Proceedings of the Bruges Colloquium

Standing up for IHL: Building a Common Understanding Around the Law that Protects in War

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PROCEEDINGS OF THE BRUGES COLLOQUIUM

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OPENING REMARKS

Eloi Fillion
Head of Delegation, ICRC Delegation to the EU, NATO and the Kingdom of Belgium

Excellencies, distinguished experts and colleagues, ladies and gentlemen,

On behalf of the International Committee of the Red Cross, it is my pleasure to welcome you to the 2025 edition of the Bruges Colloquium on International Humanitarian Law.

It is a personal pleasure for me to open this year's Colloquium, my first as ICRC Head of Delegation to the EU, NATO and the Kingdom of Belgium. I am honoured to continue this great tradition. The Bruges Colloquium has long served as the flagship international humanitarian law event of our delegation, and it has become the annual rendezvous for experts in humanitarian law across Europe, representing States, the EU, NATO and various NGOs or academic institutions. For the past 26 years, it has been a space to bring together perspectives on humanitarian law, policy, research and practice. Those who were there last year will recall that we had very interesting discussions on the topic of "Humanity in War: How Can IHL Keep its Promises?". I am pleased to share with you that the proceedings from last year's Colloquium – which bring together in writing all contributions from the excellent panellists – have recently been published and are available on the Colloquium's webpage.

It is truly wonderful to see so many of you here today, eager to exchange ideas and engage in discussions that I am confident will be both productive and inspiring as we navigate the complex challenges of our time.

Let me begin by expressing our warm thanks to the College of Europe, our partner from the very beginning, for hosting us once again in these beautiful surroundings.

Since the first Colloquium in 1999, the College has welcomed us in Bruges and helped sustain this unique forum for reflection and dialogue. We are truly grateful for this enduring partnership and for their support in bringing us all together once again.

This year, the Colloquium has attracted an exceptional level of interest, as reflected in the impressive turnout and the full room we see today. The growing number and intensity of armed conflicts around the world, coupled with the immense human suffering they cause, have cast a spotlight on the critical importance of international humanitarian law. In parallel, States are increasing their spending and preparation for conflicts, that – we hope – will never occur. The high attendance today is a powerful reminder of the urgency with which we must address the suffering caused by conflict, and the shared responsibility we all bear in safeguarding the values that lie at the heart of humanitarian law.

Ladies and gentlemen,

We stand at a defining moment for the future of international humanitarian law, and for the millions of people whose lives are torn apart by war.

Across the world, we are seeing a dangerous shift: violations of IHL are becoming increasingly normalized. What once shocked the conscience of humanity is now too often met with silence, inaction, or even the distortion of IHL language to justify the very conduct it was designed to prohibit. This erosion endangers not only civilians caught in conflict – it strikes at the very heart of the Geneva Conventions, born to ensure that the horrors of the Second World War would never be repeated.

For decades, the world has agreed on a simple but vital principle: even war have limits. Yet today, that conviction is faltering. Political will is waning. Operational realities are hardening. Moral lines are blurring. The International Committee of the Red Cross believes this moment demands more than concern – it demands courage, unity, and decisive action.

It was from this sense of urgency that the Global Initiative on IHL was born. In September of last year, the ICRC, alongside Brazil, China, France, Jordan, Kazakhstan, and South Africa, came together to reignite a global commitment: to breathe new life into the laws of war and to remind the world that our shared humanity must never become collateral damage.

The theme of this year's Colloquium speaks directly to these concerns. Its title, "Standing Up for IHL: Building a Common Understanding Around the Law that Protects in War", captures two central imperatives.

First, the imperative to stand up with courage and conviction in upholding the principles of IHL and ensuring their application in good faith by all parties to conflict, everywhere.

Second, the need to address the uneven application of IHL by fostering a more coherent and shared understanding of the law and its implementation, so that it remains both protective and relevant.

I am positive that the discussions that will unfold over the coming days will offer an opportunity to reflect on, and collectively confront, this shared challenge.

In this spirit, the Bruges Colloquium is not conceived as a forum to debate specific contexts or politics, but rather as a space for experts to engage with the broader and evolving challenges facing international humanitarian law. It offers an opportunity to step back – to exchange ideas, reflect, and engage in open, constructive dialogue. To this end, please remember that this event will be conducted under the Chatham House Rule.

Once again, we are privileged to welcome a remarkable mix of participants: distinguished academics and seasoned practitioners who will share their insights as keynote speakers and panellists. Their expertise will undoubtedly enrich our discussions and help deepen our understanding of the issues at stake. But the success of this Colloquium also depends on you – your questions, your perspectives, and your active participation will contribute to the richness of the debates and to the continued vitality of this important forum.

Ladies and gentlemen,

Allow me to offer you a brief overview of what lies ahead.

The Colloquium's opening session will set the tone by asking a crucial question: "What should political support for IHL look like in practice?" This will frame our reflections of how to move from legal affirmation to concrete action. Throughout the next two days, our discussions will draw on five substantive themes inspired by the workstreams of the Global Initiative. These will help us explore key legal questions and practical challenges that define today's armed conflicts.

The first panel will address the protection of civilian infrastructure. The discussion will look at how the protection of essential civilian services and facilities depend on a good-faith interpretation and application of the concept of "military objective". It will also examine good practices from a military perspective to ensure that civilian infrastructure is safeguarded in operations and will address the complex legal questions surrounding the targeting of dual-use objects.

Following this, the second panel will focus on the protection of medical facilities. The discussion will examine what the law says about the specific protection afforded to hospitals and other medical sites. It will also explore how the misuse of such facilities for military purposes can lead to the loss of that protection in practice and will consider practical measures to implement safeguards that prevent or mitigate the humanitarian consequences when medical facilities are threatened or attacked.

The third panel will explore the challenges of ensuring IHL protection in an increasingly digitalized battlefield. The discussion will examine how IHL imposes limits on cyber operations from a State perspective, the legal issues surrounding the military use of civilian ICT infrastructure and civilian involvement in cyber operations, and measures to protect civilians and other protected persons from harmful information during armed conflict.

Tomorrow morning, the fourth panel will address protection challenges in contemporary naval warfare. The discussion will cover the legal status of merchant vessels under the law of naval warfare, the humanitarian impact of naval operations on both land and sea, and the protection of the natural environment at sea during armed conflict.

Finally, the fifth panel will look at a crucial but often overlooked aspect of the law that protects in war: creating pathways for peace. The discussion will explore how respect for IHL can support peace processes by enabling dialogue and fostering space for mediation and reconciliation, the role of disarmament treaties in promoting lasting peace, and the impact of IHL obligations beyond active hostilities on post-conflict recovery.

I would like to thank all the speakers and moderators for their support in preparing this agenda and for their willingness to make valuable contributions to advancing these crucial debates. I also thank all of you for being here, for your engagement, and for the spirit of openness that defines the Bruges Colloquium.

And now, I am glad to give the floor to Mr. Marco Incerti, Director of the Rectorate of the College of Europe, followed by Mr. Gilles Carbonnier, Vice-President of the ICRC, for his opening remarks.

Thank you for your attention.

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Ladies and gentlemen, distinguished speakers, organizers, and representatives of the International Committee of the Red Cross,

It is a privilege for me to welcome you today on behalf of Rector Mogherini. Regrettably, she cannot be with you, as she is currently in Peru delivering a keynote address at the General Assembly of the International Network of Diplomatic Academies. In that capacity, she is also contributing to the spread and upholding of international humanitarian law and international law more broadly. She would have very much liked to be here with you today, as this is a topic close to her heart and one on which she could have contributed substantively. While her absence is a loss for us, we hope that she will be able to join a future Colloquium.

For my part, it is also a privilege and an honour to address you. I am, technically, a lawyer – once upon a time. At the time of the first Colloquium here in Bruges, I was in Finland, then a major hub for the study of international law, and I was writing a research paper on the establishment of the International Criminal Court. More importantly, however, as the brother of an operational doctor with Médecins Sans Frontières, I have been able to see firsthand the impact of violations of international humanitarian law on the ground: lives torn apart and suffering inflicted. I know all too well why it is fundamental to uphold these rules. From that perspective, the two days of discussions you will have here are of the utmost importance.

I would also like to thank the International Committee of the Red Cross for bringing you to Bruges. Our role is modest: we host you and help ensure that everything runs smoothly. But for us, this is a crucial annual event. As part of our contribution to the upholding of international humanitarian law, in cooperation with the ICRC, we include dedicated modules in the curriculum of our International Relations and Diplomacy Department. These are consistently appreciated by our students. In addition, over the past three years, we have been organizing the European Union Diplomatic Academy, which brings together young diplomats from across Europe in the same venue in which you are convening today. The aim is to build a common understanding among them – not only of international humanitarian law, but also more broadly. We believe that building bridges and bringing people together is a crucial first step: the letter of the law can remain dead without ownership, and we hope to contribute to that sense of ownership.

Before I leave you to the discussions, one further word for those who may not be familiar with the College of Europe. The College was established in the same year as the signing of the Geneva Conventions, likely in a similar spirit: to bring people together – physically and literally. To this day, we remain one of the few boarding schools dedicated to European affairs. Our students here in Bruges, now more than 330, come from across Europe and live together.

They attend classes together, study together, and spend their daily lives together. This builds strong bonds and an extensive network.

Our Master's programme, while now one among several, remains recognized for its importance and excellence. Many of our alumni go on to distinguished careers in international and European affairs. We count among them many officials of the European Union institutions, as well as individuals working in international organizations, NGOs, and beyond. As I mentioned, we have also established the European Union Diplomatic Academy, and we see this as another area where there is room for cooperation and interaction with many of you in your respective capacities. We look forward to exploring further synergies.

With that, I leave you to these two days of extremely important conversations. I hope you will come away with new ideas and, potentially, new initiatives. As a College, we are proud to host you and to continue cooperating with the International Committee of the Red Cross.

Thank you very much.

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Excellencies, ladies and gentlemen, distinguished participants,

I am delighted to welcome you to the twenty-fifth edition of the Bruges Colloquium on International Humanitarian Law. For a quarter of a century, this forum has brought together scholars, practitioners and policymakers to examine ways to protect our common humanity in the worst of times: in the midst of armed conflicts.

I wish to thank our host for the renewed hospitality to hold this Colloquium in the College of Europe. Dr Marco Incerti, the International Committee of the Red Cross greatly values the partnership developed over the years with the College of Europe in Bruges. We thank the College for your steadfast commitment to fostering debates on major challenges to international humanitarian law.

“Standing Up for IHL: Building a Common Understanding Around the Law that Protects in War”: The theme of this year’s edition addresses one of the most pressing questions of our time: How do we ensure that the law protecting human life and dignity in conflict is not only widely known, but effectively respected and implemented – in the field, in command rooms, and in policy decisions?

To address this question, we must first acknowledge the increasingly polarized world in which we live. This is a period of multiplying and intensifying armed conflicts. The ICRC currently operates in some 130 armed conflicts – almost twice as many as just 15 years ago. From Sudan to Gaza, from Ukraine to Myanmar, the world is witnessing protracted crises with devastating human costs: millions of people displaced, cities under siege, families separated, hospitals destroyed and essential services collapsing. These are not inevitable side effects of war. They are the result of a political failure to uphold the basic norms of humanity enshrined in IHL.

In other words, the challenge is not that international humanitarian law might have become irrelevant or outdated – quite the contrary! It is insufficiently respected. The letter and spirit of the law are all too often violated.

The Geneva Conventions remain universally ratified, widely taught, and broadly accepted. Yet their goals and spirit – the duty to protect the wounded and sick, to spare civilians, to treat detainees humanely – is too often discarded in practice, sometimes under the guise of an overly permissive interpretation of the law.

Standing up for IHL means closing the glaring gap between stated commitment and compliance – between States’ obligations and their practice.

Ladies and gentlemen, colleagues,

We are witnessing an alarming trend toward widening gaps between legal commitments and actual behaviour. This trend must be stopped and reversed – or else the unacceptable might become the new norm. This is in no one's interest – small and big powers alike.

Such a trend has dramatic consequences for the lives of millions of civilians affected by armed conflict, suffering deliberate attacks, starvation used as a weapon by warring parties, or denial of access to humanitarian relief. At times, we also witness slightly more subtle, but no less damaging, trends: the concept of "military necessity" stretched without limit; "dual-use" applied so broadly that vital civilian infrastructure loses its protection; and "proportionality" reinterpreted to justify the widespread destruction of civilian objects.

Such trends erode the protective power of IHL. Standing up for the law means embedding respect and compliance at every level – from top political and military decision-making, through command responsibility, to military training and ever more importantly to public discourse, averting the light-speed spread of harmful narratives.

Excellencies, distinguished participants,

Over the next two days, we will explore how to translate respect for IHL into concrete action. We will discuss what genuine political and institutional commitment to IHL looks like: how to strengthen the protection of vital civilian and medical infrastructure; how to apply IHL in the digital and maritime domains; and how to ensure compliance not only during, but also before and after a conflict, including how IHL can contribute to fostering an enabling environment for peace.

These are not abstract questions, but issues that directly impact the daily realities experienced by people affected by armed conflicts as well as the ability of humanitarian workers to provide them with assistance and protection. These questions also raise critical policy issues – not least in terms of military doctrine, training, accountability, and leadership.

This year again, the Bruges Colloquium serves as a bridge; a forum where legal reflection meets policy and operational practice.

The agenda ahead of us deals with many issues covered by the Global Initiative to Galvanize Political Commitment for International Humanitarian Law. This initiative was launched in September 2024 by six States (Brazil, China, France, Jordan, Kazakhstan and South Africa) together with the ICRC. Over ninety States have now formally joined, while more than 130

governments have participated in ongoing work along seven thematic workstreams, each of them co-chaired by a group of States from all regions of the world.[1]

This Initiative aims at making respect for IHL a political priority. It is not intended to create new rules. Its pragmatic goal is to prompt States to enhance respect for existing rules through a set of concrete, actionable recommendations.

The focus is on implementation – transforming IHL from commitment to capability. It looks at what respect for IHL looks like and requires in practice – in terms of policy priorities, resources, planning, training and accountability.

An interim progress report, issued last month, gathers the inputs of all contributing States, breathing life into the idea of standing up for IHL, with practical steps to embed and promote respect across government and defence structures.[2] Among the most valuable proposals are concrete calls for action, such as:

- To integrate IHL into national policies and military doctrines – not as a compliance checklist, but as an operational philosophy guiding the use of force.
- To strengthen accountability systems with a view to ensuring that violations are effectively investigated and sanctioned, including within armed forces.
- To map risk factors that increase the likelihood of violations – such as the spread of dehumanizing language against an enemy or a group of people – and address those risks before harm occurs, for example by instilling appropriate transparency and scrutiny when it comes to acts by State agents.
- To reinforce the protection of medical services by clarifying the legal and procedural safeguards that prevent the misuse of healthcare facilities or attack against hospitals, for instance by establishing no-strike lists.
- And fifth, to embed IHL obligations in peace processes and ceasefire agreements, ensuring humanitarian protection is a contributing part of the architecture of peace, not an afterthought.

Such measures are actionable steps that governments can adopt within existing institutions. They demonstrate that respect for IHL is not merely aspirational, but an attainable policy outcome if and when political will and systems align.

[1] At the time of publication of these proceedings, in November 2026, 131 States have joined the Global Initiative to Galvanize Political Commitment to International Humanitarian Law, while more than 160 governments have participated in its consultations.

[2] Global Initiative to Galvanize Political Commitment to International Humanitarian Law, 'Progress Report', October 2025, available at: shop.icrc.org/global-initiative-to-galvanize-political-commitment-on-international-humanitarian-law-progress-report-pdf-fr.html.

However, the success of such initiatives ultimately depends on you – policymakers, legal advisers and military lawyers. You translate law into policy; you convert principles into standing orders that influence the conduct of hostilities; and your role is to ensure that restraint in the exercise of violence is a professional expectation, not just an ethical aspiration.

Each policy decision that duly integrates IHL reinforces both the protection of civilians and the legitimacy of the institutions applying it.

Ladies and gentlemen, dear colleagues,

Protecting vulnerable people in war is one of humanity's most remarkable achievements. It does not abolish conflict, but it prevents the worst from happening. It marks the boundary between lawful military action and all-out war – between combat and cruelty. Today, that boundary is under immense strain. But it is not broken. It holds wherever individuals, institutions, and States choose to uphold IHL. Our delegates in the field witness daily instances where a military commander reverses a targeting decision to prevent civilian harm, or where rank-and-file soldiers let an ambulance pass unharmed with wounded enemies so that they can receive medical care.

As we open this 25th Bruges Colloquium, let us reaffirm a simple truth – respect for IHL is not a legal abstraction. It is a lifeline – for civilians under fire, for prisoners in detention places, for communities trying to rebuild their lives amid the ruins of conflict.

It is time to stand up for humanity in war.

I thank you for your active participation and wish you a productive and enjoyable Colloquium.

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INTRODUCTORY SESSION

WHAT SHOULD POLITICAL SUPPORT FOR IHL LOOK LIKE IN PRACTICE?

