



Speech by Didier Burkhalter, Federal Councillor,
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Affairs

***“A Meeting of States to enable the
voice of international humanitarian
law to be heard above the din of war”***

**Meeting on strengthening compliance
with international humanitarian law,
Geneva**

Monday 17 June 2013

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Mr. President of the International Committee of the Red Cross (ICRC)

Excellencies,

Ladies and Gentlemen, representatives of the governments,

Ladies and Gentlemen,

Geneva is a city of peace and the capital of international humanitarian law. This year we celebrate the 150th anniversary of the International Committee of the Red Cross (ICRC). It is an opportunity to remind ourselves of the crucial role that this city and this organisation have played in the development of international humanitarian law in the past. It is also an encouragement to continue the work that has been done up to now. Much still remains to be done, and it is precisely this that has brought us together today.

I am happy to be here today, but I am even happier that you are here for this second meeting of States on strengthening compliance with international humanitarian law. The presence of so many delegations in this room is a clear demonstration of the universality of the principles of international humanitarian law and of the importance that you attach to strengthening compliance for it.

“Law stands mute in the midst of arms”, said the great Roman statesman, Cicero. Two thousand years later, we have to concede that the law still struggles to be heard above the din of war. To be sure, international humanitarian law does not stand mute, but **all too often it goes unheard**.

Every day, **new atrocities** are committed in the context of armed conflicts around the world - atrocities that are an insult to our shared humanity: prisoners are tortured; children are forced into the ranks of fighting groups; civilians are caught in the crossfire between armies fighting in city centres. We all know what these conflicts are and where they are causing so much suffering.

By signing the Geneva Conventions, **the States vowed to put an end to crimes committed on the battlefield** and to ensure this not only by creating a law of war, but by giving this law a voice that can be heard even in the face of armed violence. It is the **persistence of violations** of these

rules that brings us here today to reflect on strengthening compliance with international humanitarian law.

International humanitarian law is based on **fundamental values of humanity**. Its aim is to limit the effects of armed conflicts and to protect those who are not, or no longer, taking part in hostilities.

It seeks to prevent the unnecessary suffering caused by armed conflict. And it aims to prevent the vicious spiral that leads to barbarism.

Let's remind ourselves of the 24th of June 1859, the date of the Battle of Solferino, at which Henry Dunant witnessed the carnage that left 6,000 dead and 40,000 wounded lying abandoned on the battlefield. It marked a turning point in history and gave birth to the International Movement of the Red Cross and Red Crescent. Next week, Switzerland and the International Committee of the Red Cross (ICRC) will mark this symbolic day to remember the suffering of the victims of armed conflicts and to reiterate their humanitarian commitment to this cause.

A conference organised jointly by the ICRC and the Swiss Confederation will address the challenges that contemporary humanitarian action must confront in a constantly changing environment.

The world has changed since the Battle of Solferino. Warfare is no longer conducted on faraway battlefields but all too often in inhabited areas. Combatants no longer fight in a clearly defined battle order but intermingle with children, women and men who only ask to be spared the horrors of war. **Nowadays, the first and the main victims of armed conflicts are civilians.**

It is the weakest and most disadvantaged who pay dearest for the madness of war. For this reason, international humanitarian law and the protection it assures are more important than ever before.

This **body of law has greatly developed** over the last few decades. New conventions such as those on antipersonnel mines or cluster munitions have been adopted. International criminal justice, for its part, has contributed considerably to fighting impunity. Switzerland is especially

pleased about this progress because the fight against impunity is of one its foreign policy priorities.

Further progress however is both needed and urgent!

The fact is that **international humanitarian law is being violated every day**. In the heat of battle, when fear and hostility prevail, respect for rules too often becomes the collateral victim of the conflict. Passions get out of control: hate and the lust for revenge lead to all kinds of abuses and prevail over appeals to preserve a vestige of humanity in the midst of the horror of war. The aim of international humanitarian law, however, is precisely to **preserve this irreducible minimum of humanity** by offering protection and assistance to the victims.

