while for captives it was 15,000 RMB per month¹⁵); captives received

¹² He Xiaodong, "The Chinese humanitarian heritage and the dissemination of and education in international humanitarian law in the Chinese People's Liberation Army."

¹³ Zhou Hongyang 周宏雁 and Jiang Tiejun 姜铁军, *Jiefangzhangzheng qiuqulu <juan si> - huishijiuzhan 解放战争全记录 (卷四) 挥师决战 [Complete Records of the War of Liberation (Volume 4) - A Decisive Battle of Commanders]*, (Sichuan: Renmin Press, 1999), p. 455.

¹⁴ "Law of War" entry in *The Chinese Military Encyclopedia (Second Edition)* (in the volume on the *Law of War* under the "Military Law" entry).

¹⁵ These figures refer to old currency (10,000 RMB in the old currency equaled 1 RMB in the new currency introduced in 1955). Converted into new currency, these figures would

the highest quality of winter clothing; their religious beliefs and local traditions were respected; they had freedom of communication with their families; medical treatment was provided for those who were wounded; and for the sake of providing a rich cultural life, even sports events and theatrical performances were organized.¹⁶ According to the treaty signed after the war, all the POWs, apart from the 20 individuals who wished to remain in China, were released and repatriated.

To give other examples, during the border conflict with India in 1962 and the Sino-Vietnamese War of 1979, the PLA strictly obeyed the Geneva Convention to ensure the humane treatment of POWs, including the wounded and civilians. In the Sino-Vietnamese War, units above the company level enlisted special commanders and departments to inspect and monitor the protection of civilians and treatment of captives. The division units set up POW transfer stations and the military regions set up POW management departments. The wounded Vietnamese civilians and POWs received timely medical treatment. After the war, all POWs were repatriated upon release.

In sum, the lenient treatment of POWs by the PLA, among other practices, has become a model for the humane treatment of captives during wartime, which demonstrates the high level of compatibility and consistency between the PLA's humanitarian traditions and those of IHL. As the main enforcement body for IHL, moreover, the PLA has undertaken various measures to disseminate and implement IHL provisions within the armed forces, and has achieved significant results in doing so, as is examined below.

Translation and Dissemination of IHL

Most of the IHL treaties explicitly require that the relevant parties ensure the widest possible dissemination of IHL during both peace and wartime. In particular, the study of the treaties should be included in the military education plan and thus ensure that the armed forces are well educated in this regard.¹⁷ In accordance with such requirements, the PLA has undertaken a series of measures to spread knowledge of IHL within its ranks.

be 13 RMB and 15 RMB respectively.

¹⁶ Guo Weijin 郭维敬, *Diyideng zhanfuying: lianheguojun zhanfu zai chaoxian* 第一等战俘营——联合国军战俘在朝鲜 [The First Class Camp – United Nations POW Camp in North Korea] (Beijing: World Knowledge Press, 1999), pp. 86-87.

¹⁷ Sections of treaties that address the dissemination of IHL include article 47 of the Geneva Convention (I), article 48 of the Geneva Convention (I), article 127 of the Geneva

First, the PLA is responsible for the translation and publication of major IHL instruments and relevant literatures into Chinese. All the treaties that China has ratified and acceded to have been translated and published. In addition, a number of treaties that China has not concluded or acceded to have also been translated. Relevant literature include IHL efficacy and guidance materials, such as the Ottawa Treaty, the Sentencing Provisions of the International Criminal Court, the San Remo Manual on International Law on Armed Conflict at Sea, Customary International Humanitarian Law Rules, and so on.

Second, the PLA has produced and published numerous IHL training and promotional materials for military officers, such as Chinese translations of "Lectures on IHL" and "The Essence of IHL." A further 200,000 volumes of additional materials have been distributed to troops in all departments. IHL has been incorporated into educational materials and relevant literatures, taught in classes, and even distributed through cards in a simple, intuitive, and graphical manner to all military officers in the armed forces.¹⁸ Production has not been limited to written materials. Video productions entitled "Humanitarianism" and "Fighting Wars by Rules" have been produced and distributed to units above the division level. The film "IHL Training in the PLA" depicting the PLA's work in instructing IHL has also been distributed among troops.

