

**Singapore War Crimes Trials Project Launch
30 August 2016, Singapore**

**Fiona Barnaby, Legal Adviser¹
International Committee of the Red Cross (ICRC)
Regional Delegation in Kuala Lumpur**

Introduction

Today's launch is a seminal moment in the promotion of greater awareness about international humanitarian law (IHL) in Singapore. The International Committee of the Red Cross (ICRC) has been regarded for the longest time as the 'guardian of IHL'. While this seems to indicate that the ICRC is responsible for ensuring respect for IHL, the double edge of this sword means the organisation is often criticised for not doing enough to respond to violations. Moreover, it is the primary responsibility of States to respect and ensure respect for IHL [Common article 1 of the four Geneva Conventions of 1949 (the Geneva Conventions)].

The Singapore War Crimes Trials Project does much to showcase criminal justice for war crimes at the end of the Second World War undertaken by States against representatives of States who were accused of war crimes. The Project's accounts of the trials in Singapore squarely places the responsibility for prosecutions not on the shoulders of the international community but on the State itself, at that time a British colony. International criminal justice is often framed in the lofty and, unfortunately, isolated language of an international criminal court or tribunal somewhere far away. This Project demonstrates that the real battle for better compliance with IHL is at home, through domestic law. That is one of the key messages of this Project.

To the average Singaporean, 70 years on from World War II, it may seem inconsequential that these trials occurred a decade after the end of the hostilities. These trials close to 60 years ago may seem to have no relevance whatsoever to the Singapore of today. Nevertheless, beneath the surface, in the memories of those who lived through this time, the pain and suffering of war remain. It is also a grim reminder that no matter how comfortable things may be presently, this can change very quickly.

Contribution of war crimes trials to the development of modern IHL

The Singapore War Crimes Trials are also important in that they contribute to the development of IHL and the requirement to prosecute war crimes. After the atrocities of WWII, several international instruments were adopted, including the Genocide Convention, the Universal Declaration of Human Rights and the UN Charter. The Geneva Conventions were adopted in 1949 and entered into force on 21 October 1950 as part of the "impulse for justice" of the post-WWII era, which was also reflected in the popular support in Singapore for the war crimes trials.

The Geneva Conventions transformed public international law and national legal orders of State parties in 1949 and became the reference point for many IHL treaties that followed. They have been universally ratified (196 State parties) and apply broadly in all circumstances with an added obligation on States not only "to respect" the Geneva Conventions, but to "ensure respect" under Article 1 common to all four Geneva Conventions. Most of their provisions have today become customary international law, or even *jus cogens*, contributing to the development of IHL and international criminal law.

¹ The author is grateful to Antoine Grondin Couture, Legal Trainee, ICRC Geneva for research done for this article.

International law and justice before the GCs: A starting point

Treaty and customary IHL before 1949², mostly focussed on the conduct of hostilities. The Geneva Conventions were drafted in 1949 as a result of the tragedy of WWII and they were intended to fill gaps in IHL exposed by the conflict.

The Tokyo and Nuremberg trials, the only international criminal tribunals established before the adoption of the Geneva Conventions, broke the “monopoly” of States over criminal jurisdiction for war crimes. However, the concept of accountability for war crimes was not completely new. Although attempts to create an international criminal court after WWI failed, violations of conventional and customary IHL had been tried by military tribunals in wars prior to WWII³.

The reasons for the conduct of the Singapore war crimes trials (and indeed the Tokyo and Nuremberg trials) were numerous. They included the need to record and render visible the atrocities committed, to demonstrate respect for the due process of law and to underline the collective character of those crimes, among others. However, the international courts were criticised and had deficiencies. For example, political criticisms include claims that the Tokyo Trials were a way to assuage American guilt over the use of atomic weapons in Japan or as a means for revenge by America for the attack on Pearl Harbour.

Legally, defence counsels attacked the legitimacy of the court, invoking the principle of legality since the categories of crimes it tried were based on “*ex post facto* legislation”. Both international tribunals appeared more as judicial organs of the appointing States than independent international courts, the ‘victors’ justice’ argument. The Singapore War Crimes trials do not appear to have been beset by this kind of moral ambiguity. After WWII, in addition to the international military tribunals, 2116 trials were held at the national level, including 305 by the British in Singapore and Southeast Asia.

