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Statement by the President of the International Committee of the Red Cross, Jakob Kellenberger

Engaging in an open and critical review of the state of implementation of international humanitarian law is something both necessary and justified. In countless situations of armed conflict around the world men, women and children daily face extreme hardship and violence. The extent to which international humanitarian law is being respected or not has a direct bearing on their plight. I refer here to existing law. Indeed, the more one looks at it, the more it strikes one that the problem is not so much the lack of rules and provisions, but rather lack of respect for those rules and the often lacking political will to apply them.

It is therefore needless to emphasize that the challenge of obtaining better respect for these rules is a question of major concern to the International Committee of the Red Cross. To take only the past decade, the world has witnessed violations of international humanitarian law of the most severe type: from acts of genocide, to ethnic cleansing, from population transfers to indiscriminate attacks against the civilian population. Violations have taken place across all continents. I attach great importance, when discussing the reality of contemporary armed conflicts and their consequences to taking a comprehensive view and to getting the proportions right.

It is stating the obvious to say that international law historically developed as a set of customary law norms, gradually translated into treaties, that regulated relations among states. For centuries, states were indeed the only subjects of international law, to the exclusion of organizations, or individuals, whose interests could only be protected by mediation of their respective countries. The notion that individuals have certain inalienable rights simply by virtue of being human was therefore a novel and remarkable step in the development of international law. It was enabled by an evolution in human consciousness, a realization that the humanity of any society can only be measured by the humanity it accords each and every individual.

In human rights law and refugee law terms, the belief that humanity is a value in itself found expression in treaties protecting individuals from arbitrariness, abuse and persecution by governments. In humanitarian law

terms, it found expression in treaties providing that all persons in enemy hands during armed conflict also have specific rights. While different in circumstances of application, all three bodies of law shared and continue to have the same aim - to protect the life, health and dignity of individuals from arbitrary exercise of power over them.

It has been said that the world will never be the same after the heinous crimes of September 11, 2001, which shocked the world's conscience. The September 11 attacks delivered a blow to the most fundamental values of human society, particularly those at the heart of international humanitarian and human rights law. One should however be careful not to allow these events to overshadow the seriousness of many — often forgotten or neglected — conflict zones around the world. Losing sight of them, neglecting the violations that occur in them, one runs the serious risk of weakening the body of international humanitarian law.

The crisis generated by the attacks has posed a host of questions, some of which I will outline and to which I will attempt to briefly respond.

One line of reasoning appears to suggest that certain individuals are undeserving of the protection of the law because of the heinous nature of their criminal acts. Such assumptions should be rejected. Human beings, by virtue of being human, are entitled to the protection of the law. Just as no state, group or individual can place themselves above the law, so also, no person can be placed outside the law.

It would be misleading to think that recent or present-day international crimes surpass the evils that humans have historically inflicted on humans. Does anyone really believe that the suffering caused by current conflicts around the globe surpasses the ravages of World War II and the atrocities that accompanied it? Can it really be said that the laws devised in response to that very dark time in human history, such as the Geneva Conventions of 1949, are outdated or quaint? I think not.

Another question that has been raised is whether international law in general, and international humanitarian law specifically, are adequate tools for dealing with the post-September 11th reality. My answer to this is that international law, if correctly applied, is one of the strongest tools that the community of nations has at its disposal in the effort to reestablish international order and stability. What we have to be clear about is which body of law is the right tool. It is the rules of the United Nations Charter, and not international humanitarian law, that regulate the use of force in

international relations. The relevant provisions of the UN Charter provide guidance on questions such as legitimate resort to force, the right to self-defense and lawful responses to threats or breaches of international peace and security. It is the UN Charter that allows the international community to pass political and other judgment on the use of force in international relations.

International humanitarian law is, quite distinctly, the body of rules that regulates the protection of persons and conduct of hostilities once an armed conflict has occurred. Its aim is to alleviate the suffering of individuals affected by war regardless of the underlying causes — and therefore regardless of any justification — for the armed conflict. There are no “just” or “unjust” wars in terms of international humanitarian law because civilians, to name just one category of persons protected by its rules, have the right to be spared murder, torture or rape, no matter which side they happen to belong to.