Keynote address

Judge Theodor Meron
Professor at Oxford University and NYU Law School, former President of the International Criminal Tribunal for the former Yugoslavia (ICTY)

Thank you for your kind invitation and thank you to your Delegation for preparing this Colloquium so well. I spoke at this Colloquium many years ago, when I served at the UN war crimes tribunals at The Hague, and I am particularly pleased to have been invited and to meet with you again.

I am honoured to serve on this panel and, as a member of the ICRC Advisory Board, to be involved in this Global Initiative to Galvanize Political Commitment of States and renew respect for international humanitarian law at a time when horrendous violations have persisted for long periods of time, and continue in Gaza, Ukraine, South Sudan, Darfur, Myanmar, Central African Republic and many other places. We must focus again on efforts to revitalize and ensure enforcement of international humanitarian law in the field. As we lament the decline in respect for the law, the President of the ICRC, Mirjana Spoljaric, supported by a growing number of governments, came up with a fresh and exciting idea and project: to turn to the political leadership of States with a request and a plea to galvanize political commitment to humanitarian law. And we owe her deep gratitude for initiating this project and for fighting for it so indefatigably. The progress report,[3] issued in October, is an encouraging statement of the progress already made and highlights the existing challenges.

The tremendous number of armed conflicts raging throughout the world places considerable strain on both the law and the ICRC, particularly when many of these are characterized by violations. We are sliding towards ever greater disrespect of the law. This tendency must be stopped, it must be reversed, and the respect for IHL must be reinvigorated. This is, of course, the principal goal of our project of galvanization. As the decisions to violate the law are always domestic, our work must be directed not only towards international fora, but also towards domestic policies.

In this context, I would like to start by saying something about terminology. The terminology we use is, of course, not without importance. I note that there has been some use of the term “permissive interpretation” of international humanitarian law. If I may, I would urge against using this term. There is no such thing in the law of treaties or in international law as a “permissive” or “prohibited” interpretation. There is simply the obligation in the Vienna Convention on the Law of Treaties to interpret a treaty in good faith in light of its object and

[3] Global Initiative, Progress Report (no 2).

purpose, as well as the obligation not to defeat the object and purpose of the treaty,[4] in our case, the Geneva Conventions, the Geneva Protocols, the Hague Conventions, and so on. It means that the Geneva Conventions of 1949 and the relevant humanitarian law instruments must be interpreted in good faith, maximizing protections, and certainly not using terms which could facilitate violations such as “permissive interpretation”.

International humanitarian law, I need not remind you, is a people-oriented and people-protecting system. One may ask, why turn to leadership then? We know that the crime of aggression is a leadership crime, for which only the highest echelons of political and military leaders bear criminal responsibility. But it is not the only leadership crime. Crimes of genocide, crimes against humanity and war crimes on a large scale can only occur when they are conceived, promoted, tolerated by the political leadership of States. So, it is our task to turn to that leadership to renew its commitment to international humanitarian law.

The seven streams, or clusters, of the project[5] are ambitious and cover the main areas of international humanitarian law. I would like to make now a few comments about our project.

One: the project is universal, non-contextual and non-political. As the ICRC itself, we must be neutral and non-political. Concentrating, focusing, even speaking of one or principally one conflict only would jeopardize our neutrality and politicize our project. While encouraging some governments, it would antagonize others.

Two: renewed respect for the law. Minimizing suffering and destruction and enhancing the application and enforcement of the law. Respect for and enforcement of humanitarian law must be an important part of the political agenda of governments and States.

Three: we must encourage both enforcement and accountability, not only on the international plane, but on the domestic plane as well. As someone who has spent about two decades judging and leading UN war crimes tribunals, I understand that we will never have enough resources nor enough jurisdiction to prosecute all crimes internationally, and that domestic prosecutions are absolutely essential. This involves, of course, internalizing international criminal norms, drawing on international conventions, the statutes of international criminal tribunals and their jurisprudence.

Four: we must aim for broad, and as close to universal as possible, international support for the initiative that we have undertaken under the leadership of the ICRC.

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[4] Article 26 of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

[5] The Global Initiative to Galvanize Political Commitment to International Humanitarian Law. See official website here: https://www.upholdhumanityinwar.org/

Five: making IHL a priority for State leadership should not be just formalistic but result in practical recommendations. One current example can be found in the Gaza conflict, where I found that the inter-related conduct of the warring parties is particularly harmful and violating principles of humanity in the use of civilians as human shields, with Hamas routinely embedded in civilian infrastructure such as hospitals, even though such objects are entitled under the Conventions to special protection.[6] Conversely, Israel used disproportionate means in attacking such objects hospitals, schools, civilian housing, causing excessive collateral damage, and turning the objects attacked into rubble. When considering the clarification of the law, we must be general and not contextual. It must be clear that, when the number of combatants embedded in civilian objects is minor in numbers and in seniority, the attacking party does not get a *carte blanche* for unrestrained attacks causing major and disproportionate collateral damage to civilians. The tendency to accept even a minimal number of combatants as justification for the massive destruction of civilian apartments, hospitals and schools cannot be tolerated. We must also resist any unjustified expansion of the notion of direct participation in hostilities.

Six: one of our workstreams concerns international humanitarian law and peace. This is not a platitude. Violations leave deep wounds and scar international relations. Respect for humanitarian law encourages trust and smoothens peace-making. In such cases, reconciliation is facilitated, ceasefires are easier to reach, prisoners and detainees are better treated, and contacts between the warring parties are easier, even when mediation is not resorted to. Good practices by States that involve respect for the law should, of course, be emulated to maximize compliance.

I would like to say a few words about prevention of violations. It is the responsibility of the political and military leadership not to encourage, allow or tolerate violations. To accomplish that, it is necessary to make commander responsibility and military justice systems more effective. We must encourage military justice, particularly as an effective component of accountability. Political and military leadership should make public its commitment to international humanitarian law and warn that violations of humanitarian law and the commission of war crimes, in the broad sense, will be severely punished, even in the case of most senior officers and politicians. Respect for the law must become part of the public conscience and of the ethical and professional culture.

Let me say a few words about national IHL committees. National IHL committees have an important role in advising governments and the armed forces, and in enhancing a culture of respect for humanitarian law. Yet their potential is still underutilized. Of course, some countries

[6] Articles 18–19 of Geneva Convention (IV), relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV); ICRC, Customary IHL Study, Rules 28-29, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule25.

have not created yet such committees, and one of the goals of our project is to encourage their establishment. While typically IHL committees include representatives of the relevant ministries, academia and National Red Cross and Red Crescent Societies, the members of the committees are not always of sufficient seniority to influence political decision-making. It is essential that IHL committees have a role in encouraging governmental decisions to comply with the law, in advising the military and in monitoring compliance. This would require elevating the membership of committees to more senior officials, and presidents of committees could be of ministerial or at least ambassadorial rank. They should be provided with permanent professional secretariats. Governments should establish policies requiring consultation with national IHL committees on all matters pertaining to compliance with the law and the prevention of violations. Committee presidents should be invited to meetings where matters of compliance are discussed, and should be encouraged to express opposition to policies, standing to order and courage or be otherwise complicit with violations. Conversely, they should be allowed to express public objections to major violations. It is necessary that committees should have mandates broad enough to ensure that they have a say about compliance, the required reforms of military training and access to political parties and to Parliament. The possibility of a universal charter for national committees should be considered, and cooperation and the learning process strengthened through regional and even universal meetings.

Finally, I would like to say a few words about infrastructure. Attacks on infrastructures are the Achilles foot of international humanitarian law, of compliance with the law. They endanger the very survival of the population with an impact on health, food, clean water and education. In recent conflicts, attacks against infrastructure have become common, increasingly intentional, increasingly deliberate, ignoring the often-civilian character and even protected character of the infrastructure concerned. National IHL committees have a particularly important role in ensuring that attacks on infrastructure, particularly in urban warfare, use weapons which do not cause excessive harm to objects and to people, and comply strictly with the rules on collateral damage.

The legality of attacks on infrastructure is often complicated by dual-use objects. For instance, electric grids might be used for civilian and military uses at the same time or consecutively. Of course, the definition of military objectives in Article 52, paragraph 2 of Additional Protocol I to the Geneva Conventions[7] is highly important here, and so is the principle of proportionality. Thus, if a particular electric grid is used primarily for civilian purposes, and only to a minor extent for military uses, its civilian character must be respected. The reality is that certain attacks on electric grids do not cause much military effect, or trigger concrete and direct military

[7] Article 52 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

advantage, while causing huge and clearly disproportionate harm to civilians and civilian objects. Foreseeable military advantage of an attack on infrastructure must be weighed against the foreseeable civilian casualties in such attacks. Power stations that serve civilians exclusively constitute civilian objects and not military objectives. Attacks on them constitute war crimes. Any discussion must start from the question whether an attack targeted a military objective or a civilian object. In certain circumstances, depending on the use at the time, civilian infrastructure may become a military objective. It is therefore important that, in undertaking attacks on infrastructure, competent experts be always consulted.

Objects that serve both the armed forces and the civilian population, such as power stations, are referred to as dual-use objects. From the perspective of the law of war or the law of armed conflict, such objects are, however, either civilian, which may not be attacked, or military, which may be attacked subject to the principle of proportionality and careful assessment of collateral damage. In terms of the law of armed conflict, there is no third or intermediate category called dual-use objects. Military objects are defined, of course, in Article 52, paragraph 2 of Additional Protocol I. Their definition requires that the object makes an effective contribution to military action, and that the attacking, capturing or neutralizing the object in these circumstances offers a definite military advantage. These requirements are cumulative, and both must be satisfied. The ICRC Commentary on Additional Protocol I states that "whenever these two elements are simultaneously present, there is a military objective in the sense of the Protocol."[8]

Electric facilities are considered economic objects and qualify as military objectives only when supporting military operations or sustaining war efforts, communications and transport, and which are of sufficient importance. Power stations that are separated from a general power grid and are limited to supplying power for civilian purposes and especially local purposes, including humanitarian, such as medical facilities, could have no effect on States' ability to wage war and are not military objectives. When a power facility supplies electricity only or primarily to civilians, it should not be treated as a military objective. This provision derives largely from Article 52, paragraph 1 of Additional Protocol I.[9] This prohibition is absolute, and military necessity cannot be invoked as justification. The degree of use by the military as compared to civilian uses can be measured, for example, by percentages. It is, of course, a relevant question as installations containing dangerous forces, like nuclear electrical generating stations, may not be made the object of attack, even where they constitute military objectives, if such attacks may cause the release of dangerous forces, such as radiation, and consequent severe losses among the civilian population. Merely providing electricity to an

[8] ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Martinus Nijhoff Publishers 1987), p. 635, available at: https://www.icrc.org/en/publication/0421-commentary-additional-protocols-8-june-1977-geneva-conventions-12-august-1949.
[9] Article 52(1) of Additional Protocol I (no 7).

integrated power grid does not suffice to remove the protection afforded to nuclear power stations.

Some massive attacks on civilian objects might even be considered terror attacks. That is, attacks whose primary purpose is to spread terror, under Article 51, paragraph 2 of Additional Protocol I.[10] This provision was regarded as customary law and was successfully charged before the ICTY with regard to the bombardment of Sarajevo in the Galić case, on which I had the honour to sit. I note, however, that terrorization is not included as a crime under Article 8, paragraph 2 of the ICC Statute.[11]

Finally, insofar as water installations are attacked, consideration should be given to Article 54 of Additional Protocol I regarding objects indispensable to the survival of the civilian population.[12] Article 54 specifically prohibits attacks on drinking-water installations, whether in order to starve civilians, cause them to move away, or for any other motive. I noted that Article 8(2)(b) of the ICC Statute is narrower than Article 54 of Additional Protocol I, as it criminalizes only the intentional causing of starvation.

You may ask, how do we envisage the final product of the galvanization project? Of course, the result will depend on good faith efforts of the participating States, but we would hope that IHL would become a major priority and major component of the political agenda of government, in which compliance with humanitarian law is given priority in the decision-making process, in which governments are willing to invest major efforts to make sure that the gap between practice of States and the law is eliminated, or at least greatly reduced, and in which not only States but non-State groups make compliance their lodestar.

Thank you.

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[10] Article 51(2) of Additional Protocol I (no 7).
[11] Article 8(2) of the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.
[12] Article 54 of Additional Protocol I (no 7).

Kajsa Ollongren
EU Special Representative for Human Rights, International humanitarian law and International Criminal Justice

Good morning everyone,

I would like to thank ICRC and the College of Europe for inviting me to participate in this years' Bruges Colloquium on International Humanitarian Law (IHL).

It is a great honour and pleasure to be among you today.

I know it is still early morning but please bear with me as I would like to start with a reference to Greek mythology. When Homer tells of Odysseus sailing past the Sirens, he offers more than a myth: he offers a lesson in foresight. Knowing he would be tempted by their song, Odysseus ordered his men to bind him to the mast and to later ignore his pleas for release. In choosing restraint, he preserved his life, and theirs.

Our world too hears the Sirens' song. They sing of power, nationalism, expansionism, and economic interest. We have long acknowledged that those voices cannot always be silenced, and that conflicts will not always be averted.

So, like Odysseus, the international community chose to bind itself to restraint in war. We have set our own ropes – the rules and principles of IHL, intended to protect ourselves – against ourselves.

Today, those ropes are fraying. Armed conflicts are proliferating (130 conflicts reported globally), with increasingly permissive interpretations of IHL and a worsening humanitarian situation.

Not only are civilians, including children and journalists, not protected – they are being targeted. Medical and humanitarian personnel too. The same goes for civilian infrastructures, including medical and energy infrastructures, and schools. The weaponisation of vital resources, such as food, humanitarian aid and energy, deprives civilians of goods and services that are essential to their survival, and violates IHL.

In Sudan, Gaza, Ukraine, Myanmar, or DRC, lives are lost and human dignity violated – not for lack of rules, but due to a failure to respect existing ones.

As IHL is being challenged on the ground but also in the face of new technologies, we must stand firmly behind the rules we chose to bind ourselves with, for they are only as strong as we want them to be.

For the EU: our commitment to IHL is not new.

The promotion of international law and human dignity is enshrined in our founding treaties.

This commitment was made more tangible with the adoption of the EU Guidelines on promoting compliance with IHL (adopted in 2005 and updated in 2009),[13] which set out a range of operational tools, available to the EU, to promote compliance with IHL in its relations with the rest of the world.

Each year, our public Annual Report on the implementation of the Guidelines illustrate the broad range of EU activities. I will refer to some of them.

But coming back to the question: what should political support for IHL look like in practice?

I picture it courageous, loud, explained, unequivocal, principled, and consistent. In the absence of an international enforcement mechanism, the strength of IHL depends primarily on States' will to uphold it. This will however, strong as it may be, risks be tempered, once conflicts arise.

We see it in the scale and nature of IHL violations committed in today's armed conflicts.

We see it also in the deep polarisation of the debate over Gaza, or Ukraine, with legal and humanitarian arguments being instrumentalised.

It is therefore vital that political support for IHL builds up already before conflicts arise. It must be nurtured in peacetime, so that it does manifest itself during conflicts, and endures afterwards.

Let me elaborate on these three key stages: before, during, and after conflict. We know the premise: States have the obligation to respect and ensure respect for IHL.

In peacetime, States must develop a culture of IHL compliance, with IHL ingrained in all segments of society: from schools to courts, from armed forces to legal advisers.

States can act on several fronts.

First, legal and institutional foundations matter. States can lay the groundwork by integrating IHL into national legislation, military manuals, and operational plans, criminalising violations, and empowering the judiciary to investigate and hold perpetrators accountable.

Effective disciplinary systems must also be in place. The EU supports this through its advisory missions, in Ukraine for instance, helping partner governments strengthen legal frameworks and enforcement mechanisms. The EU itself wants to ensure that EU security sector support, including in the context of CSDP and CFSP missions and operations, is in compliance with human rights law and IHL. The adoption of the EU Human Rights and IHL Due Diligence Policy

[13] European Union, 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)' (2009/C 303/06), *Official Journal of the European Union*, C 303, 15 December 2009, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215(01).

on Security Sector Support to third parties (HRDDP)[14] spelled out core principles and defined concrete actions to this end. The Implementation Handbook, issued in June this year, provides practical guidance and tools to support the instruments and actors who implement the policy.[15]

Second, education and training are key. Disseminating the rules of IHL is an important prerequisite for its implementation. For IHL to be respected, it needs to be known and fully understood. Diplomats, civil servants, and educators must be aware of IHL. This crucial role of training and education was in fact highlighted in the Resolution adopted last year by the 34th International Conference of the Red Cross and Red Crescent.[16] Military and operational preparedness is essential. Armed forces must be trained on IHL, including in emerging domains like drone and cyber operations. It is the primary responsibility of States, but the EU too endeavours to keep IHL on the agenda through funding training programmes, with ICRC and Geneva Call for example. The military EU Training Missions in Mali and the Central African Republic have also provided such training and mentoring to local armed forces, embedding compliance before and during operations.