IHL and international justice through the adoption of the 1949 Geneva Conventions

The Geneva Conventions and their 1977 Additional Protocols are the cornerstone of IHL. The three first Geneva Conventions mostly codified or rewrote the existing rules governing IHL, which were oriented toward the conduct of hostilities. The Geneva Conventions also strengthened the role of the medical mission by affirming that medical personnel, units and transports must be respected and protected in all circumstances. In this way, the Geneva Conventions were a continuation of the development of IHL.

The Fourth Geneva Convention, in providing for the protection of civilians, filled a serious gap in IHL at the time. Not only did it incorporate the content of the 1907 Hague regulations, crystallized as customary international law since Nuremberg, Tokyo, and the other Asian trials such as those in Singapore, it provided for the protection of vulnerable persons such as refugees, women and journalists, in times of war. Thus, the Geneva Conventions preceded a new focus for IHL: the protection of civilians and the reduction of their suffering. The Singapore War Crimes Trials is similarly an important foundational work for domestic Singapore law.

The Geneva Conventions helped switch the paradigm of IHL after WWII from an inter-State legal system to one comprising the concept of individual criminal responsibility. They led to the gradual emergence of “war crimes” as a category of international crimes in the second half of

² Such as the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, the Hague Conventions of 1899 and 1907, the 1929 Geneva Convention on Prisoners of War.

³ E.g. Extraordinary Courts Martial in the Ottoman Empire for massacres against Armenians.

the 20th century and gave impulse to the idea that individuals, and not only States, could be held responsible for wrongful acts during armed conflicts. Thus, the Geneva Conventions and the post-WWII trials including the Singapore War Crimes Trials, were precursors to the development of international criminal justice.

In addition, the Geneva Conventions strengthened the international humanitarian law regime and international criminal justice mechanism by, *inter alia*:

- a. establishing the grave breaches regime, which forms part of a set of crimes under international law, consisting of war crimes and gross human rights violations, such as crimes against humanity and genocide;
- b. creating an obligation to prosecute or extradite persons who are alleged to have committed the grave breaches, subject to universal jurisdiction; and
- c. extending accountability and justice to non-international armed conflicts (NIACs) through Common Article 3 of the Geneva Conventions.

Domestic implementation of IHL in Singapore today

The significant effort made by the Project to chronicle an important piece of Singaporean history is not a means unto itself and this account of the Singapore War Crimes Trials does not stop here. Beyond these trials is the work to anchor the relevance of IHL in today's Singapore.

Today's Singapore is careful in adhering to a host of IHL treaties. Despite being party to the Third Additional Protocol to the four Geneva Conventions, Singapore should consider accession to the 1977 Additional Protocols to the Geneva Conventions and a number of weapons treaties, such as the Anti-Personnel Mine Ban Convention of 1997. Joining other developed nations, Singapore has an important role to play in lending its voice in support of the protection of the most vulnerable. Its history as the centre of the War Crimes Trials for the British after the Second World War is no accident. The legacy of these trials is that blame alone is insufficient to overcome the effects of armed conflict. IHL does not enter into the discussion of who is to blame. It simply asks that a baseline for humanity is maintained, even in armed conflict.

The account of the prosecutions and the consequences of sentencing in the Singapore War Crimes Trials record the very practical difficulties involved in managing the aftermath of war and war crimes trials. In the very human desire to move forward, Singapore moved beyond the finger-pointing. A more productive endeavour today, would be to develop ways to prevent a recurrence of the atrocities of the Second World War. Singapore and many countries around her, are at peace and should consider implementing protections for their people in times of armed conflict. These protections should be put in place in times of peace and not when they are needed in the heat of battle.

Conclusion

Despite being over 65 years old, the Geneva Conventions continue to show themselves broad enough to address the many challenges of contemporary armed conflict⁴. The question then is whether it is enough that Singapore has its Geneva Conventions Act of 1973. Singapore's answer has to bear in mind its own considerations for national security and its position on current issues preoccupying world politics.

⁴ Fourth Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflicts prepared by the ICRC for the 32nd International Conference of the Red Cross and Red Crescent, 2015.

IHL's key lesson is that politics cannot change the laws applicable in armed conflict. Politics can only ever ensure that these foundational and cardinal rules are either respected or violated, for the benefit or peril, of victims of armed conflicts.