Third, IHL has become an integral part of the PLA's legal education. Since 1986, IHL has been included in the Five Yearly Law Education Campaign. For example, The UN Charter, The Geneva Conventions and the Additional Protocols, The UN Convention on the Law of the Sea, The Convention for the Protection of Cultural Property in the Event of Armed Conflict, and other main IHL treaties have all been revised and introduced in teaching materials such as the "The Fifth 5-Year Educational Plan Legal Studies Reader." In "Military Law FAQ" materials, the IHL functions have been depicted, including clarification on legitimate war target selection, the

Convention (III), article 144 of the Geneva Convention (IV), article 83 of the Additional Protocol (I), article 19 of the Additional protocol (II), article 25 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, and article 6 of the Convention on Certain Conventional Weapons.

¹⁸ "The People's Republic of China's First Report on the Implementation of Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict" (translation from Chinese; see footnote 5).

basic rules of protecting civilians and POWs, and introduction of the common IHL signs used in armed conflicts.¹⁹ In the learning material “Soldiers’ Readers,” relevant topics such as “The Use of IHL to Safeguard National Interests,” “The UN Charter,” and “Armed Conflict Protection Signs” are all specially addressed. In “Navy’s Reader” the subject of “Maritime and Operations Laws and Regulations” is described. “A Summary of Legal Studies and Tutorial Lectures,” furthermore, is provided to cadres above the regiment level, which includes chapters and sections on international law and IHL.

Fourth, the PLA has also used the media to spread knowledge of IHL. For example, the *PLA Daily* often publishes articles on IHL. The CCTV Military Channel has produced a “Silent War Film” covering the basic rules of IHL. Additionally, in 2004, a special unit responsible for the Landmine Convention organized a nationwide “Landmine Convention Knowledge Contest” in which thousands of soldiers participated.²⁰

Education and Training

In recent years, education in IHL has been gradually expanded and deepened. More generally, troops are the fundamental platform and main enforcement subject for IHL. The PLA highly values the education and training of its troops, and it has incorporated IHL studies into its education programs at various levels, which has greatly improved competence in IHL.

In accordance with article 6 of Additional Protocol I on the requirements for training of qualified personnel, the PLA has conducted numerous courses on IHL to train qualified persons. So far, the PLA and the ICRC have held a dozen courses on IHL. Moreover, several training classes have been conducted for military personnel on the Convention on Certain Con-

¹⁹ In order to comply and implement the IHL provisions on the use of the Distinctive Emblems of the Geneva Conventions, The Red Cross Society Law of the PRC prohibits any misuse of the emblem. The law also clearly defines that the armed forces must use the sign in accordance with the related IHL provisions. The fundamental standard for the use of the emblem is set out in “The Emblem Regulations of the PRC.” The emblem is allowed to be used by five categories of military personnel in armed conflicts, four types of organizations, and prohibits the use in seven different places and situations.

²⁰ Song Xinping 宋新平, “Wojun guojirendaofa jiaoyuxunlian de tedian” 我军国际人道法教育训练的特点 [Characteristics of the PLA’s IHL Training], *Zhongguo junfa* 中国军法 [Military Law Forum] no. 7 (2010), p. 30.

ventional Weapons, the Chemical Weapons Convention, and the Landmines Protocol.

The PLA has also shouldered the responsibility to train legal personnel in the army's education institutions, political officers at the division, brigade, and regiment levels, government office cadres, military judges, prosecutors, lawyers, and legal professionals on IHL. For example, the General Political Department has delegated the Academy of Military Science (AMS) the task to hold IHL training classes for military lawyers, inviting military and non-military IHL experts, and Red Cross representatives to teach and train military lawyers and legal advisors across the entire army. More specifically, the National Defense College, which is the highest ranked educational institution in the PLA, holds special IHL lecture classes on an annual basis for officers in training at or above the division and corps level.