I might be biased, as EUSR for Human Rights, but I am convinced that beyond raising awareness to IHL, we must invest in human rights education. Respect for human dignity, equality and non-discrimination are fundamental safeguards against the emergence of conflicts, and against dehumanisation in war.

Third, diplomacy and public engagement amplify impact. Externally, States can promote compliance by others, by using their leverage – both political and economic. The EU promotes this through public diplomacy and outreach campaigns in third countries, fostering a culture that values the protection of civilians.

As I said before, our political support to IHL should be loud.

In that respect, the Global Initiative on IHL which ICRC launched last year with 6 States has been acting as a loudspeaker for IHL. The discussions it has generated already since its launch, among an ever-growing number of participating States, contributes to making respect for IHL a political priority at domestic, regional and global levels.

Finally, we must anticipate future challenges.

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[14] Council of the European Union, 'European Union's Human Rights and International Humanitarian Law Due Diligence Policy on Security Sector Support to Third Parties (EU HRDDP)' (Council document 6089/24, 2 February 2024), approved by the Foreign Affairs Council on 19 February 2024.
[15] European External Action Service, *EU HRDDP Implementation Handbook* (June 2025).
[16] 34th International Conference of the Red Cross and Red Crescent, 'Building a universal culture of compliance with international humanitarian law', (34IC/24/R1, October 2024) 10, available at: https://rcrcconference.org/app/uploads/2024/11/34IC_R1-IHL-EN.pdf.

In the current geopolitical context, many States – including EU Member States and the EU itself – are ramping up their defence investments. In this context, political support to IHL could mean "IHL-proofing" preparedness measures and contingency plans, so that institutions and individuals are ready to implement IHL, should conflict reach our territories. It could also mean allocating dedicated portions of defence spending to IHL compliance, to signal a renewed commitment to respecting IHL in military operations.

With the emergence of new technologies, the continued relevance of IHL goals, rules and principles must be reiterated. It is key that IHL be taken into account at the earliest stage of the development, deployment and use of new technologies. Regulations and operational guidance must integrate IHL principles.

Current conflicts illustrate a growing reliance on weapon systems with varying levels of autonomy, but also on systems that integrate AI into military decision making. The use of technologies for tasks traditionally performed by humans must not imply the dehumanisation of warfare. Preserving human responsibility and accountability, ensuring appropriate human control and implementing risk mitigation measures will be essential.

For the EU, it is imperative that weapons, whether they are low tech or high tech, and no matter how autonomous they may be, continue to respect international law, and IHL in particular.

As many essential civilian services and humanitarian organisations are increasingly reliant on satellite services, the potential human cost of military space operations becomes increasingly worrisome. The EU stresses that international law, including IHL, is fully applicable.

As malicious cyber operations are increasing in scale, severity, sophistication, and impact, the EU and its Member States adopted last year a declaration on a Common Understanding of the Application of International Law to Cyberspace.[17] We reiterated the view that international law, including IHL, is fit for purpose in the digital age.

During conflicts:

IHL principles must be applied *ab initio*, as an IHL reflex, in the planning and conduct of hostilities and must always guide the choice of means and methods of warfare.

But it is not enough that rules are known and applied – they must also be interpreted in good faith. The objective of IHL, to preserve human life and dignity, inherently constrain the

[17] Council of the European Union, 'Declaration by the European Union and its Member States on a Common Understanding of the Application of International Law to Cyberspace' (Council document 15833/24, 18 November 2024), available at: https://data.consilium.europa.eu/doc/document/ST-15833-2024-INIT/en/pdf.

interpretation of IHL norms, and precludes portraying as compliant attacks and actions that cause unnecessary suffering and destruction.

Good faith means that exceptions may not become the rule: medical and humanitarian personnel, ambulances and hospitals must never be attacked. That is the general rule. As a rule, also, parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian assistance for civilians in need.

IHL violations cannot go unnoticed. We cannot let them become the new normal.

We must make clear, through our words and deeds, that IHL violations are unacceptable, wherever they are committed, regardless of the perpetrator. Because the suffering and despair of children, women and men of Sudan, Ukraine, Gaza and Myanmar are the same, because when bullets and shrapnel hit, we all bleed red, and because wars always kill, we cannot be selective in our outrage.

We cannot denounce our enemies only, when they violate IHL, but must also call our allies, when they do the same. The EU uses its political and economic leverage to encourage adherence to humanitarian principles.

Every year, EU institutions – my Office included – issue numerous public statements, declarations, conclusions, and resolutions calling for respect for IHL, the protection of civilians affected by conflict, and rapid and unimpeded humanitarian access in specific crises. They represent a continuous, high-level, and public engagement by the EU as an international actor in support for IHL.

The EU and its Member States also use their convening power to bring attention to humanitarian issues and situations. The European Humanitarian Forum held annually in Brussels is an example.[18] Or the International Humanitarian Conference for Sudan and Neighbouring Countries, which the EU, France and Germany co-hosted in Paris in 2024, to bring attention to the crisis in Sudan, improve access and respect for IHL, and mobilise funds.

The EU also provides extensive support for the promotion of IHL through its humanitarian aid funding. We support and cooperate with international organisations – such as ICRC, OCHA, UNICEF or UNRWA. In DRC for instance, the EU supported the ICRC, UN agencies and civil society in their activities aimed at promoting weapon bearers' adherence to IHL, and optimising humanitarian access.

Complementary to those, it is also crucial to demonstrate that IHL violations will carry consequences for the perpetrators. The EU implements restrictive measures to prevent or respond to IHL and human rights violations. The EU's legal instruments laying down those

[18] As of 2025, the European Humanitarian Forum takes place on a biannual basis.

measures may provide humanitarian exceptions, to ensure that restrictions do not impede the delivery of humanitarian aid on the ground.

We all know the saying: justice delayed is justice denied – and in war, delay costs lives.

Impunity paves the way to more violations of the law and encourage others to do the same – including in other theatres.

In conflict already, it is essential that military justice, disciplinary measures and monitoring bodies are in place to send a strong signal that violations will be punished and will not be normalised.

Evidence must be collected and preserved, for future accountability purposes. The EU supports such efforts, by local and – when they have access – international actors. We did so in Syria, for instance, long before the fall of the Assad regime, by supporting individuals collecting evidence of the regime's atrocities.

Accountability must be pursued, including through universal jurisdiction and international cooperation. Since Russia's invasion of Ukraine, there has been unprecedented momentum and mobilisation on accountability. The same mobilisation should prevail for conflicts in other parts of the world. The credibility of the international criminal justice system depends on it.

The EU is wholly committed to fighting impunity and to promoting international criminal law and justice. For instance, through Eurojust, the EU seeks to foster cooperation between civil society organisations and national authorities investigating and prosecuting atrocity crimes in both EU and non-EU countries.

We also have a long-lasting and robust policy of support to the ICC and are determined to defend it against attacks and threats. It is not only a message that no individual can roam free after committing atrocity crimes, but also a broader signal of the EU's commitment to the rules-based international order.

When parties to a conflict agree to suspend hostilities or to enter into peace negotiations, efforts should be made to ensure that IHL is expressly mentioned in negotiated agreements, as a clear sign of a genuine effort towards reconciliation and peace. IHL obligations must not be overlooked or negotiated away, for the sake of securing shortsighted political gains.

After hostilities have ended, a number of IHL provisions continue to apply or come into force and must be implemented. They include the release of detainees and prisoners of war, the duty to account for the missing and the dead, and the obligation to allow and facilitate humanitarian relief as long as needs exist. Respect for those obligations must be encouraged and supported as it can significantly contribute to securing fragile ceasefires and peace.

As mentioned before, accountability efforts must also be continued.

Reflecting our belief that justice, truth, reparation and guarantees of non-recurrence are essential steps in rebuilding trust between citizens and institutions, in strengthening the rule of law, and in helping societies heal from conflict and repression, the EU adopted ten years ago its Policy Framework on Transitional Justice.[19]

In the Somali region of Ethiopia, the EU supports the Truth and Reconciliation Commission, which seeks to address the root causes and impact of atrocities, to ensure justice and accountability, reparations and compensations as a path towards collective healing, reconciliation and sustainable peace.

One last point before I conclude.

To ensure that our political support to IHL is tailored to address current implementation challenges, we need more knowledge of IHL violations themselves. This could help identify patterns if any, refine training programmes, improve military strategies and operations as well as humanitarian action, and for possible accountability purposes.

Initiatives that seek to collect and aggregate data, by independent institutions, such as the IHL Compliance Monitoring Database (ICMD) launched by the Raoul Wallenberg Institute, could be fostered.

To conclude, Odysseus was not naive or weak. He was wise and courageous. Wise enough to acknowledge the danger that awaited and admit his own weakness, and courageous enough to restrain himself.

Let's have the wisdom and courage to recommit to the rules we once imposed on ourselves, as necessary safeguards against our own flaws and the appeal of short-sighted political or economic gains.

We must unequivocally defend the rules of war, and oppose dehumanization, not only on legal and moral grounds, but also as a long-term investment in global peace, stability, and prosperity.

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[19] Council of the European Union, 'The EU's Policy Framework on Support to Transitional Justice', annexed to *Council Conclusions on EU's Support to Transitional Justice* (Council document 13576/15, 16 November 2015), available at: https://data.consilium.europa.eu/doc/document/ST-13576-2015-INIT/en/pdf.

John Swords
Director of the Office of Legal Affairs, NATO HQ

Good morning,

Thank you very much to the College of Europe and to the ICRC for the very kind invitation to be here again. It is really great to attend the Colloquium again in what is actually my sixth and final year as the NATO Legal Advisor. It is great to see my predecessor at NATO, Stephen Hill, in the audience today, which I think also speaks to the ongoing and genuine commitment to IHL of those in the NATO legal community.

I agree with so much of what the speakers before me have had to say so forcefully and eloquently.

The question what should political support for IHL look like in practice, when put to me as a representative of NATO, a military alliance, is perhaps slightly different, or at least it falls to be answered in part from a slightly different perspective. I think that is because at NATO, IHL is first and foremost not just something that we speak about politically, like the politicians or the ministers, the diplomats, and the heads of State and government of our allies. It is something that we at NATO do day to day. It is integral to our operations, our functions, our mandate as a military alliance and indeed as an international organization with that mission. IHL governs the conduct of hostilities, and NATO is the leading international military alliance through which NATO allies choose to plan for and, if necessary, conduct those military hostilities.

Indeed, you could say it is not something that we just do, but something that we are, or at least something that we identify ourselves with. Yes, we are a defensive alliance. And if you go back to our founding treaty[20], you will see that we are founded on values including the rule of law as well as freedom and democracy. These are things that we are fighting for and that we remain committed to in how we fight for them. IHL is very much a part of that respect for the rule of law as a means, as well as an end. For NATO, political support primarily means leading by example. We are also well aware in terms of our own legitimacy that if we do not hold ourselves to those high standards, then our cohesion as an alliance and our powers to influence others wanes. That obviously makes it more difficult for us to do our job.

For us, the day-to-day reality of our work is guided very directly by IHL: the military doctrine, the planning, the training, the exercises, education and, of course, the conduct of operations and activities. NATO's joint military doctrines embed IHL principles. Pre-deployment training for multinational forces includes IHL modules, and rules of engagement are harmonized to reflect IHL obligations across national contingents. Of course, respect for IHL is bolstered by

[20] North Atlantic Treaty (signed 4 April 1949, entered into force 24 August 1949) 34 UNTS 243.

the integration of legal advisors throughout the alliance command structures in order to guide decision making and reinforce a culture of compliance.

This is also consonant with the sense of military discipline that characterizes our armed forces and underpins their efficacy, and, of course, with the fact that they remain under democratic control. This is also evident when we talk about the national mechanisms to suppress and repress IHL violations, which must not be politicized or impeded.

These and other features of NATO's military work are themselves the product of international political consensus within the North Atlantic Council. All thirty-two allied nations have to agree to those components for them to be NATO documents or activities, or they have to be produced by NATO military commands that are accountable to, and work within, the powers delegated to them by the Council – a mandate that should always be construed in accordance with international law.

When we think about the operational plans, or the rules of engagement that frame our operations – documents that are steeped in IHL as well as political and operational considerations – it is allies that also politically affirm the application and relevance of IHL within their specific provisions when agreeing to them. But that commitment to IHL as a common legal basis amongst all allies also manifests itself in policy documents and taskings on all manner of topics. Because IHL, and international law more broadly, is something that allies can easily reach consensus on. It is something that is reached for as a means for engendering consensus, particularly on sensitive issues. So as a result, when NATO is saying something on the use of cyber or operations in outer space, or perhaps tasking the Office of Legal Affairs to advise on aid to Ukraine, to write white papers on the use of artificial intelligence, or to convene allied lawyers to discuss the protection of critical undersea infrastructure or the use of biotech, IHL will often be expressly incorporated and leveraged into the North Atlantic Council agreed mandate.

The role of weapons review under Article 36 Additional Protocol I[21] in informing NATO's approach to emerging disruptive technologies is yet another example, as is my Office briefing the Nuclear Planning Group when conducting sensitive nuclear exercises.

On the subject of policy, NATO has notably developed a number of policies and frameworks that are complementary to IHL and further the principle of humanity, including policies on the protection of civilians, its approach to civilian harm mitigation, and policies on human security.[22] But you also see references to allies' commitment to IHL in the public summit and ministerial

[21] Article 36 of Additional Protocol I (no 7).

[22] See, for example, NATO, *NATO Policy for the Protection of Civilians*, endorsed by Heads of State and Government at the Warsaw Summit, 9 July 2016, available at: https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2016/07/09/nato-policy-for-the-protection-of-civilians.

statements, which come when the ministers or heads of State and government of allied nations convene as NATO. These are much more visible political manifestations that are, of course, broadcast to the world.

At the Washington Summit in 2024, allied leaders expressed their full commitment to IHL. This was the first time that we have seen such an explicit reference to IHL in a Summit document. That summit declaration read:

> *"We will also continue to strengthen our human security approach related to the protection of civilians and cultural property at a time when international law and fundamental norms are challenged. We remain fully committed to international humanitarian law."*

It went on to say:

> *"We are bound together by shared values, individual liberty, human rights, democracy, and the rule of law. We adhere to international law and to the purposes and principles of the United Nations Charter and are committed to upholding the rule-based international order."*[23]

Interestingly, the declaration also called out violations, including violations of IHL by third States within the Euro-Atlantic context in which NATO operates. In doing so, it exemplified another way in which we stand up for IHL politically and externally. The relevant passage read:

> *"Russia bears sole responsibility for its war of aggression against Ukraine, a blatant violation of international law, including the United Nations Charter. There can be no impunity for Russian forces and officials for abuses and violations of human rights, war crimes, and other violations of international law."*[24]

But that same Summit declaration also spoke to another external aspect of standing up for IHL. This commitment is evident not only in our own activities and in calling out violations by others, but also in how we engage with our partners and in what are our expectations of them. The passage read:

> *"NATO's partnerships remain key to enhancing stability, positively influencing the global security environment and upholding international law."*

In relation to the Western Balkans and the Black Sea region we went on to say:

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[23] NATO, 'Washington Summit Declaration' (Press Release 2024(001), 10 July 2024), paras 1 and 35, available at: https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2024/07/10/washington-summit-declaration.

[24] Ibid, para. 17.

"Democratic values, the rule of law, domestic reforms, and good neighbourly relations are vital for regional cooperation and Euro-Atlantic integration, and we look forward to continued progress in this regard."[25]

Indeed, compliance with IHL is a component or condition of many allied contributions to partners, including Ukraine. Forms of training may be offered, and oversight exercised by allies in order to satisfy them that the material provided will be used in accordance with IHL. Respect for the rule of law, including IHL, is also required before accession to NATO. Article 10 of the North Atlantic Treaty stipulates that invitations may be extended to States that are in a position to further the principles of the treaty.[26]

Let me conclude with a few broader observations. In addition to the above-mentioned Summit declaration, for the third time, NATO underscored its commitment to upholding the laws of armed conflict at the 34th International Conference of the Red Cross and Red Crescent held in Geneva last October. Also last year, NATO opened a liaison office in Geneva, which demonstrates its enhanced interest in expanding its cooperation with international humanitarian law actors. Indeed, last month, the 18th annual Staff Talks between NATO and the ICRC were co-chaired by our Ambassador Boris Ruge, also in Geneva. And looking forward, next March, NATO will have the pleasure of welcoming the ICRC President to brief the North Atlantic Council. The ICRC President has been a regular interlocutor at the North Atlantic Council.

On accountability, two years ago, at Ukraine's request, NATO's Office of Legal Affairs wrote to allied signatories of the European Convention on Human Rights (ECHR) ahead of the Ukraine-Russia hearing, prompting an unprecedented intervention by 26 States in that landmark case. All of those interventions, whilst supporting ECHR extraterritorial jurisdiction in one form or another, focused on the desire for accountability of IHL violations through international human rights law, whilst maintaining the centrality of IHL as *lex specialis* in armed conflict. I should add, noting the importance for this initiative not to be politicized, that the ECHR is such a supercharged political topic in many States. I would be surprised if we did not see further political support for IHL expressed by States, if only in the context of that side debate. I think the Strasbourg court itself is evidently giving greater weight to IHL in some of its judgments involving armed conflict.

