

40th Round Table on Current Issues of International Humanitarian Law

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

Sanremo, 7-9 September 2017

Prof. Fausto Pocar, President of the IIHL

Opening Address

Excellencies, Civil and Military Authorities, Colleagues and Friends, Ladies and Gentlemen,

It is for me a great pleasure and indeed a distinct privilege to open this 40th Round Table on current issues of International Humanitarian Law (IHL), which has been organized as is tradition by the Institute in co-operation with the International Committee of the Red Cross, thus following a long and fruitful collaboration that has allowed distinguished experts - both academics, military officials and field operators – to come together to discuss significant issues of IHL in the neutral and friendly environment of our Institute, an environment which has been customarily referred to as the “Spirit of Sanremo”.

C'est bien dans cet esprit que j'adresse a tous et a toutes ici dans cette sale la bienvenue la plus chaleureuse au nom de l'Institut et ma gratitude pour s'être rendu(e)s a Sanremo pour être avec nous au cours de cette Table Ronde, qui marque le 40e anniversaire des Protocoles additionnels aux Conventions de Genève et en même temps constitue la 40e table ronde de notre Institut.

Nel porgere il mio benvenuto ai partecipanti, desidero esprimere la mia profonda gratitudine al Presidente della Repubblica, che ha voluto esprimere ancora una volta il suo apprezzamento per la manifestazione conferendo alla Tavola Rotonda la “Targa del Presidente della Repubblica”. E' un riconoscimento che onora l'Istituto e ci incoraggia a continuare con sempre maggiore impegno nella nostra attività per il rispetto del DIU.

Vorrei anche esprimere il mio vivo ringraziamento a tutte le autorità civili e militari presenti in questa sala e alle illustri personalità che prenderanno la parola in questa cerimonia di apertura della Tavola Rotonda, a cominciare naturalmente dal Sindaco di Sanremo, Alberto Biancheri, per il suo costante sostegno a favour dell'Istituto; al Presidente del CICR, Ambasciatore Peter Maurer, che pur non potendo essere presente, ha inviato in messaggio con un video; all'Ambasciatore Elisabetta Belloni, Segretario Generale del Ministero per gli affari esteri e la cooperazione internazionale per essere intervenuta in rappresentanza del Ministero, che ringrazio per il continuo sostegno dato all'Istituto; al Sottosegretario Generale per gli affari giuridici e Consigliere giuridico delle Nazioni Unite, Miguel de Serpa

Soares, che ci onora per la seconda volta consecutiva con la sua presenza. Desidero inoltre esprimere la mia riconoscenza al Governo elvetico per il contributo offerto all'organizzazione di questa tavola rotonda.

Infine, un mio personale riconoscimento va ai coordinatori del programma della Tavola Rotonda, il vicepresidente Michel Veuthey, il prof. Wolff Heintschel von Heinegg, per molti anni membro del Consiglio dell'Istituto, e ai membri del servizio giuridico del CICR Helen Obregon e Jean-Francois Queguiner. E, last but not least, al personale dell'Istituto, che si è prodigato con la consueta solerzia per la riuscita di questo incontro.

Mesdames et Messieurs,

Ainsi que le programme l'indique, cette Table Ronde se déroule à l'occasion du 40eme anniversaire des Protocoles Additionnels du 8 juin 1977 aux Conventions de Genève. Le colloque est toutefois bien loin d'être une simple célébration de l'anniversaire de deux instruments juridiques dont l'importance et l'actualité ne saurait être mise en doute. Il s'agit non seulement de tracer un bilan de la contribution que les Protocoles ont donné à l'évolution du Droit International Humanitaire et aux principes desquels il s'inspire, mais également d'identifier le rôle qu'ils peuvent jouer dans le cadre de la complexité des scénarios qui caractérise le présent contexte des conflits qui ont lieu aujourd'hui dans le monde: un contexte nouveau auquel une distinction rigide entre conflits armes internationaux et conflits armes non internationaux est de moins en moins susceptible de s'appliquer – ainsi qu'il a été mis en lumière au cours des débats de la 38^{eme} Table Ronde qui a eu lieu il y a deux ans, en 2015, de laquelle la présente constitue d'une certaine manière la continuation.

