

Second Meeting of States on Strengthening Compliance with International Humanitarian Law

June 17-18 2013, Geneva

**Remarks of Dr Peter Maurer
President of the International Committee of the Red Cross**

Your Excellencies,
Ladies and Gentlemen,

I would also like to warmly welcome you to this Second Meeting of States on Strengthening Compliance with International Humanitarian Law and to say how very pleased I am to be able to address you on this occasion.

The topic we will be discussing over the next two days lies at the very heart of ICRC action. Our operational presence in the field - like that of other humanitarian organizations - is in large part the result of needs created by lack of compliance with IHL by the parties to armed conflicts. Our everyday engagement in the field, in addition to providing protection and assistance to persons affected by armed conflict, aims to encourage the parties involved to better comply with this body of rules. In addition, all of our work in the legal domain, which started with the drafting of the first Geneva Convention of 1864, is ultimately aimed at enabling better compliance with IHL for the benefit of civilians and others who suffer the ravages of war.

Starting in 1864, and periodically since, great strides have been made in developing IHL, thus allowing the injection of a much-needed measure of humanity into the conduct of military operations. States have adopted numerous IHL treaties and important norms of customary IHL have likewise crystallized. Many aspects of the conduct of hostilities and the protection of persons in enemy hands have been codified and basic legal principles guiding behaviour have been laid down. Discussions on clarifying and strengthening IHL to meet the challenges of modern day armed conflicts are ongoing as we meet today. Among them are debates on the relationship between IHL and terrorism, the applicability of IHL to multinational forces, new types of weapons, the possible conduct of hostilities in cyberspace, and others.

In addition to dealing with specific new legal challenges IHL also has to adapt to certain changes in the nature of warfare. Chief among them is the current prevalence of non-international armed conflicts, both within the territories of single States, as well as those in which multinational forces are engaged in an armed conflict in the territory of a host State against a range of organized non-State armed groups. Asymmetrical conflicts involving parties of significantly different strength and technological capacity are also on the rise, as are conflicts which involve a variety of armed actors, with different levels of organization, command structures and knowledge of IHL.

I will submit to you that the changing nature of warfare and the specific legal questions it poses have been a constant to which IHL has had to adapt. I would also submit that it has generally done so fairly well at the normative level.

The area in which much more needs to be done, and which is at the centre of this meeting, is how to improve compliance with IHL norms in practice. Given that enormous human suffering caused by armed conflict continues, this is a legal as well as an ethical and political challenge.

We are witness to continued daily violations of IHL, including deliberate attacks against civilians, the destruction of infrastructure vital to the civilian population, the forcible displacement of entire communities from their habitual places of residence and various forms of sexual violence inflicted against vulnerable individuals and groups. Persons deprived of liberty in armed conflict are likewise frequently subject to appalling behaviour by their captors, including murder, torture and other forms of ill-treatment, inhuman conditions of detention and denial of procedural safeguards and fair trial rights. Medical personnel and humanitarian workers are also an increased target of attacks. The law tries to prevent or put a stop to suffering and to deter future violations, but norms cannot, in and of themselves, eradicate abuses or be expected to do so. They need to be complied with.

In the broadest sense of the term compliance includes a range of activities. At one end of the spectrum is prevention. Activities in the area of prevention of IHL violations before an armed conflict occurs remain an ongoing obligation of States, as provided for in the 1949 Geneva Conventions, and Additional Protocol I of 1977.

Prevention may take many forms, including the adoption of domestic legislation implementing IHL treaty obligations, the adequate training of armed forces in peacetime, the appointment of legal advisers to the armed forces, IHL training in the armed forces, teaching and dissemination of IHL to the population at large, and others.

Important work in this area has been, and continues to be, undertaken by States - and their National IHL Committees - with the support of the ICRC's Advisory Service. The International Conference of the Red Cross and Red Crescent is the primary international venue in which States and the components of the Red Cross and Red Crescent Movement appraise each other of the progress made and exchange information on activities they intend to undertake in the domain of prevention.

Respect for IHL may also be improved by putting into place procedures and mechanisms necessary to enable the determination of individual criminal responsibility, albeit only once suspected IHL violations have occurred.

This is an area in which the most progress has been made over the past two decades, at both the domestic and international level.

However, mechanisms aimed at strengthening compliance with IHL have seen inadequate progress. This is the reason for and the focus of the Swiss Government - ICRC initiative: inadequate progress. The need to examine IHL compliance mechanisms was acknowledged by the 31st International Conference of the Red Cross and Red Crescent held in December 2011, which recognized "the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with IHL, with a view to strengthening legal protection for all victims of armed conflict".

The ICRC was invited in resolution 1 of the International Conference "to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors (...) to identify and propose a range of options and its recommendations to (...) enhance and ensure the effectiveness of mechanisms of compliance with IHL".

The resolution also expressed its appreciation to the Government of Switzerland for its commitment “to explore and identify concrete ways and means to strengthen the application of IHL and reinforce dialogue on IHL issues among States and other interested actors, in cooperation with the ICRC”.

Since the launching of our joint initiative last year we have focused on an overview of the existing IHL compliance mechanisms and why they do not perform in practice. Three main conclusions can be drawn: existing IHL compliance mechanisms are of limited scope, they were crafted for international armed conflict only, and they have rarely, if ever, been used.