Finally, NATO continues to convene high-profile legal events across the alliance, connecting lawyers from the 32 allied capitals. We see this every year when we host the Annual Meeting of Allied Legal Advisors. As mentioned before, we had a session specifically on the role of IHL in Ukraine's pathway to peace during that meeting. We also share this initiative through *ad hoc*

[25] Ibid, paras. 28 and 31.
[26] Article 10 of North Atlantic Treaty (no 20).

legal meetings, as we have done, for example, on space, critical undersea infrastructure, AI and biotech. We also held our One Nation NATO legal event at headquarters earlier this week, where we were also very happy to invite our ICRC colleagues.

Thank you very much for your time, and please enjoy the rest of the conference.

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PANEL 1

Standing up for humanity through the protection of civilian infrastructure

CHAIRED BY JULIA GRIGNON, PROFESSOR AT PARIS-PANTHÉON-ASSAS UNIVERSITY & MEMBER OF THE FRENCH NATIONAL COMMITTEE ON IMPLEMENTATION OF IHL

Protecting civilian infrastructure by a good faith application of the concept of "military objective" under IHL

Arjen Vermeer
Assistant Professor of Military Law, Netherlands Defence Academy

Summary

Mr. Vermeer examined how the principle of good faith, understood in both its subjective and objective dimensions, should inform the interpretation and application of the concept of "military objective" in IHL, with a focus on protecting civilian infrastructure. He argued that the definition of military objective is intentionally restrictive and must be applied in a manner consistent with IHL's humanitarian purpose, including by favouring civilian protection in cases of ambiguity. The contribution highlighted the operational and accountability challenges that arise when commanders make real-time targeting assessments, particularly in relation to "dual-use" infrastructure, and discussed how the "reasonable military commander" standard operationalizes good faith on the battlefield. Mr. Vermeer concluded that political self-interest and opacity in targeting can erode objective good faith and called for a more restrictive approach to military objective determinations, greater transparency, and stronger accountability and training measures.

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Introduction

The topic – protecting civilian infrastructure through the good faith application of the "military objective" concept under international humanitarian law (IHL) – is both timely and critical.[27] As armed conflicts increasingly threaten essential civilian systems, the need for a principled and honest approach to targeting decisions has never been greater. At the heart of this challenge lies the principle of good faith, a foundational notion in public international law.[28] Good faith is

[27] See 34th International Conference of the Red Cross, *Building a universal culture of compliance with international humanitarian law,* Resolution 1, October 2024, Doc 34IC/24/R1, preambular para. 5, available at: https://rcrcconference.org/app/uploads/2024/11/34IC_R1-IHL-EN.pdf; Cordula Droege, 'War and What We Make of the Law' (Just Security, 10 July 2024), available at: https://www.justsecurity.org/97582/war-law/; Jean-Marie Henckaerts, 'Protecting civilians in good faith: the updated Commentary on the Fourth Geneva Convention' (ICRC Humanitarian Law & Policy Blog, 21 October 2025), available at: https://blogs.icrc.org/law-and-policy/2025/10/21/protecting-civilians-in-good-faith-the-updated-commentary-on-the-fourth-geneva-convention/.

[28] See Guillaume Futhazar and Anne Peters, 'Good Faith', in Jorge E Viñuales (ed.), *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law* (Cambridge University Press 2020); and Robert Kolb, *Good Faith in International Law* (Hart Publishing 2017).

a legal requirement underpinning the entire functioning of the international legal system.[29] Good faith compels States to honour their international obligations with sincerity, fairness, and a genuine commitment to the treaties' purpose. Another standard that is often linked to good faith is that of reasonableness,[30] which is the main concept used throughout this analysis.

The application of good faith in IHL, particularly to the concept of "military objective," presents profound legal and practical challenges. The paradox is acute: while good faith demands objectivity and impartiality in interpretation, the realities of war often introduce subjective biases and competing strategic interests. This tension can lead to interpretations and applications that, though held in subjective good faith, strain the objective reasonableness required by the law's humanitarian purpose.

I will examine this tension through the lens of civilian infrastructure, so that we can better understand the legal arguments, ambiguities, and accountability challenges that arise in practice. This article first explains the concept of good faith in international law. Second, it analyses the concept of good faith in relation to the interpretation of the definition of military objective. Third, it outlines the relation between good faith and the reasonable military commander standard. Fourth, it highlights the challenge of applying good faith in the face of political self-interest. The article concludes that good faith is a concept indispensable to the integrity of IHL, and in particular as it applies to the concept of military objective in the context of protecting civilian infrastructure.

1. Good faith in international law: dimensions and implications

There are two dimensions of good faith that are crucial for understanding its application in IHL: a subjective and an objective dimension.[31]

1.1 The subjective dimension

At its core, good faith mandates honesty, fairness, and the absence of malicious intent.[32] In the IHL context, this means parties to an armed conflict cannot wilfully misrepresent civilian

[29] Markus Kotzur, 'Good Faith (Bona fide)' (*Max Planck Encyclopedia of Public International Law*, January 2009), paras. 14 and 22-24, available at: http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1412.

[30] Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law*, Vol. I, *Peace*, 9th ed. (Longman 1992), p. 1272.

[31] In the context of good faith interpretation as reasonable interpretation, the ICRC, *Commentary on the Fourth Geneva Convention* (2025), para. 3371, fn 55, states with reference to Black's Law Dictionary that *"[a]n objective legal standard is one 'that is based on conduct and perceptions external to a particular person', for instance, the reasonable person standard in tort law, while a subjective legal standard 'is peculiar to a particular person and based on the person's individual views and experiences', i.e. it defers to the subjective assessment of the obligor."* Available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-53/commentary/2025#refFn_F24CE7A5_00055.

[32] Kotzur (no 29).

objects as military objectives to justify attacks. For example, deliberately targeting a hospital by falsely labelling it as a military base would violate this subjective standard. This dimension focuses on the internal intentions of decision-makers, e.g. commanders, soldiers, and legal advisers, requiring them to act with genuine belief in the legality and necessity of their actions.

1.2 The objective dimension

Good faith also entails an objective standard: parties must act reasonably, avoiding interpretations that are arbitrary or defeat the treaty's purpose. An action may be subjectively honest, but if it is objectively unreasonable considering the treaty's humanitarian purpose, it fails the good faith test. This objective standard seems to be especially challenged in contemporary armed conflicts, where security interests may tempt belligerents to adopt broad self-serving interpretations. Thus, a reasonable belief must be plausible not only to the decision-maker but also to a reasonable, impartial person.[33]

2. Treaty interpretation and the definition of "military objective"

Article 31(1) of the Vienna Convention on the Law of Treaties[34] prescribes that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose."[35] The instrument of "military objective" is one way to minimize, if not avoid, the harmful consequences of the conduct of hostilities.[36] The various qualifiers in the definition of military objective are therefore intentionally restrictive – not-open ended – and reflect the humanitarian purpose of IHL.[37] Moreover, the humanitarian purpose of IHL dictates that, in cases of ambiguity, interpretations should favour civilian protection.[38]

The decision to attack a military objective is based on the *judgment* that an object constitutes a lawful military objective. This judgment entails the application of good faith. The major legal

[33] Note the discussion on the identity of this person; see Valentin Jeutner, 'Empathy at War: The Distinction Between Reasonableness and the Reasonable Military Commander Standard', in Nobuo Hayashi and Carola Lingaas (eds.), *Honest Errors? Combat Decision-Making 75 Years After the Hostage Case* (TMC Asser Press 2024), p. 243 ff. See also, Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers 1987), paras. 2037 and 2195.
[34] Article 31(1) of the VCLT (no 4).
[35] For humanitarian treaties in the broadest sense, which are foremost concerned with limitations on powers, "the application of the test of good faith seems more directed to securing the object and purpose of a treaty." Richard K. Gardiner, *Treaty Interpretation* (Oxford University Press 2015), p. 177.
[36] Preamble of the *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*, Saint Petersburg, 29 November/11 December 1868.
[37] Marco Sassòli, 'Military Objectives', in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Vol. VII (Oxford University Press 2012), pp. 207–216, para. 7.
[38] Article 52(3) of Additional Protocol I (no 7).

challenge is how to apply a good faith standard objectively to a definition that depends on subjective, real-time assessments during hostilities.

The application of good faith in interpreting the definition of "military objective" is complex, given the definition's inherent ambiguity, operational pressures, and the difficulty of *post facto* judicial review. Civilian infrastructure, particularly dual-use objects, exemplifies these challenges.

The "military objective" definition involves a two-pronged test: (1) effective contribution to military action and (2) definite military advantage from its destruction, capture, or neutralization.

Determining whether infrastructure, such as a national power grid, "effectively contributes" to military action can be highly subjective. Power grids tend to supply both civilian and military users, making their status as military objectives contentious. A restrictive interpretation, prioritizing humanitarian protection, holds that if the primary function is civilian, the object remains protected unless its military use becomes predominant and direct.[39]

Some militaries may argue more expansively that in modern "system of systems" warfare, disabling civilian infrastructure paralyzes the adversary's entire war effort. This view asserts that a host of economic objects makes a military contribution – but not necessarily an *effective* contribution – but are nonetheless viewed as military objectives.[40] While a commander might sincerely believe this legal interpretation is justified, it risks undermining the objective good faith standard and the humanitarian purpose of IHL.

The ambiguity in assessing "effective contribution" allows for opposing, but genuinely held, views, making a truly universally accepted good faith application rather elusive.

The second prong is equally challenging. "Definite" implies a clear, substantial advantage, but commanders must often make rapid decisions with incomplete information. Some commentators debate whether "definite" means "certain" or merely "clearly identifiable."[41] Most agree it requires more than speculative benefit. A good faith assessment demands a solid evidentiary basis for the anticipated military gain. Proving a lack of good faith requires showing that no reasonable commander would have made that assessment which is a high evidentiary bar to clear.

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[39] Sassòli (no 37).

[40] John A. Warden, 'The Enemy as a System', 9 *Airpower Journal* 40 (1995). For a general discussion on war-sustaining and war-supporting objects, see Agnieszka Jachec-Neale, *The Concept of Military Objectives in International Law and Targeting Practice* (Routledge 2015), pp. 92-109.

[41] Jachec-Neale, ibid., p. 111 ff.; and Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar Publishing 2024), pp. 379-383.

3. Good faith and the "reasonable military commander" standard

The "reasonable military commander" standard operationalizes good faith on the battlefield.[42] It is the primary legal standard for evaluating whether a commander's subjective judgment meets the objective requirements of reasonableness under IHL.[43]

Commanders are judged based on the information available at the time – not with hindsight.[44] They must make honest, diligent efforts to gather intelligence and assess circumstances.[45] Wilful blindness to information or evidence suggesting civilian status is impermissible.

Commanders must reasonably believe a target meets both prongs of the military objective test. Recklessness or indifference to contrary intelligence constitutes a breach of good faith as their judgment would not be guided by what a similarly situated, well-trained and reasonable commander would do in good faith.[46]

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[42] First proffered in ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia* (2000), para. 50, available at: https://www.icty.org/en/press/final-report-prosecutor-committee-established-review-nato-bombing-campaign-against-federal. Later, in the context of assessing proportionality, the ICTY adopted the standard of the 'reasonably well-informed person in the circumstances of the actual perpetrator'. See ICTY, *Prosecutor v Stanislav Galić*, Case No. IT-98-29, Trial Judgment, 30 November 2003, para. 58.

[43] I agree with Capone that this standard goes beyond its original association with proportionality and applies to all IHL targeting principles. See Francesca Capone, *Dual-use Objects under International Humanitarian Law: Towards a Paradigm Shift* (TMC Asser Press 2025), p. 157 ff.

[44] Corn explains that this entails a good faith commitment to gather "as much information related to potential targets as possible and to assess that information as thoroughly as possible given the conditions of combat". Geoffrey S. Corn, 'Targeting, Command Judgment, and a Proposed Quantum of Information Component: A Fourth Amendment Lesson in Contextual Reasonableness', 77 *Brooklyn Law Review* 437 (2012), p. 60.

[45] On the role of intelligence, see Loren Voss, 'The Overlooked Importance of Intelligence Analysis in IHL', 107 *International Review of the Red Cross* 287 (2025), pp. 287–310.

[46] Jeutner labels and favours this condition as the ability of commanders to engage in empathetic perspective-taking. Jeutner (no 33). A commentary to Additional Protocol I notes that "the evaluation of the information obtained must include a serious check of its accuracy" and "even if this system is based to some extent on a subjective evaluation, the interpretation must above all be a question of common sense and good faith for commanders". Sandoz, Swinarski and Zimmerman, (no 33), paras. 2195 and 2208. The late Professor Kalshoven observed that "this clause in Article 57[(2)(a)(i)] […] may perhaps best be seen as an appeal to the good faith of the normal, responsible military man or woman." He referred in this context to the "standard of responsible behaviour". Frits Kalshoven, 'Remarks', in 'Implementing Limitations on the Use of Force: The Doctrine of Proportionality and Necessity', 86 *Proceedings of the ASIL Annual Meeting* 39 (1992), p. 44. This appeal seems to me to apply to all judgment or discretion embedded in IHL. Consequently, "failing to check the accuracy of the intelligence on the basis of which an incorrect judgment is made may render the commander's mistake of fact unreasonable and made in bad faith." Yasmin Naqvi, 'The Limits of Honest Judgment: The Reasonable Commander Test and Mistake of Fact', in Nobuo Hayashi and Carola Lingaas (no 33), p. 194. Thus, an objective interpretation is expressed throughout these texts, and the subjective view of the commander is not decisive.

The challenge is that after-the-fact review is difficult; reasonable commanders may differ in their risk assessments; intelligence is classified; and the margin for error is wide. Accountability, therefore, is hard to secure unless clear intent or recklessness is proven.

4. Political self-interest and the erosion of objective good faith

Perhaps the greatest obstacle to objective good faith interpretation is the inherent self-interest of belligerents involved in armed conflict.

Military legal advisers may, in subjective good faith, advance interpretations that favour a belligerent's strategic interests, broadening the scope of what constitutes a military objective. This may create systemic bias, as commanders relying on such advice may act honestly but fail the objective standard of reasonableness.

Targeting decisions and legal justifications are often classified – which is not unreasonable but may impede independent scrutiny and external challenge.[47] This opacity allows belligerents in some cases to maintain broad, self-serving interpretations often with little immediate accountability. In this context, the *Chora* case, a civil law case against the Netherlands, is of interest. "According to the court, in a situation in which the Netherlands' armed forces order an attack on a quala[48], it must be able to explain the circumstances that justify the assumption that it was a military objective."[49] Consequently, as the Netherlands was not able to, "the court held that it must be assumed that the quala was bombed without respecting the principle of distinction, and thus unlawfully."[50]

Conclusion and Recommendations

The good faith interpretation of "military objective" is indispensable for upholding the humanitarian values at the heart of IHL. Yet, its application is fraught with legal ambiguities and practical difficulties. The tension between subjective sincerity and objective reasonableness, the inherent vagueness of the "military objective" definition, and the operational pressures of warfare all complicate the consistent enforcement of IHL's protective rules. There are good reasons to insist on a restrictive reading of the definition of "military

[47] There may well be another dimension of good faith interpretation that is worth mentioning and that is that good faith can be made concrete in duties of information and disclosure. Kotzur (no 29), section 1D. It goes beyond the scope of this presentation to elaborate on this issue.
[48] A quala denotes a typical Afghan residential complex that consists of several buildings surrounded by a wall.
[49] See Marten Zwanenburg, 'Dutch Judgment on IHL Compliance in Chora District, Afghanistan' (Articles of War, 19 December 2022), available at: https://lieber.westpoint.edu/dutch-judgment-ihl-compliance-chora-district-afghanistan/.
[50] Ibid.

objective". Any broadening of the concept will be at the expense of the protection of civilian infrastructure.

The "reasonable military commander" standard embodies the operational application of good faith, requiring honest and reasonable efforts to comply with the law based on all the available information. However, as seen in the context of attacks on civilian infrastructure, the broad discretion afforded by the definition of military objective makes it difficult – but not impossible – to prove bad faith or secure accountability.

Ultimately, these challenges do not signal a failure of the good faith principle itself but reflect the complex realities of armed conflict. The integrity of IHL depends on all parties striving to meet the high bar of objective good faith – interpreting "military objective" in a manner that truly balances military necessity with the imperatives of humanity and demonstrating a willingness to err on the side of caution when civilian lives and civilian infrastructure are at stake. Achieving this requires 1) ongoing dialogue between military authorities, humanitarian organizations, and civil society; 2) increased transparency in targeting practices (e.g. establishing independent oversight bodies to review targeting decisions; publishing anonymized after-action reports or summaries; and implementing standardized documentation and record-keeping requirements for targeting decisions); and 3) robust accountability mechanisms, including judicial and non-judicial mechanisms, such as educating and training soldiers and military legal advisers in IHL and national reporting mechanisms to foster dialogue and share best practices. Only through such efforts can the law retain its force and relevance, even in the darkest circumstances of war.

