



ICRC

Speech given by Mr Peter Maurer

President of the International Committee of the Red Cross

**CHALLENGES TO INTERNATIONAL HUMANITARIAN LAW
AND HUMANITARIAN ACTION**

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I am grateful for the opportunity to address you at the UNAM, one of Latin America's largest universities, committed to social justice and humanitarian ideals, in a Law Faculty which trains Mexico's leaders of tomorrow. Since the establishment in 2002 of a delegation in Mexico City the International Committee of the Red Cross has enjoyed a steadily deepening dialogue with Mexico at many levels, including the government, the academic community, civil society and in particular also the Mexican Red Cross Society.

That dialogue has allowed the development of a relationship of trust which has made it possible for the ICRC to adapt its activities. Initially oriented towards the promotion of international humanitarian law, regularly relying on Mexico's leadership in many international fora addressing IHL related issues – be it at the United Nations, the Organisation of American States, and the International Conference of the Red Cross and Red Crescent Movement – the ICRC's activities have gradually moved towards trying to address the humanitarian needs of people affected by changing patterns of armed violence in the last few years in the region. This represents an evolution in our action that would not have been possible without the close cooperation with the Mexican Red Cross Society with whom we carry out a considerable part of our activities.

Tonight, I would like to give you a brief overview of how the ICRC sees war and violence changing in this world, globally, in Latin America, and Mexico. And of how we, as humanitarians, are trying to access people in need, to deliver essential aid, to create a humanitarian space amidst conflict and violence.

Across the world, the number of wars is decreasing. That should be good news. But in reality only the number of all-out international armed conflicts are decreasing. Internal armed conflict and lengthy violent situations are increasing. We see a new type of conflict and violence emerging, with new dynamics that create new challenges for humanitarian responders:

- Protracted conflicts that are ever longer in duration and affect basic social delivery systems – for example in Afghanistan, Somalia or Israel and the occupied Palestinian Territory.
- Regionalized conflicts that spill over into neighboring countries – like the violence in northern Nigeria that is affecting Niger, Chad and other countries in the region or the Syrian conflict which has destabilized the entire Middle East.
- Volatile conflicts spiked with terror tactics and spread through the ideological battleground that is social media – for instance in Iraq.
- Politicized and increasingly polarized conflicts with few perspectives for political settlements as we see in Ukraine or Yemen.
- Battlefields that extend into cities and civilian's communities, with bombing and attacks in densely populated areas, like in Syria or Gaza.
- Violence imposed by new actors, which mix political, criminal and business interests in amorphous structures, for example in Central America or right here, in Mexico.

For the past 150 years, the Geneva Conventions and other bodies of international law have codified the limits of war. These limits of war are not only to be found in international humanitarian law (IHL); they are universal human norms which have existed for thousands of years, based on the intrinsic value of humanity, dignity, protection of the vulnerable and service to those in need.

Yet there is a range of issues that considerably complicate respect for the law. Let me enumerate some of them on which the ICRC is currently working on.

Compliance

A first issue is the one of compliance with the existing treaty and customary rules of IHL, something that is at the core of the ICRC's activities related to the protection of persons in armed conflicts. The ICRC works to improve compliance with IHL, by being present on the ground and by maintaining a bilateral confidential dialogue with State and non-State actors to address specific humanitarian problems.

In parallel, the ICRC also works to enhance compliance with IHL through activities designed at fostering understanding and acceptance of IHL, as well as assisting authorities in the implementation of IHL in domestic law. Such efforts also include reaching out to influential circles, including religious and community leaders and scholars, which enable us to better understand how value systems relate to the law of war, and to identify commonalities with IHL. This may be especially relevant when certain non-State armed groups reject IHL as a whole in the conviction that it is a Western creation.

But we have to recognize that compliance with IHL is heavily dependent on the political will of the parties to a conflict. The Geneva Conventions and Additional Protocol I provide for a whole series of mechanisms to strengthen compliance, but they have rarely, if ever been used. The reason for their failure is that their functioning is subject to the consent of the parties concerned. They were designed for international armed conflicts, not non-international ones. Similar challenges overshadow mechanisms established under the UN. They too are subject to political negotiation and selective in their choice of which situations to address. For all these reasons, the ICRC and Switzerland have launched a consultation process with States to identify options for strengthening compliance mechanisms.

Detention

Another issue complicating respect for the law is related to the deprivation of liberty of persons. In international armed conflicts, IHL clearly states when and why a person can be detained or interned. Things get more complicated in situations of non-international armed conflicts, where IHL is far less precise.