International humanitarian law is, in general, an appropriate legal framework to regulate the conduct of the parties to an armed conflict. The States recalled this in 2011 at the 31st International Conference of the Red Cross and Red Crescent. **What is urgently needed now is therefore not more rules but more respect for the rules that already exist** - more respect so that more innocent lives can be saved.

Strengthening respect for the rules of international humanitarian law is of fundamental importance. The protection of the victims of conflict and the **credibility of international humanitarian law** depend on it. Jean Pictet, an eminent Swiss lawyer to whom we owe in part the Geneva Conventions of 1949, correctly noted – and I quote – “a violated law will become a contested law, threatened by erosion and eventually ruin”.

This is why we have an obligation to strengthen the credibility as well as compliance with international humanitarian law.

Ladies and Gentlemen,

To define more precisely the aims of our meeting, I would briefly like to **recall the process** that brought us to this conference today.

In 1993, Switzerland convened the High Contracting Parties to the Geneva Conventions to participate in the **International Conference for the Protection of War Victims**. The aim of this conference was to discuss measures to strengthen the protection of the victims of war and respect for international humanitarian law.

The States adopted by consensus a declaration in which they refused, I quote, “to accept that war, violence and hatred spread throughout the world, [...] that wounded are shown no mercy, children massacred, women raped, prisoners tortured, victims denied elementary humanitarian assistance, civilians starved as a method of warfare”.

In spite of the adoption of this declaration, the fate of victims of war has not improved – quite the contrary.

In 2009, Switzerland organised, in cooperation with the ICRC, a conference to mark the 60th anniversary of the Geneva Conventions. The States **recognised the urgent need to hold discussions on improving compliance** with international humanitarian law. And **Switzerland declared its willingness to facilitate these discussions**.

In 2011, the **31st International Conference of the Red Cross and Red Crescent** gave concrete form to this momentum by adopting the resolution on strengthening the legal protection of the victims of armed conflict. This resolution recognised, among other things, both the need to enhance the effectiveness of mechanisms of compliance with international humanitarian law and to reinforce dialogue among States. Moreover, it asked the ICRC to present a report setting out a range of options for meeting these needs at the 32nd International Conference, which will take place in Geneva in 2015.

To identify means to strengthen compliance with international humanitarian law, **Switzerland and the ICRC launched a joint diplomatic initiative at the beginning of 2012**.

In **July 2012, Switzerland and the ICRC organised a meeting** which was considered to be a first concrete step towards consolidating the dialogue between States. This meeting recalled that the legal framework governing international humanitarian law was sufficient as a whole but that the

mechanisms foreseen to ensure compliance for it in the Geneva Conventions have proven to be inadequate up to now.

What is lacking? **One of the reasons for these dysfunctional mechanisms is the absence of institutional structures.** One particularity of international humanitarian law is that it does not have a real institutional framework. The mechanisms foreseen in the Geneva Conventions are therefore badly supported and inefficient due to the fact that they are not incorporated in a structure provided by the States Parties.

The **Geneva Conventions** and their Additional Protocols are the only international treaties relative to the protection of persons which **do not give the possibility to the States to meet** on a regular basis.

The other treaties on international humanitarian law, such those on arms, establish a conference, assembly or meeting of States parties. These **meetings offer the possibility to conduct a dialogue** on ways to improve implementation.

One can state therefore - and on this I believe I am speaking for most of the countries represented in this room - that international humanitarian law is suffering from the lack of an institutional structure, that is from the lack of a forum of States and therefore of regular dialogue.

The consequence of this institutional vacuum is that **international humanitarian law is increasingly being dealt with by institutions outside the framework provided for by this law.** I am thinking especially of bodies such as the Human Rights Council. Switzerland supports the work of the Human Rights Council and recognises the valuable support that it provides for the protection of human beings. However it is difficult for these bodies to take into account the specificities of international humanitarian law.

As Jean Pictet said, international humanitarian law is a **“realistic” law** - the result of a balance between the principle of humanity – that is the imperative that drives human beings to act for the wellbeing of their fellow human beings – and the principle of necessity – the obligation of public

authorities to defend the State, its territorial integrity and to maintain order. The States therefore have a clear interest in ensuring respect for this “realistic” and very useful law for protecting human lives.