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Good practices to ensure the protection of civilian infrastructure: a military perspective

Brigadier Joanna Bowen
Head of Operational Law, British Army, HM Forces

Summary

Brigadier Bowen argued that, for IHL to be meaningfully implemented, the principles of military necessity and humanity must be accorded equal normative and operational significance, stressing that military necessity cannot justify deliberate attacks on purely civilian infrastructure. She highlighted the increasing entanglement of civilian and military infrastructure in contemporary conflict, particularly in urban warfare and in relation to logistics and Command-and-Control networks, where dual-use systems may become military objectives while remaining essential for civilians. Against this backdrop, Brigadier Bowen explored how artificial intelligence (AI) could support compliance and harm mitigation across the conflict cycle, including through training and simulation, planning and mapping of critical infrastructure and interdependencies, improved pattern-of-life analysis, more accurate targeting, and post-strike assessments. She cautioned that AI is not a "silver bullet" and stressed the need for ethical deployment, legal compliance and human oversight. The contribution concluded by underlining the importance of maintaining a workable balance between military necessity and humanity so that the rules can realistically be respected in future conflicts.

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The views expressed in this article are personal and do not reflect the official policy or the position of the Army Legal Services, the Ministry of Defence or His Majesty's Government.[51]

From a military perspective, the starting point for considering any military action is the principle of military necessity. A principle that permits action necessary to achieve a legitimate military objective, such as defeating the enemy.[52] However, military necessity does not stand alone, it must be balanced with the principle of humanity such that actions must not cause unnecessary suffering or superfluous injury.[53]

The operation of these two principles should ensure that in all situations of armed conflict, there is a pragmatic balance between authority to take hostile action to defeat the enemy and the obligation to limit the suffering and destruction to that which is genuinely necessary to

[51] Note from the author.
[52] UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, JSP 383, para. 2.2, available at: https://www.gov.uk/government/collections/jsp-383.
[53] Ibid., para 2.4.1.

achieve the objective. However, the images of the suffering and devastation in Ukraine and Gaza bring the balance between military necessity and humanity sharply into the spotlight.

The interplay between humanity and military necessity is often characterised as a zero-sum dynamic, in which humanitarian imperatives are perceived to impede military advantage or military necessity prevails at the expense of humanitarian restraint.[54] However, for the Law of Armed Conflict (LOAC) to be meaningfully implemented, both principles must be accorded equal normative and operational significance.

As principles, neither military necessity nor humanity have the force to challenge or displace the rules of LOAC. Military necessity cannot of course justify, nor in my view could it properly be viewed as justifying, deliberate attacks on purely civilian infrastructure.[55] This has always been clear to military commanders and was, of course, articulated in the *Blaškić* appeal judgement at the ICTY.[56]

In very simple military terms, therefore, action against civilian infrastructure which is purely civilian in nature will not contribute to the achievement of operational objectives. However, the world is not simple, and conflict is complex.

When the fundamental principles of LOAC were first conceived, the delineation between civilian and military infrastructure was much clearer than it is now. In the modern world civilian and military infrastructure are more entwined than separated and therein lies the difficulty.

Recent armed conflicts have revealed the complex challenges faced by military forces in upholding the rules and principles of LOAC during urban warfare, particularly in ensuring the protection of civilians and civilian objects. These challenges arise primarily from the intricate physical characteristics of urban environments, their high population density, and the concentration of essential civilian infrastructure.

These challenges equally apply not only to physical infrastructure but also to the ever-increasing non-physical infrastructure. By way of examples, key to undermining an enemy is the disruption of both their logistic supply and their Command-and-Control networks:

Firstly, logistic supply is heavily dependent upon physical infrastructure such as transport networks which, while primarily civilian in nature, become military objectives because of their

[54] Mark Lattimer, 'In Honor of Françoise Hampson – Calibrating the Balance Between Military Necessity and Humanity in LOAC Practice' (Articles of War, 17 October 2025), available at: https://lieber.westpoint.edu/calibrating-balance-between-military-necessity-humanity-loac-practice/.
[55] Article 53 of GC IV (no 6).
[56] ICTY, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgment (Appeals Chamber), 29 July 2004, para. 109, available at: https://www.icty.org/x/cases/blaskic/acjug/en/.

use for military purposes. Consequently, they become legitimate targets[57]. At the same time, they remain necessary for the civilian population. If disrupting these networks is inevitable – there is no other word for it – there obviously will be an impact upon the civilian population. Military necessity permits the disruption necessary to achieve the military objective but no more. In this way, properly applied, the principle should protect the civilian use as far as is practicable. Disruption beyond that which is required for the military purpose is not legitimised by military necessity.

Secondly, Command-and-Control functions increasingly depend on integrated telecommunications systems that are also used by the civilian population, rather than being confined to closed military networks. While targeting these electronic systems may critically affect the enemy's ability to operate, any such action must be directed to cause the least disruption possible to civilian communications. The interconnected nature of these networks makes this an increasingly difficult problem, but it is one that military operations must and do confront. Disrupting the entire network with the consequent impact on the civilian use is not an option, it needs to be targeted, to reduce the impact as far as is practicable, noting that this is something of a wicked problem.

So, how can the military address these challenges? How can the military improve the protection of civilian infrastructure? As a general-purpose technology, AI offers significant potential to enhance a wide range of military functions throughout all phases of conflict. Importantly, it also offers capabilities that can help mitigate harm to civilians and reduce destruction of civilian infrastructure, particularly in urban warfare. While the risks associated with emerging technologies are real and must be addressed, my focus today is on how AI can be leveraged to support the protection of civilians more broadly. In doing so, I will draw on insights from an article written by Anna Rosalie Greipl, Research Assistant at the Geneva Academy.[58]

During preparation for deployment, AI can enhance military training for urban environments. Virtual simulations powered by AI can more accurately represent the complex structure of cities and the civilian aspects of urban operations. Additionally, AI can simulate enemy behaviour, helping refine operational concepts, tactics, and strategies. This not only deepens military understanding but also enables the development of innovative responses to enemy tactics that threaten civilian lives and infrastructure.

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[57] Note from the editors: Provided that the requirements of Article 52(2) of Additional Protocol I are fulfilled; any attack remains subject to the other applicable rules of IHL, including proportionality and precautions in attack.

[58] Anna Rosalie Greipl, 'Military Use of Biometrics Series – The Body Does Not Lie, or Does It? Towards a Disability-Inclusive Approach to Military Biometrics' (Articles of War, 27 October 2025), available at: https://lieber.westpoint.edu/body-does-not-lie-does-towards-disability-inclusive-approach-military-biometrics/.

As part of the planning process, AI can assist in mapping critical civilian infrastructure – such as hospitals, power plants and water sources – and can assist in analysing their interdependencies, helping planners understand indirect effects of targeting. This is essential for minimizing harm and ensuring efficient resource allocation in the event of damage. For instance, in Ukraine, attacks on power plants have disrupted electricity, heating, and water supplies, forcing industrial shutdowns. It is clear that while some infrastructure can be repaired quickly, other infrastructure requires complete reconstruction, thus emphasising the importance of pre-emptive planning. Meanwhile at the operational level, AI systems can analyse civilian patterns of life using diverse intelligence sources more effectively than human analysts. These insights help build a comprehensive understanding of civilian behaviour and movement within urban areas, enabling better risk assessments and harm mitigation strategies.

At the tactical level emerging AI technologies can rapidly analyse data to assist in selecting targets ensuring military targets are engaged while sparing civilian objects. Enhanced object recognition capabilities can also support faster, more accurate targeting decisions. For example, AI could alert operators to fleeing civilians, flag inconsistencies in targeting data, update collateral damage estimates, or identify protected symbols.

Following an attack, AI can support post-strike evaluations of damage and destruction to civilian infrastructure, analysing military tactics used in urban settings. This helps to identify which mitigation measures were applied, their effectiveness, and areas for improvement – informing future doctrine and operational planning.

AI promises significant advances in protecting civilian infrastructure in conflict, but it is crucial to acknowledge the associated risks. Ethical deployment, legal compliance and robust human oversight are essential for it to fulfil its potential. Any proposed application of AI must be carefully evaluated to ensure that the benefits for civilian protection outweigh potential harms. AI is not a silver bullet, but it can offer powerful tools to reduce damage and destruction to civilian infrastructure.

In summary, as unfortunate as it is, we cannot ignore the fact that cities and other urban areas are likely to remain the main battlegrounds in future conflicts. Military forces will continue to face complex challenges balancing military necessity with humanity and must take every opportunity to improve target accuracy and to protect civilian infrastructure.

But it is also important to remember what the late great Françoise Hampson suggested in 2008, that it would be “counter-productive” to interpret LOAC constraints on military action with the aim of making conflict unfightable. She commented that “if the rules were such as to make lawful fighting impossible, the result would not be no fighting. It would be fighting conducted unlawfully. In order for there to be any chance of the rules being respected, it must be possible

to fight according to the rules. The Law of Armed Conflict must strike a balance between military necessity and humanity."[59] She therefore emphasized that making war unfightable through legal constraints would lead to unlawful warfare, not peace.

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[59] Françoise J. Hampson, 'Teaching the Law of Armed Conflict', *Essex Human Rights Review*, vol. 5, no. 1 (July 2008), pp. 1–9.

The protection of civilian infrastructure and the limits on the targeting of infrastructure used simultaneously for civilian and military purposes

Laurent Gisel
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Summary

Mr. Gisel examined the protection of civilian infrastructure against the dangers arising from attacks, situating the issue within Workstream 4 of the Global Initiative to Galvanize Political Commitment to IHL. He focused in particular on infrastructure critical for the delivery of essential services to the civilian population, first setting out the IHL rules governing its protection from direct and incidental harm, before turning to the main focus of his presentation: infrastructure used simultaneously for civilian and military purposes. He then addressed how to avoid civilian infrastructure being used for military purposes in a manner that would make it a military objective, including through measures taken in peacetime, and the rules governing attacks where such infrastructure, or part of it, has become a military objective, including the assessment of reasonably foreseeable direct and indirect civilian harm. In conclusion, Mr. Gisel underscored the importance of planning already in peacetime to protect essential civilian infrastructure and ensure the continued provision of essential services. He also stressed that civilian infrastructure must never be presumed to be used for military purposes and that any attack affecting it must comply with all relevant IHL rules.

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In too many conflicts around the world, entire neighbourhoods are reduced to rubble, burying their residents underneath. Health, electricity, water and sanitation infrastructure is crumbling under attack. When infrastructure critical for the delivery of essential services to the civilian population is destroyed or damaged, more people die, diseases spread and communities are forced to flee.

The protection of civilian infrastructure is at the heart of Workstream 4 of the Global Initiative to Galvanize Political Commitment to International Humanitarian Law. The initiative was launched in 2024 by Brazil, China, France, Jordan, Kazakhstan and South Africa, together with the ICRC. The Outcome Document of Workstream 4, co-chaired by Algeria, Costa Rica, Sierra Leone, Slovenia and the ICRC, emphasized that “States and parties to armed conflict must, in good faith, uphold and comply with the IHL principles and rules protecting civilian infrastructure. The dangerously large gap between discourse and practice regarding even the most fundamental principles and rules of IHL, together with the lack of accountability for violations

when they occur, remains one of the greatest obstacles to alleviating suffering during armed conflict."60

This presentation focuses on the protection of civilian infrastructure against the dangers arising from attacks,61 namely where force is used against infrastructure that is under the physical or tactical control of the adversary. Conversely, if the infrastructure is under the physical or tactical control of the belligerent destroying it, the rules prohibiting the destruction of property apply.62 The latter is outside the scope of this presentation.

When it comes to the dangers arising from attacks, infrastructure can be destroyed or damaged because it is targeted, or destroyed or damaged incidentally, notably when another object in its vicinity is attacked. This presentation starts with a few general points on the protection of civilian infrastructure and then delves into the protection of civilian infrastructure that is, or is planned to be, used for military purposes.

The protection of civilian infrastructure

Infrastructure critical for the delivery of essential services to the civilian population is typically civilian in nature (hereafter: essential civilian infrastructure). In addition to its protection as civilian objects, various types of essential civilian infrastructure enjoy special protection under IHL.63 When it comes to the protection of civilian infrastructure, parties to the conflict have to comply with all the principles and rules of distinction, proportionality and precautions, including any applicable special protection.

As Judge Meron mentioned, it is a war crime to direct an attack against civilian infrastructure.64 Furthermore, belligerents must take all feasible precautions to avoid or at least minimize

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60 Global Initiative to Galvanize Political Commitment to International Humanitarian Law, Workstream 4, *Protecting civilian infrastructure: Outcome Document* (hereafter: *Global IHL Initiative, WS 4, Outcome Document*), September 2026, p. 2, available at: https://www.upholdhumanityinwar.org/sites/default/files/2026-09/Global%20IHL%20initiative%20-%20Outcome%20document%20Workstream%204%20Civilian%20Infrastructure%20-%20September%202026.pdf

61 Article 49 of Additional Protocol I (no 7).

62 1907 The Hague Regulations, Art. 23(g); Fourth 1949 Geneva Convention, Art. 53; ICRC, 2025 Commentary on Art. 53 of the Fourth Geneva Convention, para. 3369.

63 The following objects are typically understood as specially protected: medical units and transports, including hospitals and other healthcare facilities and ambulances; cultural property, including historic monuments, works of art and places of worship which constitute the cultural or spiritual heritage of peoples; objects indispensable to the survival of the civilian population, such as foodstuffs and agricultural areas for their production, livestock, drinking water installations and supplies, and irrigation works; the environment; and works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations. Civil defence buildings and matériel, i.e. those used for civil defence purposes; non-defended localities and demilitarized zones; as well as objects displaying the distinctive emblem, such as objects belonging to, or used by, impartial humanitarian organizations are also regarded as specifically protected.

64 Rome Statute of the International Criminal Court, Art. 8(2)(b)(ii); ICRC Customary IHL Study, Rule 156.

incidental harm to essential civilian infrastructure,[65] and the attack is prohibited when it may be expected that the incidental civilian harm – which includes all reasonably foreseeable direct and indirect civilian harm – caused by the attack, would be excessive in comparison with the concrete and direct military advantage anticipated (prohibition of disproportionated attacks).[66] These obligations are particularly relevant when attacking a military objective in the vicinity of such infrastructure and – depending on the circumstances – may require parties to armed conflict to refrain from attacking such a military objective.

The obligation to take all feasible precautions against the effects on civilians of enemy attacks[67] may also dictate that States and parties to armed conflicts refrain from locating military objectives or conducting military operations in the vicinity of essential civilian infrastructure.

Beyond recalling these basic IHL rules, let me flag three important points with respect to the protection of essential civilian infrastructure:

First, many essential civilian infrastructures are in populated areas.[68] The long-standing call by the International Red Cross and Red Crescent Movement on parties to armed conflicts to avoid the use of explosive weapons with wide impact area in populated areas[69] is critical for the protection of such infrastructure. Our call is based on the high likelihood that such weapons have indiscriminate effects, including in terms of damaging civilian infrastructure around their target – and we see these effects in armed conflicts around the world where such weapons are used in cities. States adopted important commitments on restricting or refraining from the use of explosive weapons in populated areas in the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas adopted in Dublin in 2022[70] and in the Pact for the Future adopted by United Nations Member States at the 2024 Summit of the Future.[71] Their responsibility is now to faithfully implement these commitments into their doctrine, training and

[65] ICRC Customary IHL Study, Rules 15 to 21; Article 57 of Additional Protocol I (no 7).
[66] ICRC Customary IHL Study, Rule 14; Article 51 and 57 of Additional Protocol I (no 7).
[67] ICRC Customary IHL Study, Rule 22; Article 58 of Additional Protocol I (no 7).
[68] See e.g. ICRC, *Urban services during protracted armed conflict: a call for a better approach to assisting affected people*, 2015, available at: https://www.icrc.org/sites/default/files/document/file_list/icrc-002-42491.pdf.
[69] *War in cities: a solemn appeal from the International Red Cross and Red Crescent Movement,* 2024, available at: https://blogs.icrc.org/law-and-policy/2025/01/07/war-in-cities-a-solemn-appeal-from-the-international-red-cross-and-red-crescent-movement/; ICRC, *Explosive Weapons With Wide Area Effects: A Deadly Choice in Populated Areas,* 2022, available at: https://www.icrc.org/sites/default/files/document_new/file_list/ewipa_explosive_weapons_with_wide_area_effect_final.pdf; *Explosive weapons in cities: Civilian devastation and suffering must stop*, Joint appeal by the Secretary-General of the United Nations, António Guterres, and the President of the ICRC, Peter Maurer, 2018.
[70] Available at: https://ewipa.org/the-political-declaration; endorsed by 91 States by April 2026, https://ewipa.org/endorsement.
[71] Action 14(c), p. 12, available at: https://www.un.org/sites/un2.un.org/files/sotf-pact_for_the_future_adopted.pdf.

actual practices during armed conflicts, and the ICRC has submitted a number of recommendations in this respect.72

Second, where possible, parties to armed conflicts should consider establishing protected zones around essential civilian infrastructure, to ensure its effective protection and that it can continue to enable the delivery of essential services to the civilian population. These may be for instance hospital and safety zones and neutralized zones,73 demilitarized zones or non-defended localities,74 or any other type of protected area the parties to the conflict could establish through special agreements.75 Which type of protected zone may be best suited will depend on the infrastructure to be protected and on the context and circumstances. While establishing such a zone might come with important challenges, this is an under-discussed and too often forgotten option that would merit more attention.76

Third, infrastructure alone does not guarantee the provision of essential services. People (operation and maintenance staff) and consumables (such as fuel or chlorine) are equally indispensable. To be effective, any preventive, protection, and mitigation measures need to ensure that essential service providers have safe and unimpeded access and have the necessary equipment to perform their tasks and ensure the continued delivery of essential services to the civilian population. In 2024, the Norwegian Red Cross and the ICRC provided evidence of the crucial role played by essential service providers in their report "Keeping the Lights on and the Taps Running: Protecting and Facilitating Safer Access for Essential Service Providers in Armed Conflict".77

Let me now turn to the main focus of this presentation: the protection of infrastructure used for both civilian and military purposes, often referred to as "dual-use infrastructure".