The reason for this lack of certainty and lack of clarity is that IHL applicable in non-international armed conflict assumes that internment will occur, but it fails to clarify the permissible grounds and required procedural safeguards, which leaves detaining authorities without pre-determined rules to rely on against arbitrary detention. This is

a recurring issue in legal studies: the world and societies evolve faster than the law and we find ourselves with a legal gap.

Moreover, international humanitarian law and human rights law partially overlap, yet partially leave a gap, most frequently where the clarity of the law is met with a much more complex, multi-layered reality on the ground.

Likewise, issues such as the transfer of a detainee from one State to another, material conditions of detention, including food, shelter and medical care, contact with the outside world, or specific needs of women and children or of particularly vulnerable persons such as the elderly or disabled, are not sufficiently regulated in non-international armed conflicts.

The ICRC works, together with States, to address these issues, and find both practical and legal solutions to the existing gaps.

While the main challenge for improving the situation of victims of armed conflicts is ensuring respect for existing norms, one cannot ignore the evolving ways that wars are fought in the 21st century. The rapid evolution of military capabilities is a case in point.

The Geneva Conventions give the ICRC a mandate to work on the humanitarian impact of weapons, always following the rule that all warfare must respect the principles of precaution, proportionality and distinction. We see it as a success that we managed, together with States, to enforce a ban on anti-personnel mines, or massively regulate the trade of small weapons through the Arms Trade Treaty.

We are currently working on the issue of explosives in densely populated areas. While the battlefield has moved into cities, we cannot accept that the weapons move along into urban centers, too close to family homes, hospitals and schools.

New technologies

New methods and means of warfare – such as cyber warfare and autonomous weapons - have become subject of increasing debate in the humanitarian, legal and diplomatic community. Clearly, the drafters of the Geneva Conventions did not foresee such technologies.

For example cyber warfare – that is, means and methods of warfare that consist of cyber operations amounting to, or conducted in the context of an armed conflict. While the military potential of cyber space is not yet fully understood, it appears that cyber attacks against transportation systems, electricity networks, dams, and chemical or nuclear plants are technically possible. Such attacks could have wide reaching consequences, resulting in high numbers of civilian casualties and significant damage.

As with any new technology, if cyber capabilities are used in armed conflicts, they must comply with IHL, in particular the principles of distinction, proportionality and

precautions. The main challenge in this regard is the interconnectedness of cyber space. There is only one cyber space, and the same networks, routes and cables are shared by civilian and military users. The interconnectedness of cyber space might make it impossible to distinguish between military and civilian computer systems when launching a cyber attack. Also, the principle of proportionality requires to assess the expected incidental effects of an attack on civilians and civilian objects; but in cyber space, is it possible to do so, including to assess the indirect effects of a cyber attack on civilian networks? The anonymity that cyber space allows is another major challenge. If the perpetrator of a cyber operation cannot be identified, it might become extremely difficult to determine whether IHL is even applicable to the operation, and to do so in a timely manner.

Turning to autonomous weapon systems, capable of searching for, identifying and targeting an individual with lethal force. Such weapons do not yet exist, but research is advancing at high speed, which raises concerns that need to be addressed in time. It is far from clear whether autonomous weapons could ever meet the IHL obligations to distinguish between civilians and combatants, to carry out proportionality assessments and to take feasible precautions in attack. But even if it were technologically possible one day to enable autonomous weapons to fully comply with IHL, their deployment would still raise fundamental questions about how machines can be allowed to make life and-death decisions or about who would be held accountable for war crimes. Let me be clear, the crucial question is not whether new technologies are good or bad in themselves, but to make sure that they are not developed and employed prematurely under conditions in which respect for IHL cannot be guaranteed.

At the ICRC we base our actions on the limits of war – not because the Geneva Conventions allow us to do so, but because where the limits of war are not respected, men, women and children who have not taken up arms – or combatants who have laid down their arms – are deprived of protection from murder, rape, pillage, humiliation, and the list goes on. We base our actions on the needs of people affected by conflict and violence, wherever this leads to humanitarian consequences.

Our experience shows that neutral, independent and impartial humanitarian action has the best chance to reach those most in need. It is also a tried and tested formula to prevent that humanitarian action is becoming part of larger and more controversial political agendas.

Yet the humanitarian space necessary for our work is becoming increasingly difficult to navigate against the new type of conflict and actors that are dominating today, globally, and in this region.

In Latin America, a continent not unfamiliar with armed violence, the last two decades have seen the emergence of new forms of armed violence that are generating alarming levels of humanitarian consequences for the populations of many if not most of the countries of the continent.