In addition to the above, military training exercises also seek to inculcate knowledge of IHL. IHL-linked scenarios such as the protection of civilians and POWs have been integrated into training exercises, including international joint military exercises. For example, in "Peace Mission – 2005," a joint exercise conducted with Russia, the participating troops were trained in how to respond—and obey the law—in unlawful attacks in combat situations, accidental injuries and bombing, distinction of battle targets, treatment of POWs, as well as 13 other possible scenarios.²¹

Since the PLA has experienced a long period of peacetime, the practice of IHL has mainly taken place through diversified military tasks. Before participating in UN peacekeeping missions, the escort missions in the Gulf of Aden and Somalia, joint military exercises, and other associated tasks, respectively, relevant IHL training is and has been provided. For example, in 2001 the Ministry of National Defense established the National Peacekeeping Office, as well as establishing two more offices in Nanjing City and Langfang City. Educational content includes the UN Charter, the principles and missions of the UN peacekeeping operations, agreements on the mission and status of the army, the rules of engagement, ethics, and so on. Before its participation in the peacekeeping mission to Sudan, for instance, the Red Cross Committee and other specialists were invited to lecture the units being dispatched on topics such as child protection, humanitarian assistance, the principles on the use of firepower, NGOs and the Red Cross,

²¹ *Ibid.*, p. 29

and the rules of engagement of the UN Sudan peacekeeping mission, among other subjects.²² In order to ensure high quality professional and efficient legal protection in every major military mission, special legal advisors are also attached to the missions.

Legal Advisors and Compliance Offices

In adhering to Additional Protocol I of the Geneva Conventions on the requirement of the armed forces to be equipped with legal advisers, the PLA has established a special office in the General Political Department that is in charge of managing legal advisors and their work. Legal advisors have been installed at the corps, division, and brigade levels. Currently, the PLA has established 268 military legal advisory offices, and has more than 1,600 legal consultation teams at the brigade and regiment level and in almost all battalions and companies,²³ the function of which is to spread and universalize IHL knowledge within the armed forces, recommend the proper application of IHL to the commanders and troops, which includes providing legal advice to military commanders in combat, and monitor IHL application and enforcement in the army. By the end of 2010, there were 1,342 military lawyers and 25,000 legal advisors in the PLA.²⁴

The General Political Department has also assembled several small legal service groups to provide legal assistance to the anti-terrorism and stability maintenance units, compiled and published relevant legal manuals for the troops,²⁵ and more generally educated military personnel on IHL. With the aim of bolstering the PLA's IHL commitments, the department has, for example, promoted knowledge among military officers and soldiers to help them understand and grasp treaties such as the UN Charter and UNCLOS. Together with training exercises, therefore, troops have increased their theoretical knowledge and practical application of IHL.

Under the coordination of the National Committee on International Humanitarian Law and according to IHL requirements, the relevant military units have organized various compliance activities with compliance

²² Ibid.

²³ China's National Defense in 2010, State Council Information Office, http://news.xinhuanet.com/english2010/china/2011-03/31/c_13806851.htm

²⁴ Ibid.

²⁵ Ibid.

offices in the General Staff Department and the General Logistics Department. The offices function as the state's overall compliance organization for complying with various conventions regarding weapons such as the Chemical Weapons Convention, the Biological Weapons Convention, as well as the Landmine Protocol. The units have also assisted the Chinese government through submissions of materials, reports, and proclamations.²⁶

Academic Research

Theoretical research on IHL is continuously being enhanced. In 1993 and 2001, respectively, the PLA launched master's programs and doctoral studies in IHL. The PLA has included IHL into its various research plans and programs, and provided financial guarantees for such research. As a result, more and more military academies have combined IHL into their teaching, including the navy and air force. The PLA has also published a large number of academic works on various IHL topics, which have been promoted through various channels, such as academic journals, seminars, and the media. Moreover, various academic periodicals facilitate research and discussion of IHL. Special issues of *China Military Science*, *The Journal of the Xi'an Institute for Political Science*, *Essays on Military Law*, *Chinese Military Law* (the journal of the Society for the Study of Chinese Legal and Military Affairs) have been dedicated to IHL, the latter also being taken up as a special topic in academic seminars on military law held by various military academies.