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72 ICRC, *Second international conference of the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas San Jose, Costa Rica, 18-20 November 2025, ICRC recommendations*, available at: https://www.icrc.org/sites/default/files/2025-11/ICRC_Recommendations_Second_EWIPA_conference-2025.pdf; ICRC, *Preventing and mitigating the indirect effects on essential services from the use of explosive weapons in populated areas: ICRC Recommendations*, 2024, available at: https://shop.icrc.org/download/ebook?sku=4765/002-ebook.

73 1949 First Geneva Convention, Art. 23; 1949 Fourth Geneva Convention, Arts 14 and 15; ICRC Customary IHL Study, Rule 35.

74 Articles 59 and 60 of Additional Protocol I (no 7); ICRC Customary IHL Study, 36–37.

75 Common Articles 3(3) and 6/6/6/7 of the four 1949 Geneva Conventions.

76 This issue has been discussed as part of Global Initiative to Galvanize Political Commitment to International Humanitarian Law, Workstream 4, Protecting Civilian Infrastructure; see *Global IHL Initiative, WS 4, Outcome Document*, p. 9, (no 60).

77 Norwegian Red Cross and ICRC, *Keeping the lights on and the taps running: Protecting and facilitating safer access for essential service providers in armed conflict*, 2024, available at https://shop.icrc.org/download/ebook?sku=4818.01/002-ebook.

The protection of infrastructure used for both civilian and military purposes

So-called dual-use objects, or for this presentation dual-use infrastructure, is not a separate legal category of objects under IHL, as Judge Meron recalled this morning, and I fully concur with him in this regard.78 Dual-use infrastructure is a short-hand to describe an infrastructure that continues to be used for civilian purposes, while at the same time being used for military purposes in a manner that fulfils the definition of military objective under IHL.79

In today's armed conflicts, it is often the case that essential civilian infrastructure is used by belligerents for military purposes. While this is not prohibited in a categorical and general manner for all essential civilian infrastructure, it risks turning this infrastructure into military objectives and consequently exposing it to attacks.

One can immediately see here the tension between the principles of military necessity and humanitarian considerations that Brigadier Bowen recalled.80 Infrastructure, or part thereof, whose use for military purposes is such that if fulfils the definition of military objective, is no longer protected by the prohibition on directing attacks against a civilian object for such time as it is so used. This is despite the fact that it remains used for civilian purposes simultaneously, and especially when it comes to infrastructure critical to the delivery of essential services to the civilian population, the consequences of damaging or destroying it can be devastating.

I will divide my presentation on the protection of dual-use infrastructure in two parts: I will first focus on avoiding that civilian infrastructure becomes dual-use; I will then discuss the rules governing attacks when such infrastructure has become dual-use.

Avoiding using civilian infrastructure for military purposes.

First, let me turn to the importance to avoid that civilian infrastructure becomes dual-use in the first place, namely avoid that it is used for military purposes in a manner that fulfils the definition of military objective, and what the law says in this respect.

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[78] See Keynote Address by Judge Theodor Meron, p.13.

[79] ICRC Customary IHL Study, Rule 8; Article 52(2) of Additional Protocol I (no 7): "In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". On the protection of so-called dual-use objects, see also ICRC, *Frequently Asked Questions: IHL and the escalating conflict in the Middle East*, March 2026, question "What does IHL say about the protection of civilian infrastructure?", available at https://www.icrc.org/en/article/faq-ihl-and-escalating-conflict-middle-east

[80] See Panel 1 intervention by Brig. Joanna Bowen, p. 4033.

The obligation to take constant care to spare civilians and civilian objects from the effects of military operations,[81] as well as the obligation to take all feasible precautions to protect civilians and civilian objects against the effects of attacks,[82] are critical in this regard.

To the extent feasible, belligerents should refrain from using civilian infrastructure for military purposes.[83] If this cannot be avoided, all feasible measures need to be taken to minimize the risk that such use may entail for the delivery of essential services to the civilian population.[84] Of course what is feasible will always remain highly context dependent.

When looking at the type of military use, a broad distinction appears: armed forces from States and non-State armed groups can use civilian infrastructure for its original purpose, such as having a military barracks connected to the city water or electricity network. Or they can use it for other purposes, such as setting up an observation or firing position on top of a water reservoir or the roof of a hospital in the middle of the city.

The second scenario, namely armed forces using infrastructure for purposes other than its original purpose, will typically raise more doubts as to whether it wouldn't have been feasible to avoid putting civilian infrastructure at risk in this manner. In the example of positioning a firing position on top of a water reservoir or the roof of a hospital, among the questions that arise is whether another tall building could not have been used that is not a hospital or infrastructure indispensable to the survival of the population and on which an enemy attack could have been expected to cause less harm for the civilian population. Such use is sometimes referred to as "misuse", though such a notion is not defined in IHL. While there is no general prohibition under IHL to use civilian objects for military purposes, misuse is prohibited for certain categories of specially protected objects, including medical units and cultural property.[85] Even in situations where it is not expressly prohibited, belligerents may not repurpose or otherwise use civilian infrastructure for military purposes – whether or not such use amounts to a misuse – when this would be incompatible with their obligation to take all

[81] ICRC Customary IHL Study, Rule 15; Article 57(1) of Additional Protocol I (no 7).
[82] ICRC Customary IHL Study, Rules 22 to 24; Article 58 of Additional Protocol I (no 7).
[83] *Global IHL Initiative, WS 4, Outcome Document*, note 60 above, p. 8.
[84] Articles 57(1) and 58 of Additional Protocol I (no 7); ICRC Customary IHL Study, Rules 15 and 22.
[85] See Art. 12(4) API prohibiting the use of medical units in an attempt to shield military objectives from attack; and Articles 53(b) API and 16 APII prohibiting the use of cultural property in support of the military effort; and Rule 39 ICRC Customary IHL Study prohibiting the use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity. See also AP I, Arts 62(3) and 63(4) and (5), civil defence buildings and matériel; AP I, Art. 54(2), and AP II, Art. 14, for objects indispensable for the survival of the population. In the view of the ICRC and others, the special protection afforded to such objects extends to pieces of energy infrastructure critical to the effective operation of other indispensable objects; (see ICRC Commentary to API, Art. 54, para. 2103; E. Giorgou and A. Zeith, 'When the lights go out: the protection of energy infrastructure in armed conflict'; Humanitarian Law and Policy blog, available at: https://blogs.icrc.org/law-and-policy/2023/04/20/protection-energy-infrastructure-armed-conflict/); for schools: see *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*, Guideline 1, available at https://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf.

feasible precautions to protect civilians and civilian objects under their control against the dangers resulting from military operations.86

Furthermore, and depending on the situation, it may raise issues in terms of the prohibition of human shields.87 This prohibition applies primarily when persons are used as shield, though IHL also expressly prohibits the use of a medical units to shield military objectives from attack.88 However, where the civilian infrastructure is used for military purposes with the specific intent to shield, the object and purpose of the prohibition of human shields may justify applying it by analogy. This would be the case for instance if a party to the conflict locates a military command centre within the control room of an essential civilian infrastructure with the specific intent to shield it from attacks. And of course, where civilians – for instance essential service providers – are present in the infrastructure in question, as will often be the case, locating a military command centre in such infrastructure to shield it from attack directly violates the prohibition of human shields.89

On the other hand, and to come back to the first scenario, it may be more complicated – or less feasible, to use legal language - for the military to rely on sources of electricity or water other than the civilian networks. Unless, however, this has been appropriate planned for.

In this regard, let's take a step back from the fog of the battle and zoom out to what can be done in advance, including during peacetime, to best prepare for such situations. As this presentation is delivered at the Bruges Colloquium, let's take the example of NATO Member States. EUSR Ollongren already recalled the June 2025 decision at the North Atlantic Council that Allies commit to invest 5% of GDP annually on defence and security-related spending. As part of this commitment, up to 1.5% of GDP could go to, inter alia, protect "critical" infrastructure and ensure civil preparedness and resilience.90

Integrating considerations related to the military use of infrastructure, including civilian infrastructure, into investments and capability planning is at the heart of States' defence and preparedness discussions. There are a number of concrete measures that States can take during such preparedness investment and efforts to prevent civilian harm in case an armed conflict would break out.

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[86] For a more elaborate discussion of this issue, see E. Giorgou, '*Old and new challenges to implementing the principle of precaution in large-scale urban warfare*' (forthcoming).
[87] ICRC Customary IHL Study, Rule 97; Article 51(7) of Additional Protocol I (no 7).
[88] Article 12(4) of Additional Protocol I (no 7).
[89] For a more elaborate discussion of this issue, see E. Giorgou, note 86 above.
[90] The Hague Summit Declaration, issued by the NATO Heads of State and Government participating in the meeting of the North Atlantic Council in The Hague 25 June 2025, para 3, available at: https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2025/06/25/the-hague-summit-declaration.

The importance of the obligation to take all feasible precautions to protect civilians against the effects of enemy attacks must be underscored in this respect. According to Article 58(b) of Additional Protocol I, “The Parties to the conflict shall, to the maximum extent feasible: avoid locating military objectives within or near densely populated areas.” Planning in peacetime to use civilian infrastructure during armed conflicts in a manner that would turn it into a military objective falls within the ambit of this rule when such infrastructure is located in a city. So, what can be done? Let me just flag two examples:

First, when planning in peacetime to use civilian infrastructure for military purposes during armed conflict, States need to assess the risks of civilian harm arising from such use. This includes, in particular, the risk that the adversary may attack the infrastructure, thereby depriving not only the military but also the civilian population of the essential services it provides. This could require considering alternative options, such as segmenting infrastructure that is used for military purposes from civilian infrastructure, to the maximum extent feasible, in the same way that military airfields are distinct from civilian airports.

Second, whenever feasible, States must take measures already in peacetime to help ensure the continuity in the delivery of essential services to civilians if such infrastructure would be attacked if a conflict breaks out. This can include, for instance, strengthening the resilience of civilian infrastructure such as installing alternative power sources for health, water and wastewater infrastructure.

While this issue would benefit from being delved into in much more depth than this short presentation allows, let me turn to the other side of the issue: what limit does IHL impose on attacks against infrastructure used simultaneously for civilian and military purposes.

The protection of infrastructure used simultaneously for civilian and military purposes.

First, it is important to recall that not every military use makes a civilian infrastructure, or part thereof, a military objective. This is the case only when the infrastructure fulfils the definition of military objective under IHL.91 Together with Oxford University (ELAC), the ICRC has undertaken an expert process to clarify the notion of military objective.92 Let me underscore in this regard the importance of good faith interpretation and application of the law, as already noted by Judge Meron and Mr. Vermeer.93

It is equally critical to emphasise that determining that a piece of civilian infrastructure has become a military objective is not sufficient to conclude that it can be attacked.

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[91] See (no 79) above.
[92] ICRC and the Oxford Institute for Ethics, Law and Armed Conflict (ELAC), *Report of the expert process on: The Concept of Military Objective under International Humanitarian Law* (forthcoming).
[93] See Keynote Address by Judge Theodor Meron, p.13; and Panel 1 intervention by Mr. Arjen Vermeer, p. 33.

First, as noted above, much of civilian infrastructure enjoys special protection, in particular medical units, including hospitals and other healthcare facilities;[94] cultural property, including historic monuments, works of art and places of worship which constitute the cultural or spiritual heritage of peoples;[95] objects indispensable to the survival of the civilian population, such as drinking water installations and supplies, and irrigation works;[96] and works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations.97 Civil defence buildings and matériel, i.e. those used for civil defence purposes;98 infrastructure located in non-defended localities and demilitarized zones;99 as well as infrastructure displaying the distinctive emblem, such as those belonging to, or used by, impartial humanitarian organizations are also regarded as specifically protected.100 This special protection often entails a high degree of protection against attack even when the infrastructure has become a military objective. This special protection must be fully complied with, and the next panel will focus on the special protection afforded to medical facilities, while Judge Meron already recalled the special protection afforded to works and installations containing dangerous forces.101

Modern complex infrastructure, such as for instance an electrical power plant or a water network, often comprises several distinct buildings and installations, that may be adjacent, contiguous or otherwise physically connected. When it comes to dual-use infrastructure, the first question is the delineation of the "object" that must be considered for the purpose of the definition of military objective. In this regard, the smallest distinct piece of infrastructure (be it moveable or immovable) should be the relevant point of reference for the application of the definition of military objective. An object is distinct when it is separable from other objects, and separability can be physical, functional, or operational.102 In particular, objects that are physically separable remain distinct even in cases where they are clustered together or are functionally and operationally integrated as parts of a larger facility or complex infrastructure (such as a power plant). The infrastructure may therefore not be considered as a single object for the purpose of the military objective definition. Only the part of the infrastructure that is used

[94] Articles 12, 13, 21 of Additional Protocol I (no 7); Article 11 of Additional Protocol II; Articles 19, 21, 22 and 35 of GC I; Articles 18,19 and 21 of GC IV; ICRC Customary IHL Study, Rules 28–29.
[95] Article 53 of Additional Protocol I (no 7); Article 16 of Additional Protocol II; ICRC Customary IHL Study, Rule 38.
[96] Article 54 of Additional Protocol I (no 7); Article 14 of Additional Protocol II; ICRC Customary IHL Study, Rule 54. This list of examples, found in the treaty provisions, is not exhaustive. Depending on the circumstances, certain types of energy or communications infrastructure on which objects indispensable to the survival of the civilian population depend, for instance, may also constitute objects indispensable. See ICRC, 2024 Challenges Report, p. 46.
[97] Article 56 of Additional Protocol I (no 7); AP II, Art. 15, ICRC Customary IHL Study, Rule 42.
[98] Articles 62-65 of Additional Protocol I (no 7).
[99] Articles 59 and 60 of Additional Protocol I (no 7); ICRC Customary IHL Study, Rules 36–37.
[100] ICRC Customary IHL Study, Rule 30.
[101] See Keynote Address by Judge Theodor Meron, p.13.
[102] See ICRC and ELAC, *Report of the expert process on: The Concept of Military Objective under International Humanitarian Law* (forthcoming).

for military purposes in a manner that makes it fulfil the definition of military objective loses its protection against attack.

A particularly important measure to address the challenges posed by infrastructure used simultaneously for civilian and military purposes, and to protect the delivery of essential services to the civilian population, is to refrain from attacking such infrastructure, or any part thereof, unless, at the time of the attack, it is actually being used in a manner that meets the definition of a military objective, and only where such use makes a significant contribution to the adversary's military action.[103]

Another important question relates to the incidental civilian harm that must be considered when planning and deciding upon attacks against a piece of infrastructure that has become a military objective while continuing to be used by civilians. Two issues need to be addressed here:

First, indirect effects – sometimes referred to as 2nd, 3rd or higher order effects, or cascading effects, or reverberating effects, all terminology that encompasses the same idea. While it has been argued that remote effects are excluded,[104] there are actually only two criteria in this regard: first, causation: the incidental effects must be expected to be caused by the attack; and second, foreseeability in the circumstances ruling at the time – and the wealth of evidence about the detrimental impact for civilians of damaging essential civilian infrastructure during armed conflict is, sadly, growing every day.[105]

The second aspect is whether impairing the civilian "use" of the infrastructure must be considered, even if it is not "death, injury or damage of civilian objects" as per the wording of Articles 51 and 57 of AP I. If a bridge is attacked and destroyed because it has been determined that the enemy intends to use it in a manner that turned it into a military objective, civilians can no longer use it. If an electricity or water infrastructure is damaged, it will hamper the functioning of other infrastructures – hospital, schools, sanitation. Depending on the circumstances, it may also be entirely foreseeable that civilians will be displaced. The prevailing view, shared by the ICRC,[106] is that the principles of proportionality and precautions

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[103] *Global IHL Initiative, WS 4, Outcome Document*, note 60 above, p. 6.
[104] United States, Department of Defense, *Law of War Manual*, June 2015 (updated July 2023), para. 5.12.1.3.
[105] For further discussion on what constitutes relevant incidental civilian harm for the purposes of both proportionality and precautions in attack, and when reverberating effects are reasonably foreseeable, see ICRC, 2019 Challenges, Report, Chapter 2, pp. 18-21, available at https://www.icrc.org/sites/default/files/document/file_list/challenges-report_urbanization-of-armed-conflicts.pdf; ICRC, Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas, ICRC, Geneva, 2022, pp. 96-102, available at https://shop.icrc.org/explosive-weapons-with-wide-area-effect-a-deadly-choice-in-populated-areas-pdf-en.html.
[106] ICRC, 2019 Challenges, Report, Chapter 2, p. 19, available at: https://www.icrc.org/sites/default/files/document/file_list/challenges-report_urbanization-of-armed-conflicts.pdf. For an account of this debate with regard to proportionality, which would apply mutatis mutandis with regard to precautions, see ICRC, The Principle of Proportionality in the Rules Governing

remain relevant, not only with regard to incidental damage to other civilian objects, but also in terms of the consequences for civilians of impairing the civilian use of that (dual-use) object.