These various findings having been established, we must now proceed to a **reflection on the best ways to overcome this shortcoming**. Because it is not simply an exercise for lawyers or a purely theoretical issue, it raises fundamental questions that have direct implications on the ground. We therefore have a moral obligation to act, because by acting to the strengthen compliance with international humanitarian law we are participating in actions to protect human lives.

Ladies and Gentlemen,

In July 2012, the States expressed the wish to study the possibilities of reforming the existing mechanisms before envisaging the creation of new mechanisms. In this light, a number of States argued in favour of the **International Humanitarian Fact-Finding Commission and recommended considering ways to deepen the discussion on activating the Commission**.

To develop these discussions and to identify the principal subjects that could help advance the process, **Switzerland and the ICRC conducted consultations** on a bi- and multilateral basis with all interested States.

The discussions focused on an assessment of the current system for strengthening compliance with international humanitarian law and on the necessary functions for such a system to be efficient. It turned out that the **States considered it necessary to establish a meeting of States** with the aim of enabling a regular and systematic dialogue to take place on international humanitarian law and respect for it. This new institution would possess the necessary functions to strengthen compliance with international humanitarian law. The reporting procedure was recognised as one such function, among others, that could be integrated into this meeting.

The universal periodic review procedure, for example, has proven its worth in the framework of the Human Rights Council. We must now draw

conclusions from this experience to develop a specific framework for international humanitarian law.

These contacts have enabled us to better outline the points on our agenda. One characteristic of the Geneva Conventions is that they are universally accepted. It is therefore essential that this **process be open, transparent and inclusive**. Switzerland and the ICRC aim to ensure this by organising annual meetings such as today's.

It is in this spirit that Switzerland and the ICRC are convening such annual meetings, and will continue to do so until the 32nd International Conference of the Red Cross and Red Crescent in 2015.

The **purpose of today's meeting is to identify potentially useful functions for a system for ensuring respect for international humanitarian law** as well as the tasks that could be assigned to a meeting of States.

Switzerland and the ICRC are also hoping that this meeting will provide ideas on how to develop this initiative.

The role of **Switzerland and the ICRC is to act as facilitators**. We want each and every state to feel concerned and to have confidence in this process. It is up to the States to decide what they consider to be useful for strengthening compliance with international humanitarian law and the protection of persons affected by armed conflict. We will present options and we ask you to let us know those which are for you the most suitable for achieving the set objectives, that is, those which are conducive to strengthening compliance with international humanitarian law and those which should be developed at greater depth in view of the coming third meeting to be held next summer.

Because, as I have said, the Geneva Conventions are universally accepted, it is **essential that everyone feels concerned about the importance of respect for international humanitarian law during armed conflicts**. This process is intended to be transparent, inclusive and open. It focuses on thematic issues with the aim of establishing a climate of

confidence. It will take into account at each stage the wishes of States, to which international humanitarian law is mainly addressed.

To deepen the discussions, **Switzerland and the ICRC will continue their consultations**, specifically in two meetings scheduled to take place in November 2013 and in April 2014.

Their aim will be to set the agenda for the meeting of States in 2014 and to decide which options should be discussed. Your **active participation is** strongly encouraged.

We also encourage **everyone to submit their ideas, opinions or comments at any time during this process**. Since the beginning of the process, Switzerland and the ICRC have been, and remain, at the disposal of those States interested in holding bilateral consultations.

Ladies and Gentlemen,

The moment has come for the High Contracting Parties to work together to find specific and practical ways and means to ensure respect for international humanitarian law. The moment has come to **give a voice to law in times of war**, a voice that is sufficiently powerful to be heard even above the din of armed conflict. After two thousand years, the moment has finally come **to prove Cicero wrong** and to act in a way that the law can be heard even when weapons are calling the shots.

We owe this to too many victims of armed conflict.

I wish you every success in your discussions.