International Cooperation and Exchange

The PLA has gradually increased its IHL international exchange activities since 1989, when representatives visited the ICRC headquarters in Geneva and participated in one of the military courses held by the International Institute of Humanitarian Law (IIHL) in San Remo, Italy. Two years later,

²⁶ For example, in accordance with article 13 of the Revised Landmine Protocol to the Convention on Certain Conventional Weapons, a national compliance report on the execution of the protocol was submitted to the UN Secretary General. Second, in accordance with article 6 of the Chemical Weapons Convention, an initial and annual declaration on chemical weapons, leftover chemical weapons, and production facilities on chemical weapons was handed in. Further, in accordance with the requirements from the first review conference of the Biological Weapons Convention, annual reports to the UN on China's confidence building measure situation and information have been submitted since 1988.

the PLA and the ICRC initiated collaboration on IHL education and training, including joint courses, short-term programs, regional seminars, sending visiting scholars to the IIHL, and participating in international IHL contests. In addition, ICRC representatives and scholars have been invited to China to teach Chinese military commanders, political commissars, legal advisers, and military academy professors about IHL, as well as actively participate in international academic exchanges activities on a regular basis.²⁷

²⁷ "The People's Republic of China's First Report on the Implementation of 'Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.'"

Future Needs and Challenges

The PLA has achieved remarkable results in its dissemination and implementation of international humanitarian law. However, in order to meet future needs, there are still some deficiencies that need to be addressed. In recognizing that the PLA is the key actor and main implementing body of IHL, it should shoulder responsibility for disseminating and implementing IHL even more proactively, as well as promote the further development of related activities. The main challenges and areas for improvement are analyzed in this section.

National Legislation and Transformation of IHL Provisions Into Domestic Law

The transformation of IHL provisions into domestic law is the precondition for the PLA to implement IHL within the army. The PRC has somewhat lagged behind in this respect. This has, from a critical point of view, had a certain effect on the PLA's proper dissemination and implementation of IHL. First, the legitimacy of IHL provision in the PRC remains unclear. The validity of the IHL treaties signed or ratified by the PRC is not specifically provided for in the Constitution. Generally, the provisions do not have any direct effect: transformation into domestic law is required for the provisions to attain any legal effect. Such lack of proper transformation may result in uncertainties in the application and implementation of relevant IHL provisions.

Second, the provisions on war crimes in the Criminal Law of the PRC are relatively insufficient. They do not cover all types of war crimes: the subjects of prosecutions are limited to Chinese military staff and preclude foreign military staff.²⁸ War crimes are classified as a breach of military staff duties and obligations, and are thus applicable to statutory limitations.²⁹

²⁸ Indeed, there are many provisions in the Criminal Law of the PRC that reflect the requirements of the law of armed conflict. However, a majority of them only have a general application and do not specifically address war crimes. Currently, critically speaking, only two of them apply to war crimes, namely, mutilation of civilians and plundering of their properties, and abuse of prisoners.

²⁹ War crimes are not limited by statute of limitations whilst ordinary criminal offenses

The principle of *nulla poena sine lege*³⁰ represents a barrier for universal jurisdiction and thus prevents the domestic punishment of war crimes.

Third, important regulations that may relate to armed conflicts have yet to be formulated. For example, a law on captives and protection of cultural properties and the environment in armed conflicts has not yet been included in legislation. As a precautionary measure, the PLA should request the state to legislate in these aspects, clarify the relationship between national laws and international treaties, revise the criminal and procedural laws, clarify the regulations on war crimes and trial procedures, and accelerate the enactment of legislation that is directly related to military combat.³¹

Strengthen the Integration of IHL Into Law and Practice

It is difficult to ensure proper practice of the law. Thus, the key to disseminating and implementing IHL within the PLA is recognition of relevant provisions in military rules and regulations, incorporation of IHL provisions into the military's ordinance codes, and regular training in order for IHL to be ingrained within the military and so impact its conduct.

