

## 40<sup>th</sup> Round Table on Current Issues of International Humanitarian Law

### “The Additional Protocols 40 Years Later: New Conflicts, New Actors, New Perspectives”

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#### Concluding Address

As I am the last speaker, I would like to take the liberty of making some more personal remarks and give my own thoughts on some of the topics discussed here today.

I will start with an experience I had on May 26<sup>th</sup> of this year, when I had the opportunity to brief the Security Council, representing the ICRC. The briefing was on the situation in the Middle East, with regard to the implementation of Security Council Resolution 2286, the “Healthcare in Armed Conflicts Resolution”. I was there with a colleague from Human Rights Watch. Having the head of a non-governmental organisation also invited to brief the Security Council was a real first.

We both gave our briefings, describing the situation as bad and as difficult as it was. Then, I listened to the statements of all the Security Council Members and each of them agreed totally with what my colleague from Human Rights Watch and I had said. They all admitted that the situation was unacceptable, that things had to change and that they would do their best to prevent such things happening again. However, nothing changed and the situation went on. We can take the example of Yemen with the shelling of hospitals; or the mere 35 percent of health infrastructure working in Yemen; and the big cholera epidemic, the scale of which is a consequence of the health system not functioning at all. We can look too at the doubling of attacks on health care facilities in Afghanistan since last year, as they did the year before that. We can look at all the attacks on civilian infrastructure taking place in Syria and Iraq. Things are not getting any better.

Personally, I think we have a very well developed international humanitarian law system. It is strong and adapted to the situations with which we currently have to cope. Nevertheless, the law is not really respected and that is what we have to work on.

What we encounter when we are working in the field is that it is often difficult to bring medical devices or surgical instruments, for example, to assist people who have been wounded in conflict. And when the wounded people are fighters, it is even more difficult. The very idea that wounded soldiers, who are therefore *hors de combat*, have to be looked after no matter what side they are on is still in many cases contested. As a matter of fact this is the basic principle promoted by Henri Dunant, one that he developed after witnessing the suffering of wounded soldiers at the Battle of Solferino. Yet if this principle is contested,

I think we really have a lot to do. We have to then go back to basics and make people understand the importance of this principle.

We had an interesting panel on the medical mission, which was very insightful. We also had a very interesting panel on access. To take a look at what we see in the field, we can take the example of the four towns in Syria: Fuaa, Kafraya, Madaya and Zabadani, where we work together with the Syrian Arab Red Crescent and others including the UN. People there were in a desperate situation: two of the towns were besieged by governmental forces, and two by the opposition forces. What we were allowed to bring in was the result of negotiation and we had severe constraints. For example, we had to bring exactly the same amount of relief items into both towns. This was so strictly imposed that when one truck broke down, we needed to take one truck out of the convoy going to the other town. Everything was very closely checked; calculated truck by truck. We stuck to the system because people were in dire need of our help, so in a certain sense we accepted unacceptable conditions.

I am a lawyer but not a specialist in international humanitarian law. I have really appreciated all the discussions I have heard here and I have learned a lot. I really enjoy academic discussions; I think they are thrilling gymnastics for the brain. However, I think we also have to bring to light the reality and the conditions under which we have to work. I think we have to recognise that what we see every day, and what we will see more and more in the future, is that we have to tackle dilemmas. Nothing is just black and white. Nothing is just right or wrong under the law. It is always somewhere in between.

So, I ask myself: was it correct to accept the conditions imposed on us by the government and the non-state armed groups in Syria? Was it correct to accept to go and help people in these besieged cities under these conditions and constraints? I think the answer is yes, because going in we saw how horrible the reality was. We really did bring life-saving help. However, on the other hand, it was probably not totally in accordance with our principles. Can we accept that medical devices are unloaded from trucks in one location as a condition for granting access to other critical regions? Sometimes we have to do it because we want to bring help to people in the most desperate need.

We heard yesterday from Dr Ferraro that “access” means “access to bring assistance”, and “access to bring protection”. I would be first to agree this is extremely important. Protection is really at the core of our mandate. It is one of our strategic objectives and the ICRC has to work strongly on protection. But, sometimes, if we get involved in a situation where assistance is deeply needed, starting with protection dialogue might prevent us from bringing assistance. So, do we decide to wait a little bit before starting the protection dialogue, in order to bring assistance first - and how long do we wait until we start this protection dialogue?

These dilemmas are our daily bread. I am not questioning the strength and the importance of the law. I would be the first to say that it is extremely important to have strong legal bases and that our mandate is as strong as it is because it is built on the law and a principled approach. I also think that it is extremely important to bring together academics, legal

experts and field practitioners. Indeed, bringing together such groups of people reflects the richness and the very strength of the San Remo Roundtable.

This is not always easy because sometimes people from different disciplines and backgrounds do not speak the same language and sometimes they disagree. But, because it is not easy, it is important to do it. San Remo is an ideal place and platform for such meetings, because here we remain friends, despite the arguments. It is important to exchange conflicting views, because only in this way we can make progress.

If I may make a wish as a departing member of the Council, it is that the Institute should continue being an open platform and invite very bright academics, perhaps more practitioners than we have had up to now, people from the field, military people and humanitarians – all of them people who know exactly how things work and where the dilemmas lie, and who will try together to tackle those dilemmas, translating law into a meaningful reality on the ground. Indeed, for the people who serve in the field, the most important thing is to find practical solutions.