A related doubt that has been raised in the aftermath of September 11 is whether international humanitarian law is applicable to the new security threats posed by acts of terrorism. Several bodies of law, including national and international rules of criminal law, are relevant in the struggle against terrorism. As for international humanitarian law, it is that body of rules that is applicable whenever the fight against terrorism amounts to or includes armed conflict. There is no question that its norms are adequate to deal with security risks in war because its provisions were designed specifically for the exceptional situation of armed conflict. The generations of experts and diplomats who crafted international humanitarian law over the last two centuries were fully aware of the need to balance state security and the preservation of human life, health and dignity. That balance has always been at the very core of the laws of war.

Our belief in the continued validity of existing law should not be taken to mean that international humanitarian law is perfect, for no body of law can lay claim to perfection. What we are suggesting is that any attempt to reevaluate its appropriateness can only take place after it has been determined that it is the law that is lacking, and not the political will to apply it. *Pacta sunt servanda* is an age-old and basic tenet of international law which means that existing international obligations must be fulfilled in good faith. This principle requires that attempts to resolve ongoing challenges within an existing legal framework be made before calls for change are issued.

Any other course of action would risk depriving the law of its very *raison d'être* – which is to facilitate the predictable and orderly conduct of international relations. Care should especially be taken not to amend rules designed to protect individuals in times of crises, because individuals have no other protection from arbitrariness and abuse except implementation of the law.

Contrary to perceptions according to which international humanitarian law is static, this body of norms, like all others, is constantly subject to refinement and change. The very first contemporary international humanitarian law treaty, the Geneva Convention of 1864, aimed at ensuring that wounded soldiers, regardless of which party they belong to, were not left to die on the battlefield, but were protected and cared for. Today, the four Geneva Conventions of 1949 — which have achieved almost universal ratification — and their Additional Protocols of 1977, are the backbone of a complex web of humanitarian law treaties aimed at limiting the effects of violence in armed conflict.

In our view, the fundamental principles of humanity underlying these texts cannot and must not be disturbed. They mandate that the life, health and dignity of all persons not taking, or no longer taking part in hostilities must be respected and that military operations must be conducted so as to minimize the suffering caused by war. The Geneva Conventions and Additional Protocols have since been supplemented by a range of treaties prohibiting or restricting the use of certain weapons, protecting cultural property and, most recently, clarifying the international criminal responsibility of those who violate the laws of war. I refer here to the 1998 treaty establishing a permanent International Criminal Court that is expected to shortly come into force. Another avenue of humanitarian law development are the evolving rules of customary international humanitarian law which the ICRC will present upon completion of its ongoing, comprehensive examination of this issue.

I would, lastly, like to address the fear that the protection afforded individuals by international humanitarian law is an obstacle to justice. The Geneva Conventions and their Additional Protocols do not prevent justice, they only require that the due process of law be applied in dealing with offenders.

Each of the 1949 Geneva Conventions has specific provisions listing acts which are considered grave breaches of their rules, such as the killing, torture and denial of fair trial rights to protected persons. The list

of grave breaches was expanded with the adoption of the 1977 Additional Protocols to criminalize certain other acts, particularly those aimed at harming civilians through the unlawful conduct of hostilities. The Conventions and Protocols not only encourage states to bring perpetrators of war crimes to justice, they demand it, including by means of exercise of universal jurisdiction.

Allow me to conclude with a few words on the role of the International Committee of the Red Cross. As a neutral, independent and impartial humanitarian organization whose history is intimately linked to the creation and development of international humanitarian law, the ICRC has an abiding interest in seeing that humanitarian law norms are observed. Our mandate under the Geneva Conventions and Additional Protocols includes ensuring assistance and protection to all persons affected by war based on the values underlying those treaties — humanity and respect for individual dignity. Together with the other components of the International Red Cross and Red Crescent Movement, we will continue to pursue our mandate with those principles in mind.