The PLA has put a lot of effort into the dissemination and implementation of IHL. However, its external influence in this regard still needs further improvement. One of the reasons for this is that not many of the PLA's cultural and IHL regulations are reflected at the policy level or are statutory regulations, and so are largely unknown by the international community. There are, however, some exceptions. For example, in the judgment of the UN International Criminal Tribunal for the Former Yugoslavia (ICTY), the PLA's "Three Main Rules of Discipline" and "Eight Points for Attention" were used to argue that "war crimes" are grave breaches of international customary law and should be punished severely. The ICTY studied the legal elements of these rules, including their binding forces and penalties in case of violation.³²

are subject to statutory limitations.

³⁰ The term is rendered in English as "No penalty without a law," see: http://www.law.cornell.edu/wex/nullum_crimen_sine_lege

³¹ Xu Xin 徐新 and Wang Wenjuan 王文娟, "Jiaqiang wuzhuang chongtu de chuanbo yu shiji" 加强武装冲突法的传播与实施 [Enhancing the Dissemination and Implementation of the Law of Armed Conflict], *Zhongguo shehuikexuebao* 中国社会科学报 [Chinese Social Science Journal] No. B01 (January 2013).

³² Si Lifang 司利芳, "Yiqiangle de zerenxin he shiminggan guanzhu guojirendaofa ji qi

IHL is a compound and complex system: many of its regulatory principles cannot be used as codes of conduct during wartime. Therefore, on the basis of national implementation, the IHL provisions should be incorporated into military laws and regulations and transformed into practical means and measures that could simplify the implementation procedure. Currently, the PLA has regulated the dissemination and implementation of IHL according to certain specific regulations; however, these regulations are mostly general principles. The PLA has suggested some proposals on national rules of engagement. Other suggestions include elaborating IHL provisions, principles of combat methods, measures used by armed forces, as well as implementation and supervisory measures based on various combat tasks and forms. Lastly, there is a need to formulate military manuals and soldiers' codes to transform the principles of IHL into a concrete military code of conduct and thus to ensure effective implementation of laws and regulations.

Enhancement of Practical Training

While IHL has been incorporated into military education, training, and examination systems, due to the lack of imperative regulations and time and evaluation shortages, IHL provisions can sometimes still be out of touch with the reality of military training and combat missions. Due to the lack of communication and coordination between the administrative authorities, furthermore, there is no effective guarantee for the financing of education, training, and materials, which thus has an impact on their effectiveness.

The publications of the ICRC state that the training of armed forces in IHL must be conducted in a "practical manner." The meaning of the concept is two-fold. First, IHL education and training should be put into practice at all levels of the armed forces. Second, IHL education and training must be *practical*—that is, applicable to armed forces during wartime. In order to ensure IHL training is practical, there should be a comprehensive plan for education and training applicable across the whole PLA, and one that

fazhan – fang guojirendaofa zhuming zuezhe Zhu Wenq" 以强烈的责任心和使命感关注国际人道法及其发展—访国际人道法著名学者朱文奇 [Focus on International Humanitarian Law and its Development with a Strong Sense of Responsibility and Mission – Visiting the well-known scholar on International Humanitarian Law Zhu Wenqi], *Xian zhengzhi xueyuan xuebao* 西安政治学院学报 [Journal of the Xi'an Institute of Political Science], Volume 22, Number 2, April 2009, p. 121

ensures adequate training time, quality content, good organization, and sufficient financing.

Also, it should be clarified that the headquarters and the political department are jointly responsible for the coordination of IHL training and education. The troops' guarantee system for IHL education and training, which includes financial, equipment, and personnel support, should be further improved. Education and training contents should be practical and based on the different tasks and level of the officers and soldiers. In spite of a practical focus, IHL theoretical studies should also be incorporated into political education and the development of professional skills in IHL as an element of military training. Through continuous and intensive training and education as well as practice drills, and thus providing practical experience for the majority of military officers and soldiers, this could ensure the following: that in a specific combat situation, field commanders would have the relevant legal knowledge; and that soldiers would be familiar with the most basic combat rules, aware of the various protective emblems on a battlefield, and would be able to react appropriately.