Much of the violence today no longer stems predominantly from political confrontations, but seems to be driven more and more by motives related to other gains, including through illegal activities such as drug trafficking. Despite such trends, the humanitarian consequences identified are often similar to those experienced in

contexts of more traditional patterns of violence such as armed conflicts or in internal disturbances. Such consequences include people being killed, wounded or going missing, but there are also consequences directly generated by general insecurity, for example when people are prevented from accessing basic services such as healthcare and schooling because it is dangerous to go out in the street, or when they feel compelled to move from their homes to other places either within their country or abroad due to the lack of social or economic opportunities or for fear that something might happen to them or their families.

It is clear that this type of scenario poses a series of challenges for authorities and humanitarian actors alike. The perpetrators of such violence are not always accessible nor possible to control and are not necessarily concerned about the well-being of the population. In the same way, communities or individuals who live under constant fear of the threat of violence are not always forthcoming in reporting problems - much less so those who find themselves in another country without the correct documentation. Even when a clear desire to improve the situation is expressed, the resources available are not always enough, leaving gaps in services or procedures designed to protect the most vulnerable and exposed.

The ICRC always aims to provide a meaningful response to the humanitarian needs of people in the region, and as such has adapted its approach in several contexts in Latin America and the Caribbean, including in Mexico, where the ICRC remains very concerned about the humanitarian situation in several parts of the country where people are affected by high levels of violence but do not receive the help and assistance they need.

Unlike other organisations, the ICRC does not focus only on one specific area like health or food; nor on one specific group like children or women; nor on one specific type of activity like assistance or advocacy. We are committed to respond to a broad area of needs (food, water and sanitation, health, basic household items) and thus describe ourselves as a multidisciplinary organisation. We focus on the most urgent needs of people and thus on a broad range of vulnerabilities - we are radically needs-based in our approach and thus work in direct proximity of victims. We are not just a relief agency but committed to assist and protect, to influence weapons bearers to respect contractual and customary frameworks in the limitation of the use of weapons, and we try to influence actors on the ground to better protect civilians.

With such an approach, our response is distinct and different throughout countries and regions. We have a very different exposure today in the Middle East, in Africa, in Asia or Latin America.

I would like to give you an overview of how we try to respond to some of those needs in Mexico, particularly related to migration, missing persons, healthcare, and use of force by law enforcement officials.

Migration

The ICRC is deeply concerned by the situation for migrants in the region, vulnerable as they are to the effects of armed conflict or other situations of violence. , Amongst this group, women and children are particularly exposed to the multiple forms of violence and exploitation that exist.

In Mexico, in partnership with the Mexican Red Cross Society, the ICRC has looked for ways to respond to the specific needs of this population. Following the Mexican Red Cross's example in Sonora, Red Cross points have been set up along the migratory route, providing basic assistance to migrants in transit to attend to immediate needs. Tools have been developed to help migrants protect themselves from potential hazards during the long and dangerous journey and assistance is also provided to those deported back to Mexico. In addition, several migrant shelters run by Mexican non-governmental organizations have received assistance, either through improving access to drinking water or by rehabilitating infrastructure, in order to ensure that migrants were accommodated in dignified conditions. Migrants with severe injuries / amputated limbs have also received assistance from the Mexican Red Cross and prostheses / orthoses and other assistive devices at institutions supported by the ICRC.

One consequence of migration, be it in the search for more opportunities or to attempt to flee present or imminent dangers, is the loss of contact with loved ones. This can result in the person being considered missing by his or her family and causes high levels of anguish and suffering for those without news. Part of our response has been aimed at helping to restore family links, which is one more of the lines of action in which our partnership with the Red Cross Movement in the region has proven successful. Sometimes all it takes is a phone call. So we provide phones. Several thousands of migrants have been able to contact their loved ones thanks to ICRC-funded telephone services, either at Mexican Red Cross / ICRC assistance points or shelters. In addition, calling-card dispensers have been installed in various shelters along the migratory route.

The ICRC enjoys an on-going and constructive dialogue with the authorities on ensuring that migrants in Mexican retention centres have adequate living conditions, including access to health care and contact with families. In addition, the ICRC seeks to remind the authorities of their obligations towards migrants in terms of protection needs and respect for their fundamental rights.

It is necessary to ensure that the framework of protection for the migrant population established at national level is applied and respected, as well as to ensure that the required resources are available.