These issues are relevant for both proportionality and precautions. In terms of precautions, they may impact the choice of means and methods of attack as well as the aimpoint of attack, e.g., by requiring the attacker to privilege cyber over kinetic means if this enables minimizing civilian harm, or to target a specific part of the military objective that will cause the smallest (or shortest in duration) impact on the infrastructure's civilian use. These issues are equally relevant for proportionality. More generally, Judge Meron reminded us that when civilian use of an object is prominent, the civilian character must be respected.[107]

Conclusion

To conclude, let me underscore the importance of considering, already in peacetime, how to avoid using civilian infrastructure for military purposes in ways that could deprive it of protection against attack during armed conflict, and of planning ahead to ensure the continued provision of essential services to the civilian population.

A piece of infrastructure can only be determined to be a military objective when there is reasonable certainty that it fulfils the IHL definition in the circumstances ruling at the time and on the basis of information available from all sources. In particular, civilian infrastructure must never be presumed to be used, or to be intended to be used, for military purposes and must never be targeted based on broad categorizations of entire classes of objects as dual-use. Any attack directed at, or that might incidentally affect, infrastructure that delivers essential services to the civilian population must comply with all relevant IHL rules.

As the President of the ICRC underscored, "[w]hen cities are levelled, when hospitals are bombed and communities forced to flee, the very foundations of society are destroyed".[108] Greater respect for IHL is essential to strengthening the protection of the civilian population and the infrastructure on which it depends, and to upholding our shared humanity in today's armed conflicts.

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the Conduct of Hostilities under International Humanitarian Law, pp. 37–40; International Law Association Study Group, The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare, pp. 11–12.

[107] See Keynote Address by Judge Theodor Meron, p.13.

[108] Remarks delivered by ICRC President Mirjana Spoljaric on 18 October 2025 in Rome, Italy, available at: https://www.icrc.org/en/statement/icrc-president-world-cannot-afford-limitless-war.

Moderated discussion

At the end of the panel discussion, a Q&A session allowed the audience to raise several questions.

Defining military objectives

a) The "smallest identifiable part" and means available

A participant asked whether the idea that the smallest possible identifiable part of a broader object should constitute the military objective depends on the weapons available to a party to the conflict.

One panellist reiterated the distinction between the rule of distinction and the assessment of feasible precautions: in the panellist's view, for purposes of distinction, identifying the smallest identifiable, distinct object does not depend on the means available, whereas considerations linked to precautions may depend on what is feasible.

b) "War-sustaining" objects

Another participant raised the question of whether there is a trend towards greater acceptance of "war-sustaining" objects as military objectives, in the context of the definition of a military objective.

One panellist stated that, in their view, the definition of military objective does not encompass all "war-sustaining" objects. The panellist noted that the United States holds a different view, reflected in its military manuals, but emphasized that other States have publicly disagreed with that position. The panellist further stated that the concept cannot be reconciled with the definition of military objective under Article 52 of Additional Protocol I and suggested that the definition was framed precisely to exclude "war-sustaining" objects. The panellist recalled that France initially voted against the definition during the Diplomatic Conference because it wanted to include "war-sustaining" objects, but later changed its view and ratified the Protocol.

Another panellist agreed, adding that the concept risks undermining the whole system and could amount to an interpretation or application in bad faith, as it would remove restrictions imposed by IHL.

c) Past or predictive misuse and targeting decisions

One participant raised concerns about being told by a party to a conflict that targeting of *prima facie* civilian objects as military objectives was based on past misuse, past conduct, or

predictive misuse. The participant asked whether there is a growing consensus among militaries that past or future conduct can be used for targeting.

One panellist emphasized that the law is clear: civilian infrastructure can only be targeted when it falls under the definition of military objective. In the panellist's view, it is not permissible to target such infrastructure because it might, at some point in the future, or at some point in the past, have been used by the military. The panellist stressed that this point is made absolutely clear in training.

Another panellist agreed and added that past misuse can never make an object a military objective. The panellist recalled that "purpose" is often understood as intended future use, but emphasized that this must relate to a very specific piece of infrastructure and requires reasonable certainty that it will be used in a way that fulfils the definition of military objective. By way of example, the panellist noted that one does not necessarily need to wait for tanks to be on a bridge to attack it, but the definition of military objective must be met. The panellist also linked this to good faith interpretation of "purpose": it would be a bad faith interpretation to rely on a vague future risk as sufficient, rather than assessing the definition in good faith.

Dual-use objects: essential services, proportionality and precautions

One participant asked about electrical grids and, specifically, whether the protection of objects indispensable to the survival of the civilian population is considered where such infrastructure may also be qualified as "dual-use".

One panellist replied by emphasizing that the targeting process is extremely rigorous in determining which objects are to be targeted, and that it is assessed at various levels (including targeting boards, and senior strategic, operational and political levels). The panellist stressed that a lawyer is present, and that the lawyer will look specifically for objects indispensable to the civilian population and do everything to avoid targeting such objects.

Another participant asked how targeting decisions are taken for objects with both military and civilian uses, given the binary distinction between military objectives and civilian objects. Using the example of a bridge that has a definite military application but also significant civilian use, the participant asked how incidental civilian use of the bridge is factored into proportionality assessments and feasible precautions, and whether civilian use of the object itself risks being disregarded once the object is characterized as a military objective.

One panellist explained that, in their practice, the term "dual-use" is not used, as it can be confusing and does not appear in the law. The panellist emphasized that an assessment would consider, for example, whether there are alternative bridges that either side could use, and

that proportionality is always considered. The panellist added that, where it is the only bridge and it supplies the military, it would be considered a military target because of its military use, and it would be taken out.

A panellist added that this assessment should be context-dependent and that, even where the bridge is a military objective, its importance for civilians must be factored into proportionality and precautionary assessments. By way of an extreme example, the panellist referred to a situation where a bridge is the only connection for an island city and destroying it would cut civilians off from essential services. Where the military advantage of destroying the bridge is not significant, those civilian consequences should be weighed, and there may be cases in which an attack would be excessive despite the bridge being a military objective.

In follow-up, the participant asked how, in practice, such impacts are assessed, and whether this is treated as "civilian injury". The panellist responded that this is relevant, and that, based on discussions with State experts (including military experts), the view expressed was that it is uncontroversial: such harmful impacts on civilians are taken into account as a matter of law, even where the harm is linked to "use" or broader civilian impact rather than deaths, injury or physical damage in a narrow sense.

The panellist underlined that where infrastructure has not become a military objective, parties must comply with the rules of distinction, proportionality and precautions, as well as specific protections that may apply depending on the type of infrastructure. The panellist noted that it is a war crime to directly attack civilian infrastructure and suggested that protection concerns may also require refraining from conducting major operations near critical infrastructure and avoiding, to the maximum extent possible, attacking targets in the vicinity of such infrastructure. The panellist further recalled calls to avoid using heavy explosive weapons in populated areas, given the high risk of indiscriminate effects and damage to civilian infrastructure.

Finally, the panellist suggested that belligerents could consider establishing protected zones around critical infrastructure, such as demilitarized zones or undefended areas, where infrastructure remains purely civilian. The panellist also emphasized that infrastructure alone does not guarantee the provision of essential services: people (operations and maintenance staff) and consumables are also required.

Good faith, reciprocity and self-interest in interpretation

One participant asked how much can be expected of "good faith" in judicial proceedings, given uncertainty over what good faith means, including whether it refers to reasonableness and effectiveness or compatibility with the original intention of the parties.

One panellist replied that good faith is a difficult concept and somewhat abstract as a standalone basis for argument, particularly in judicial proceedings. However, the panellist suggested that it appeals to dimensions such as reasonableness and effectiveness, and that it can be operationalized through the “reasonable military commander” standard in IHL. The panellist added that violations of good faith are the other side of the concept and may be more readily actionable in practice.

In a related question, a participant asked whether “reciprocity” could be a road to good faith interpretation, in the sense of asking whether one would accept the same interpretation if it were applied by an adversary against one’s own cities, civilian population, or civilian infrastructure.

A panellist suggested that what had been described as reciprocity could also be understood as self-interest for States, including their self-interest in protecting their own people and infrastructure. The panellist also suggested that, in military training and education, greater attention could be given to empathetic decision-making or perspective-taking, as empathy may not come naturally to many militaries.

Another panellist agreed that reciprocity is important, while emphasizing that those who carry out attacks and participate in armed conflict may also be fundamentally affected by their own actions. The panellist underlined that the fact that soldiers may suffer as well should also be kept in mind in governing military action.

The role of NGOs and civil society in compliance and accountability

One participant asked what role civil society and NGOs play in taking up cases on behalf of alleged victims, and in enhancing compliance with IHL.

One panellist emphasized that the role of NGOs and civil society is wide and extremely important. In addition to supporting enforcement mechanisms, the panellist stressed that NGOs also contribute by assessing situations, collecting allegations, identifying patterns of potential violations and harm, and building the broader evidence base of the impacts of conflict.

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PANEL 2

STANDING UP FOR A MEANINGFUL PROTECTION OF MEDICAL FACILITIES: IMPLEMENTING LEGAL SAFEGUARDS

CHAIRED BY SILVIA DELGADO GONZALEZ, DEPUTY DIRECTOR GENERAL FOR THE UNITED NATIONS AND MULTILATERAL AFFAIRS, MINISTRY OF FOREIGN AFFAIRS OF SPAIN

Specific protection of medical facilities: what does the law say?

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Summary

Dr. Verlinden examined the IHL framework ensuring the special protection of hospitals and other medical facilities, drawing where relevant on findings from Workstream 5 of the Global IHL Initiative. She first addressed the definition of medical facilities and the obligation to respect and protect them, before turning to the exceptional circumstances in which their special protection may cease, namely where they are used to commit acts harmful to the enemy and a prior warning remains unheeded. She then examined the continued application of the general conduct of hostilities rules, stressing that loss of special protection does not automatically render a hospital a military objective and that distinction, proportionality and precautions continue to apply, including with regard to reasonably foreseeable direct and indirect harm. She concluded that the multiple layers of specific and general protection mean that, in practice, attacks against hospitals will in most cases violate IHL.

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This presentation provides a brief overview of the relevant IHL rules that ensure special protection of hospitals, in addition to the general protection of civilian objects. It will first touch upon the definition of hospitals, before unpacking the obligation to respect and protect medical facilities. Subsequently, it will discuss the loss of the special protection of such facilities, complemented with some reflections on the continued application of the general conduct of hostilities rules, which continue applying. Where relevant, the presentation includes some of the findings that came out of the ongoing consultation process that is taking place in the framework of Workstream 5 of the Global IHL Initiative, the Workstream on Achieving Meaningful Protection for Hospitals in Armed Conflict. So far [*by November 2025],* there has been one State consultation and two expert consultations already, with the second State consultation coming up in December 2025.[109]

1. Definition of medical facilities

The Geneva Conventions and the Additional Protocols do not use a single term throughout the many provisions that aim at protecting medical facilities. Different articles use different terminology, but they all mean to describe hospitals or other medical facilities that enjoy the

[109] An overview of all the consultations that took place in the framework of this Workstream can be found in the GIIHL Outcome Document, published in September 2026, available at: https://www.upholdhumanityinwar.org/sites/default/files/2026-09/Global%20IHL%20initiative%20-%20Outcome%20document%20Workstream%205%20Hospitals%20-%20September%202026.pdf.

highest form of protection under IHL. For instance, Art. 19 of the First Geneva Convention refers to 'fixed establishments and mobile medical units', whereas Art. 18 of the Fourth Geneva Convention refers to 'civilian hospitals', and in Art. 8 of the First Additional Protocol, the term 'medical units' is used, the same term being used in the Second Additional Protocol. In essence, two elements are required. First, the 'establishment' or 'facility' or 'hospital' needs to be *organized* for medical purposes – and this has a broad meaning. It does not only cover the diagnosis or treatment of wounded and sick, but it also includes activities related to the search and collection of wounded and sick. Activities to prevent diseases are also understood to be activities for medical purposes. In addition, a medical facility also needs to be exclusively assigned for medical purposes. This requirement designed to ensure some control and supervision by competent authorities and is the determination that a facility is intended for exclusively medical purposes. Importantly, the protection granted by IHL to hospitals covers hospitals run by civilians and those run by military. In similar vein, and this is a basic idea, the nature of its patients also does not impact the protection provided to the structure: civilian and military patients are equally protected if they go to a medical facility. Lastly, the protective scope does not only cover fixed medical establishments, but also encompasses mobile medical units, such as ambulances.

2. Protection of medical facilities

The general duty to respect and protect hospitals and medical facilities in all circumstances can be found in a number of provisions of the Geneva Conventions and the Additional Protocols: the obligation is reflected in Art. 19 of the First Geneva Convention, Art. 18 of the Fourth Geneva Convention, Art. 12 of the First Additional Protocol, Art. 11 of the Second Additional Protocol, and in customary international humanitarian law (Rule 28 Customary IHL Study). The specific duty to respect and protect hospitals is intrinsically linked to the overarching obligation to respect and protect and care for the wounded and sick under IHL – the basic idea of Henry Dunant when he wrote his 'Memory of Solferino'. In that book, he outlines both his idea to launch a Red Cross Movement and the need to conclude international agreements aimed at ensuring more protection for wounded and sick during armed conflict. The overarching obligation to collect and care for the wounded and sick is reflected in many parts of the Geneva Conventions, and one translation thereof is the specific protection granted to medical facilities.

The specific protection needs to ensure that medical facilities remain functional in times of armed conflict, thereby avoiding that an entire medical system collapses because of the absence of infrastructure. Without a meaningful protection of hospitals, the entire framework that guarantees medical care for both civilian and military wounded and sick as well as disease prevention would be affected. For this reason, it is in all parties' interest to respect the specific protection of hospitals.

i. Respect and protect

The obligation to respect medical facilities entails a negative obligation: a prohibition to attack them, but it is not limited to that. It also includes an obligation not to interfere with the functioning of a hospital. This means that the doctors working within the hospital should be allowed to continue their work in treating and caring for the wounded and sick, even in time of armed conflict. Concretely, this means that inspections of hospitals are subject to the limitations imposed by the duty to respect hospitals. The military is allowed to inspect a hospital, but such inspection should not impede the normal continued functioning of the medical service. The right to inspect cannot be abused.

The obligation to protect means that the parties to the conflict need to take feasible measures, which depend on the circumstances, to facilitate the functioning of a hospital and to prevent the establishment and the personnel working therein from being harmed. For example, parties to the conflict have to prevent hospitals from being looted. Moreover, the obligation to protect also means that parties cannot use medical facilities to shield military objectives, which puts the facilities at risk of attack. This prohibition is enshrined explicitly in Art. 12(4) AP I, which says that "under no circumstances … medical units [shall] be used in an attempt to shield military objectives from attack". In similar vein, the duty to protect entails that parties have to ensure that hospitals are not deprived of medical supplies, electricity or water. They need to actively support in ensuring the continuity of such supplies. This also means that, in planning attacks against interconnected infrastructure providing critical services to the civilian population, parties need to take into account the impact the deficiency of an electricity grid would have on the hospitals in a certain area.