Malgré ce nouveau contexte, malgré les défis auxquels le DIH se voit de plus en plus confronté, les Protocoles, ainsi que les Conventions de Genève dont ils sont le complément, restent le point de référence essentiel dans le droit des conflits armés et sont toujours la base de leur discipline juridique. Ils ont le potentiel de continuer à jouer un rôle fondamental à cet égard pourvu qu'on leur donne une interprétation évolutive et cohérente avec leur but et leur objet, et qu'on les respecte dans leur intégralité. Il s'agit donc d'identifier les situations qui demandent une interprétation évolutive des principes qui y sont affirmés et renforcer le respect de leurs dispositions par tous les acteurs, étatiques et non étatiques, engagés dans un conflit international ou interne.

Ladies and Gentlemen,

In light of the abovementioned considerations, the Round Table will focus on several issues dealt with in the Additional Protocols which may require further clarification, especially in the framework of NIACs, such as the treatment of persons deprived of their liberty, the protection of medical personnel and of medical activities, and the provision to health care for civilian population in armed conflicts, as well as the question of humanitarian access. Furthermore, with a view to identifying features implying the need for a progressive interpretation and implementation of the Protocols, and more in general of IHL, the

programme of the Round Table has singled out the questions of gender violence in armed conflicts and of the integration of a gender perspective into IHL.

In recent years, increasing attention has been placed on gender issues in armed conflicts, and States and humanitarian actors have begun to integrate gender perspectives in their operations.

However, gender violence, whilst still prevalent in many armed conflicts, does not appear to be widely addressed in traditional IHL training packages for the armed forces and there could therefore be a perception that the issue has not been absorbed as a mainstream IHL subject. There remain detractors, including IHL specialists, who do not regard this area of IHL as “real IHL” in the same sense as they regard “proper” subjects such as, for example, targeting. It is true that the subject covers a wide range of behaviour which does not always amount to breaches of IHL, ranging from individual criminal conduct by, for example, peacekeepers, to its systematic employment as a means and method of warfare. But, even where the behaviour does amount to a breach of IHL, its inclusion in this field as a proper subject is sometimes perceived as emotional and controversial. It seems appropriate, at this stage, to explore how the Additional Protocols address the issue of sexual and gender-based violence in armed conflicts and some of the situations related thereto.

The integration of a gender perspective into IHL has a wider dimension though. Save for a few provisions that provide specific protection to women, the majority of IHL rules, including those in the Additional Protocols, are intended to be gender neutral in that women and girls, men and boys are afforded the same protection. If this is certainly true, structural inequalities and gender stereotypes in society may entail the application of IHL rules in a way that is inherently discriminatory, and there may be a need to clarify or further develop the law to address these effects. Hence the problem of integrating a gender perspective into IHL, particularly at the level of its implementation, inevitably arises. Again, it is appropriate to address this issue and the Round Table will endeavour to explore and discuss it.

Let me finally stress that, while the 1977 Additional Protocols represented a milestone in the regulation of armed conflict and strengthened the protection of victims on many issues, that protection depends on the degree of respect for their rules by actors engaging in IAC and NIAC. In light of the frequent violations of these rules, a main issue is still how to enhance respect for, and prevent violations of, the Additional Protocols and IHL more in general. A wide range of measures have been adopted and initiatives have been proposed, both internationally and nationally, to increase respect for IHL in armed conflict, and it is important to reflect on lessons learned and possible ways forward to enhance the implementation and promotion of the Additional Protocols. This is a recurrent subject at these Round Tables, and reflects the main object of the activity of the Sanremo Institute, whose goal, in almost fifty years of life, has been to promote and disseminate IHL through

the organisation or courses, workshops and training activities, bringing together leading military experts, academics, civilian and military personnel from different regions of the world, as is the case of this Round Table.

In thanking all the participants for their presence in Sanremo, we look forward to a productive discussion over the next few days and to the contribution that all of you will give to the Round Table. Thank you for your attention.