Missing persons and their families

Throughout the region there are thousands of families who are without any news regarding the whereabouts of a relative who may have disappeared on his or her journey as a migrant, but also in other circumstances not involving migration. Of these, a vast number go missing in Mexico for various reasons but there is no single mechanism for the search of missing persons nor to identify mortal remains. This prevents most families, either in Mexico or in the region from ever knowing the fate of their loved ones and serves to prolong the suffering for all those who have a right to an answer.

The ICRC has been working to respond to the plight of missing persons and their families in for a long time the world over, in particular where disappearances were related to armed conflicts and other situations of violence.

In Mexico, such efforts include work with the authorities on measures that effectively respond to the complex needs of the families of persons gone missing, first and foremost their need to know what has happened to their missing loved one. The ICRC is providing legal and technical expertise to the authorities, for example on protocols to improve the quality of standardized data collection of missing persons, the handling of human remains or for strengthening the support to families.

In addition, the ICRC is developing a dialogue and cooperation with members of the civil society who work on this issue and have a wealth of experience, in order to ensure that the voice of the families is also heard and taken into account in terms of political policies and the eventual creation mechanisms to properly address the problem.

For progress to be made on this issue it is essential that all those involved – including civil society and the families themselves- work together to decide jointly which steps need to be taken. The ICRC reiterates its continuing commitment to providing any technical or other support that is required.

Respect and protection for health care

In several parts of the country, it has become difficult for people to receive adequate health care and for health services to carry out their mission. The ICRC has intensified efforts to share through training events directed at health professionals its experience in treating weapon wounds, providing pre-hospital care and ensuring ambulance services in risky situations. An important part of such activities have also focused on approaches and practices strengthening the protection of health workers and facilities, as well as of patients during emergencies. Such efforts included incorporating this subject in teaching curricula of medical institutions.

Use of force by law enforcement officials

The evolving forms of violence have required law enforcement authorities to adapt their operating procedures and equipment. In many countries, this has entailed an increasing involvement of the military assisting civilian authorities in the accomplishment of law enforcement activities, including in Mexico. Whether civilian or military forces are being deployed to ensure public order, it is critical for the respect of the law and the protection of persons that they have the means to do so in conformity with international human rights law and applicable internationally recognized standards.

Such means include adequate legal frameworks, as well as doctrines and operating procedures integrating the applicable international rules and standards in order to ensure that operations involving the use of force under a law enforcement paradigm can be properly planned and carried out, the forces dispose of adequate equipment and are appropriately trained for their mission.

The ICRC has been cooperating with police and armed forces in Mexico in their efforts of integrating international human rights law and standards into doctrines, procedures and training.

Humanitarian spaces

In some States of Mexico efforts to help communities cope with violence has involved promoting discussion among secondary school students and their teachers on humanitarian values to contribute fomenting respect for human life and dignity in their communities. Such projects have been implemented, together with the Mexican Red Cross Society and local Education Departments, namely in Guerrero and in Chihuahua.

The ICRC continues to increase and review its efforts, together with the Mexican Red Cross Society to mitigate the consequences of violence

- be it through our action in favor of migrants or of missing persons and their families,
- be it through strengthening access to health services,
- be it when trying to ensure that international human rights law and standards are adequately integrated in doctrines and procedures on the use of force under a law enforcement paradigm,
- or be it when working with communities on humanitarian values.

We are convinced that those efforts do bring a measure of humanity that makes a difference to those affected by armed violence. And we are determined to continue to make that difference, slowly, steadily, but with perseverance and determination.

Beyond our work on legal frameworks, and our operations on the ground, we engage in advocacy, too. Creating awareness and spreading information about some lesser-known sides of the humanitarian consequences of armed conflicts can help prevent suffering.

Sexual violence for example – against women, men, boys, girls, and detainees – has been part of wars for centuries, all over the world. But it is a war crime. We aim to educate and inform military, other weapons carriers and communities about the risks, the suffering and the essential medical and psycho-social treatment for victims of sexual violence.

Two years ago, we launched a campaign on the matter of protecting healthcare facilities and staff. Because what happens when hospitals are attacked, or doctors and nurses targeted? When medical aid is blocked from delivery? People suffer longer and more. Just last week, in Yemen, a plane carrying medical equipment was prevented from landing. This means hospitals cannot treat patients. And wounded people were quickly filling up the hospital, but the medicine hadn't arrived. The same week, a colleague of mine was shot while driving an ICRC truck to get more medicine for a hospital in northern Mali. The security of our staff has to be a priority – so how can we work when we are being attacked for doing our work?

At the ICRC we believe in making every effort to marry practical experience, policy and law. This way, we can counter the fatal spiral of violence and disrespect for the law

with strong encouragement for practical humanitarianism, supported by strong law and decisive political action.

Thank you.

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