It is not my aim to go into specifics of the Protecting Powers system, the Enquiry Procedure, or the International Humanitarian Fact-Finding Commission established under Article 90 of Additional Protocol I. The first afternoon session will be devoted to that topic. Let me just emphasize that the reasons for which the existing IHL compliance mechanisms have not been utilized arguably lie in the way in which they were configured, as well as in the lack of an appropriate institutional anchorage. The existing compliance mechanisms are based on the premise that States involved in an international armed conflict will have the political will and the capacity to propose to the other party, or agree with it, to trigger the mechanism in question. This premise is not likely to be fulfilled in the present day. No branch of international law dealing with the protection of persons that was developed subsequent to the Geneva Conventions relies exclusively on mechanisms that are thus configured.

Existing IHL compliance mechanisms also lack attachment to a broader institutional compliance structure. The Geneva Conventions and their Additional Protocols are an exception among international treaties related to the protection of persons in that they do not provide that States will meet on a regular basis to discuss issues of common concern and perform other functions related to treaty compliance. The absence of such a structure means that specific compliance mechanisms lack the institutional support that may be necessary to ensure they are utilized, to facilitate the performance of their tasks, and to assist in any follow-up.

It should also be recalled that the existing IHL compliance mechanisms are provided for in treaties that were crafted to regulate international armed conflict. However, international armed conflicts today constitute a fraction of the armed conflicts taking place, the great majority of which are non-international in nature. The devastation and suffering caused in this type of armed conflict are in daily evidence, with civilians being the primary victims of violations of IHL committed by both State and non-State parties. The absence of IHL compliance mechanisms in this type of armed conflict calls into question the protective function and reach of this body of international law.

While the ICRC, operationally present in many conflict contexts, will continue its efforts to strengthen its role in the implementation of IHL, the organization cannot and does not strive to replace a possible inter-State compliance system.

The Swiss-ICRC initiative does not aim to duplicate the role we perform, but synergies will be sought, where possible, in articulating the relationship between the ICRC and such a system.

The inadequacy of existing IHL compliance mechanism also poses the question of the design and functions of an effective IHL compliance system. The Background Document for this Meeting lists a number of possible functions derived from the compliance systems of other branches of international law.

Reporting is an essential function to the work of any international law compliance system. It provides each State with a basis for self-assessment, and allows for an informed dialogue among States on issues of compliance. Fact-finding is another such function. It may be a necessary precursor to informed discussion in some circumstances, keeping in mind that relevant expertise and a clear mandate are important ingredients for ensuring acceptance of any results obtained.

It should be noted that the functions of a possible compliance system provided for in the Background Document are illustrative and aimed at stimulating reflection and providing guidance for our meeting and beyond. We look forward to your views on the different functions and their potential to contribute to the strengthening of the IHL compliance system.

As has been mentioned, the Geneva Conventions and their Additional Protocols are an exception among international treaties in that they do not provide an opportunity for States to meet on a regular basis, to discuss issues of common concern and to perform tasks related to treaty implementation. That may be one reason why IHL compliance is increasingly being dealt with by compliance systems established under other bodies of law, including human rights law, that are not always able to capture its specificity.

IHL is a body of norms that was specifically designed to govern the relations between the parties to an armed conflict, rather than the obligations of a State to persons on its territory or under its jurisdiction. It is designed to balance military necessity and humanity and security and protection interests, and is therefore more specific in its context and less aspirational than human rights law.

It is based on the notion of equality of rights and obligations of the belligerents, the purpose of which is essentially to ensure protection for civilians and civilian objects regardless of whose power, or control, they may find themselves in. IHL also legally binds both State and non-State armed groups, and is the only branch of international law to do so. This means that the parties must be clear about their obligations, must have processes in place to ensure that their armed forces can implement its prescriptions and that responsibility may be determined when they fail to do so.

Given that most international law regimes have an intergovernmental platform for regular dialogue among States, the establishment of such a platform for IHL is overdue.

I am thus pleased to note that the discussions and consultations held thus far have confirmed what was initially expressed at the July 13 meeting in 2012: that there is general support for the creation of a platform for regular exchanges among States related to IHL compliance. I share the view that a regular Meeting of States would be of benefit in that it would enable a permanent dialogue on IHL, enhance cooperation among States and help promote respect for this body of law. In this context, I hope that our discussions today and tomorrow will allow us to move forward on the possible tasks that a regular Meeting of States could perform, as well as its periodicity, and any other questions you may deem relevant.

Establishing a platform for a regular dialogue among States on IHL will require further work. Careful consideration will need to be given to issues such as its basis, structure, tasks, methods of work, subsidiary bodies that may be attached to it, and others. As the joint facilitators of this process, we hope that you will mandate us to continue working with you in the months to come in order to devise concrete proposals for how a Meeting of States could be configured. The result of that work would then be presented for your examination and further guidance at a Meeting of States, like this one, that would be held in the summer of 2014.

Your Excellencies, Ladies and Gentlemen,

Allow me in closing to say that the initiative we are engaged in presents a unique opportunity to meaningfully contribute to enhancing compliance with IHL. We are fully aware that the process needs to be guided by a number of principles that will serve as the overarching framework.

Among them are the importance of avoiding politicization, the State driven character of the process, its transparency and openness, as well as the enhanced effectiveness of a future system. We hope that our discussions today and tomorrow will likewise be productive in examining the issues posed and in tracing the next steps.

I look forward to the discussion and thank you for your attention.