Greater Practical Education and Research

The PLA has experienced a long period of peace. As a consequence, the focus on IHL has been more directed toward theoretical studies while real practical application and experience have been relatively neglected. This has led to military staff not being aware of the appropriate actions at certain times and during certain events. For example, in 1974, during the Battle of the Paracel Islands, the opposing side unlawfully used medical ships to transport combat units and military equipment. Due to a lack of practical experience in knowing how to handle such incidents, the Chinese military failed to block the transport. Another example is the Vietnam War, during which many Chinese soldiers were killed by enemy soldiers disguised as civilians or pretending to be wounded.³³

In light of the above, a key point in IHL education and training should relate not only to the provisions, but more importantly in studying the

³³ Chen Gang 陈刚, "Xinzhongguo dui guojirendaofa de gongxian" 新中国对国际人道法的贡献 [New China's Contribution to International Humanitarian Law], *Xian zhengzhi xueyuan xuebao* 西安政治学院学报 [Journal of the Xi'an Institute of Political Science], No. 4 (2003), p. 55.

“hows” and “whats” of the discipline. In this regard, the PLA could learn from other international and regional organizations. For example, the main content of the workshops held by the IIHL, which is headquartered in Italy, is comprised of case studies. Teaching and research are developed on the basis of simulations of various real combat scenarios, which are designed to promote flexible IHL application on the battlefield. The ICRC has organized high-level educational IHL moot court competitions in co-operation with the Chinese International Humanitarian Law National Committee. So far, there have been six sessions, in which 28 high-level educational establishments have participated. Such activities have significantly contributed to enhancing participants’ understanding of IHL application. It is suggested here, therefore, that more case study-based teaching methods be used to make the PLA’s education and research more active and practical. A development in the right direction was the PLA’s establishment in 2009 of a specialized unit within the Xi’an Institute for Political Science to coordinate and develop IHL online education through cyber combat training and moot court activities. Indeed, this constitutes a pioneering development in this field.

Enhancing the Expertise of Military Lawyers

There are still some weak links in the PLA’s efforts to improve expertise in IHL, especially among military lawyers. First, there is simply a shortage of military lawyers. For instance, the Fourth Department of the General Staff Headquarters as well as air and naval forces lack a proper allocation of military lawyers. Additionally, at the regimental level, the operational units have not been assigned military lawyers. What is more, selected military lawyers are often more familiar with domestic laws, the main focus of their work being to provide military officers with legal advice. Their main responsibilities, therefore, revolve around counsel concerning criminal defendants as well as upholding civil military units’ and officers’ rights. In comparison, their knowledge of IHL is often lagging.

Second, military lawyers often lack practical military skills and experience. Therefore, their usefulness would be undermined during wartime, as they would not be able to be deeply involved in operational decisions. Subsequently, it is necessary to accelerate the process of providing operational units at the regiment level, the air and naval forces, and the operational

bureaus under the Fourth Department with specialized military lawyers. In addition, it is also of importance to enhance military lawyers' training in military affairs with more attention paid to IHL, with a special focus on non-battle military operation training and improving military lawyers' knowledge and abilities in the practical application of IHL. In this way, they will be better able to provide legal advice and support in combat operations and thus ensure compliance with the law.

Concluding Remarks

In conclusion, the dream of achieving universal and long-lasting peace is a long way off. Nevertheless, even if it is impossible to rid the world of war, it is incumbent on the international community to try to reduce the harm and suffering that war brings to all mankind. The PRC, and more particularly the PLA, has an important role to play in this regard. With this ultimate aim, the dissemination and inculcation of IHL within the PLA will continue, with the PLA also playing a more active role in international activities by strengthening cooperation with the ICRC and other peacekeeping international organizations so as to make its due contribution toward the promotion of IHL.

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