Surprisingly perhaps, no provision of the Geneva Conventions or the Additional Protocols foresees an explicit and general prohibition to use medical facilities for military purposes. While such explicit prohibition is not explicitly included in the law, there is broad agreement among States that the obligation to respect and protect medical facilities implies that medical facilities cannot be used for military purposes. This understanding among States became very clear during the State consultations held in the framework of Workstream 5 of the Global IHL Initiative.[110] Using a medical facility for military purposes would not only constitute a violation of the obligation to respect and protect hospitals, but also potentially of other IHL obligations, notably the conduct of hostilities and more specifically the passive precautions obligation enshrined in Art. 58 AP I. Another provision affected by military use of hospitals would be the

[110] GIIHL Progress Report, p. 40, available at: https://www.upholdhumanityinwar.org/sites/default/files/2025-10/Global%20IHL%20Initiative%20Progress%20Report%20October%202025%20ENGLISH.pdf.

prohibition of improper use of the Red Cross and Red Crescent Emblem (Rule 59 Customary IHL Study).

ii. Loss of protection

Since IHL is a body of law that always seeks to balance humanity with military necessity, the specific protection of hospitals can be lost in certain exceptional circumstances, which remain nevertheless very limited. The conditions for loss of protection are described in Art. 21 of the First Geneva Convention, Art. 34 of the Second Geneva Convention, Art. 19 of the Fourth Geneva Convention, Art. 13 of the First Additional Protocol and Art. 11 of the Second Additional Protocol. These provisions determine that the specific protection of hospitals "shall not cease, unless", followed by two conditions, discussed in detail below. The first condition is that the medical facility, outside of its humanitarian function, commits an act harmful to the enemy. The second condition is that prior to any military response to a loss of specific protection against a hospital, a warning was given and that that warning remained unheeded.

It is important to flag that the two conditions are two separate requirements that need to be fulfilled cumulatively. During the consultations with states and experts in the framework of the Global IHL Initiative, it was really acknowledged and affirmed that protection is the rule and loss of protection is an absolute exception.[111] Therefore, parties considering an attack on a hospital, will need to show that both conditions are fulfilled. Only then can it be concluded that the exception applies. As explained further below, even in that case, it must be further determined that the part of the medical facility that has been used for an act harmful to the enemy, constitutes a military objective, and other rules on the conduct of hostilities complied with.

Turning to the first condition, IHL does not define what an "act harmful to the enemy" is. Rather, it gives examples of what it is not: if personnel of the hospital carry or use light individual weapons in self-defense or in defense of the wounded and sick that are being treated in the hospital, that is not considered to be harmful to the enemy. Other examples of acts not considered harmful are the use of personnel to guard a medical facility, or the presence of sick or wounded military in that facility, or even of healthy military if they are in the facility for health-related reasons such as vaccinations or disease prevention, insofar they do not take directly part in the hostilities. In addition to the negative definition enshrined in the relevant IHL provisions, State practice offers further insights in what constitutes "an act harmful to the enemy". For instance, if a hospital is used as a base to launch attacks, as a command centre, as an observation post, or to store weapons, these acts would be considered harming the opposing party in an armed conflict. During the State and expert consultations held in the framework of the Global IHL Initiative, it was acknowledged, however, that the criteria to

[111] GIIHL Progress Report, p. 40, no 110.

identify what exactly constitutes an act harmful to the enemy are not so clear.[112] This degree of vagueness results in a range of varying interpretations and assessments that create the risk of reducing the protective value and purpose of the rule. In response to that, it was suggested during the consultations that clear and verifiable criteria could be developed to identify what an act harmful to the enemy means. Some participants in the consultations promoted the idea that credible evidence is needed to verify whether an act harmful to the enemy is committed: field reports, visuals or intelligence showing that a specific act actually took place. This would only offer a partial solution, as certain acts harmful to the enemy cannot be captured on camera, for instance ongoing preparations or plans being made from within a hospital. In reaction to that gap, another idea that was proposed suggested to set up an entity that could go into a medical establishment to verify some allegations made by a party to the conflict.

The second condition that needs to be fulfilled when assessing whether or not a hospital loses its protection from attack, is a warning that remains unheeded. The warning itself can take several forms, as the law does not contain a specific requirement on the way in which the warning is given. It can be a simple military order, it can be a letter or even an e-mail, warning the other side the party of an act harmful to the enemy that is being committed. During the GIIHL consultations, States acknowledged that this warning is an essential prerequisite condition before concluding that a loss of protection occurs. Importantly, the warning requirement should not be confused with the 'effective advance warning' as a precautionary measure under the conduct of hostilities rule (Art. 57(2)(c) AP I). The latter warning has a different purpose – to take, "unless circumstances do not permit", measures to prevent damage to civilian objects or injury to civilians. The warning in the context of loss of the specific protection of hospitals aims at giving the opposing party the time to stop or undo the act that is considered harmful to the enemy, or to clarify any misunderstandings or to respond to unfounded allegations that an act harmful to the enemy is being committed. The possibility to evacuate patients is only a secondary purpose, which comes after the primary purpose of the warning obligation. Because of this specific purpose, the warning requirement in this context does not have the qualifier of 'unless circumstances do not permit'.

Issuing a warning is not sufficient. Only if the warning goes unheeded (and only if there is an act harmful to the enemy), a hospital loses its special protection. During the consultations in the framework of Workstream 5 of the Global IHL Initiative, participants discussed how a party issuing a warning can determine that the warning has been heeded and be assured that the medical facility will henceforth be exclusively dedicated to medical purposes.[113]

3. Conduct of hostilities rules applied to attacks against medical facilities

[112] GIIHL Progress Report, p. 40, no 110.
[113] For more details, see GIIHL Progress Report, p. 41, no 110.

The loss of special protection does not automatically turn a medical facility into a military objective. The general conduct of hostilities rules still need to be applied: distinction, proportionality and precautions. Art. 52 AP I requires that the object provides an effective contribution to military action and that its total or partial destruction, capture or neutralization in the circumstances ruling at the time offers a definite military advantage. While the definition of Art. 52 AP I states that the effective military contribution of the object can result from the 'nature, location, purpose or use' of the object, in the ICRC's view, only the use of a medical facility can be considered when assessing the effective contribution to military action – and not the location or purpose of the medical facility.[114]

Importantly, often, hospitals are actually a group of buildings, part of one single hospital structure. If an act harmful to the enemy is committed only in part of the hospital, only that part of that hospital loses its protection. On this point, there was broad agreement during the consultations for Workstream 5.[115]

If a hospital lost its protection because an act harmful to the enemy is committed, and a warning goes unheeded, and if in addition the hospital fulfills the requirements to become a military objective, there will, in practice, still be a lot of wounded and sick persons and medical personnel present in the structure. They are, in the case of a potential attack, expected civilian losses and losses of military medical personnel who are not 'civilian' that need to be weighed against the concrete and direct military advantage of the attack. In light of these considerations, it is highly unlikely that an attack against the hospital, even if the hospital fulfils the conditions of a military objective, is proportionate and therefore lawful under IHL. States expressed strong agreement on this point during the GIIHL consultations.[116]

During the same consultations, most States and experts also agreed with the idea that to assess the expected civilian harm, one needs to factor in the direct and the indirect harm - the reverberating effects that are reasonably foreseeable.[117] When assessing the lawfulness of a possible attack against a hospital, this means, concretely, that the impact of the absence of a hospital on an entire civilian population, should also be taken into account into the proportionality assessment. The long-term foreseeable harm for the patients as well as for the affected population should be considered.

Lastly, applying the general conduct of hostilities rules also requires parties to take passive and active precautionary measures. On the side of the attacking party, this includes careful

[114] See 2025 ICRC Commentary to the Fourth Geneva Convention, Art. 18, para. 1852, fn 29, no 31.
[115] GIIHL Progress Report, p. 42, no 110.
[116] GIIHL Progress Report, p. 43, no 110.
[117] GIIHL Progress Report, p. 43, no 110.

selection of specific weapons, adjusting the timing of an attack, and other measures to reduce harm to civilians.

4. Conclusion

The obligation to respect and protect hospitals is a core obligation of IHL. Their special protection forms an essential element in the framework that protects wounded and sick. Even though the special protection is lost in case of acts harmful to the enemy, combined with a warning that remains unheeded, the conduct of hostilities rules still apply.

As a result of these various layers of protection, specific and general, in practice, attacking a hospital would in most cases be a violation of IHL rules. States came to the same conclusion during the GIIHL consultations. Further consultations [*held after November 2025]* will explore how acts harmful to the enemy can be identified, how they can be verified and which measures can be taken to evacuate if need be.[118]

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[118] In September 2026, the Final Outcome Document of the Global IHL Initiative was published, see the chapter on Workstream 5, available at: https://www.upholdhumanityinwar.org/sites/default/files/2026-09/Global%20IHL%20initiative%20-%20Outcome%20document%20Workstream%205%20Hospitals%20-%20September%202026.pdf.

Hospitals misused for military purposes: addressing the loss of specific protection in military practice

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Summary

Brigadier Ferris examined the legal and operational framework governing the loss of special protection of hospitals when they are misused for military purposes. She recalled that protection may cease only where medical units are used to commit "acts harmful to the enemy" and, even then, only after a warning has been given where circumstances permit, emphasizing that this safeguard reflects a presumption in favour of protection. The contribution highlighted the role of the military legal adviser in making good-faith, real-time assessments under conditions of uncertainty, including in relation to what constitutes an "act harmful to the enemy" and the practical implications of monitoring and evidentiary standards. Brigadier Ferris stressed that the loss of special protection does not automatically make a hospital a lawful military objective: a distinct assessment under Article 52(2) of Additional Protocol I is required, followed by the full application of distinction, proportionality and precautions, with proportionality posing a particularly high bar in light of the persons and functions involved. She concluded by underscoring the increasing relevance of these questions in complex, urbanized conflicts and the importance of transparency and accountability mechanisms in sustaining legality and legitimacy in targeting practice.

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Introduction

Tēnā koutou,Tēnā koutou,Tēnā tātou katoa.

Before I begin, I would like to take you back to 1915. Private Donald Ferris of the New Zealand Māori Pioneer Battalion was serving in Gallipoli alongside his brother – my great-grandfather. He wrote, in what would ultimately be his last letter home to his mother:

"In my spare time I visit the hospitals where I try and get as much information from the wounded as I can…."

Private Ferris did not survive the Gallipoli campaign. Yet, more than a century on, his words are contributing to international law discourse, as they had me thinking: under what circumstances does a hospital lose the exceptional protection that international law affords it?

In that spirit, I invite the audience to consider themselves enlisted as legal advisers, and to reflect on how they would address these issues when advising command.

My remarks today will examine: first, the legal framework and the concept of special protection; secondly, the conditions that must exist to trigger the loss of special protection, including procedural safeguards and curative obligations; and thirdly, the practical consequences for military operations of the loss of that protection.

I. The legal framework and the concept of special protection

The protection of hospitals is a foundational pillar of the law of armed conflict. As a matter of treaty law, hospitals "may in no circumstances be attacked" and must be respected and protected at all times. Additional Protocol I elaborates these protections in the context of international armed conflict: Article 12 reaffirms the protection of medical units, including hospitals, while Article 13 – of particular relevance to this discussion – regulates the conditions under which that protection may be lost, specifying that protection ceases only where medical units are used to commit "acts harmful to the enemy," and even then only after due warning has been given, where circumstances permit.[119]

Additional Protocol I also provides important negative clarifications: the presence of wounded combatants, the possession of small arms for self-defence by patients and staff, or the treatment of enemy fighters do not, of themselves, constitute acts harmful to the enemy. The International Committee of the Red Cross has confirmed that these obligations form part of customary international humanitarian law and apply equally in non-international armed conflicts.[120]

Underpinning the entire edifice of special protection are three interlocking principles: immunity from attack, protection from interference with medical functions, and respect for medical neutrality and the imperative of impartial care. Together, these principles reflect the humanitarian rationale that has animated the law of armed conflict since its inception.

II. Conditions for the loss of special protection

The threshold question is: what constitutes an "act harmful to the enemy"? The term is not defined in the treaty text. Guidance may be found in the ICRC Commentaries, scholarly literature, and military manuals. In the present author's view, the concept is broader than "direct participation in hostilities" but it is not so elastic as to render the protection notional. It therefore requires a careful, good-faith assessment of the facts and circumstances, made in real time and under conditions of operational uncertainty. This is precisely the kind of analysis that falls to the military legal adviser.

[119] Articles 12, 13 of Additional Protocol I (no 7).
[120] ICRC, Customary IHL Study, Rule 25 (no 6).

Critically, before protection may be lost, a duty to warn applies. A warning must be given, accompanied by a reasonable time limit within which the situation may be remedied, unless circumstances do not permit. Protection ceases only if the warning goes unheeded. This procedural safeguard is not a formality; it reflects the law's deep reluctance to sanction attacks on medical facilities and the presumption in favour of protection that must be rebutted before any such attack may be lawfully contemplated.

A logical corollary of this framework is potentially an obligation on belligerents to monitor hospital use by adversaries. This is a largely unexplored issue in the literature, and one that raises significant practical questions for military forces: who is responsible for monitoring compliance, how is that monitoring to be conducted consistently with the law, and what evidentiary standard is required before a conclusion of misuse may be drawn? These are questions that deserve more systematic attention in military doctrine and legal practice.

III. Consequences of the loss of special protection: military practice

The loss of special protection does not, of itself, render a hospital a lawful military objective. Once special protection has ceased, a separate and distinct assessment must be undertaken as to whether the hospital, as an object, meets the definition of a military objective under Article 52(2) of Additional Protocol I – that is, whether it makes an effective contribution to military action and whether its total or partial destruction, capture, or neutralisation offers a definite military advantage in the circumstances ruling at the time.

Even if a hospital were determined to constitute a military objective, that determination does not authorise attack. The identification of a legitimate military objective is a necessary, but not sufficient, condition for a lawful strike. The next step – and the one on which the legal adviser's contribution is most consequential – is the proportionality assessment under Article 57 of Additional Protocol I. The question is whether the anticipated direct military advantage is excessive in relation to the expected incidental harm to civilians and civilian objects. Given that a functioning or recently functioning hospital will, by definition, contain patients who are *hors de combat*, medical personnel entitled to protection, civilians and life-sustaining equipment, the proportionality threshold for lawfully targeting such a facility ought to be very high.

In practice, most armed forces have formalised targeting processes and procedures through targeting doctrine. Unfortunately, New Zealand Defence Force targeting doctrine is classified. However, a quick Google search highlights, by way of illustration, Allied Joint Publication 3.9[121]

[121] North Atlantic Treaty Organization (NATO), *Allied Joint Doctrine for Joint Targeting*, AJP-3.9, May 2008, available at: https://nllp.jallc.nato.int/cmnt/ciedcoi/CIED%20PUBLICATIONS/Handbooks%20and%20Doctrines/AJP%203.9.%20DOCTRINE%20OF%20JOINT%20TARGETING.pdf.

– NATO's publicly available targeting doctrine, spanning over 120 pages – provides an outline of the military targeting process and, although not universal, is useful to the discussion.

As indicated by doctrine and Brigadier Joanna Bowen's intervention, most militaries would undertake a Targeting Board or a number of Targeting Boards or similar processes, which would provide the governance framework for conducting attacks on military targets.

According to NATO doctrine, targeting a hospital would first require its removal from the No-Strike List, a step requiring approval from the Supreme Allied Commander Europe (SACEUR). Within the New Zealand Defence Force, I can say that the equivalent process would require Chief of Defence Force approval, with advice of a legal officer.

Even following removal from the No-Strike List, the full suite of targeting law obligations – distinction, proportionality, and precautions in attack – must be satisfied before a strike may be authorised. The legal adviser is present at each stage of that process, not as a bureaucratic formality, but as an active participant in ensuring that the decision to attack, if taken at all, is lawful.

IV. Concluding observations

The military operating environment is increasing in its complexity, and legal advisers need to be agile enough to respond. Urbanisation is transforming the character of armed conflict. Where only twenty per cent of the world's population lived in cities in the 1920s, that figure now exceeds fifty-five per cent and continues to rise. Hospitals, concentrated in urban centres, will increasingly be found in the midst of conflict. The question of their protection is not an abstract legal inquiry; it is a practical necessity.

Technological change, including the integration of AI into targeting processes – creates both new capabilities and new risks. The legal adviser must ensure that the introduction of automated or AI-assisted tools does not erode the human judgment that the law demands at each stage of the targeting chain. The procedural safeguards examined above – the duty to warn, the requirement for good-faith assessment, the proportionality calculus – are not merely technical requirements.

Accountability and transparency are indispensable to the ongoing legitimacy of the armed forces and the legality of our targeting. New Zealand has taken a step in this direction through the establishment of an Inspector General of Defence, with a mandate extending to the review of conduct during operations, in addition to existing military disciplinary frameworks. These mechanisms matter: they are the institutional expression of the commitment to the law, in addition to existing military discipline frameworks.

It is fitting to close where we began. Private Donald Ferris, writing from Gallipoli in 1915, was not a legal scholar but he raised a question that continues to be relevant today – what constitutes loss of protection of a hospital? Would his simple questioning of soldiers, ostensibly to gather intelligence, have been considered an act harmful to the enemy and potentially causing the hospital to lose its special protection assessed against the current law?

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Medical facilities under attack: implementing safeguards to prevent humanitarian consequences

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Summary

Ms. Maon drew on MSF's operational experience to argue that attacks on hospitals have become a recurring feature of contemporary armed conflict, despite the strict prohibition of attacks on medical facilities and the limited, narrowly framed exceptions under IHL. Using the tenth anniversary of the Kunduz hospital bombing as a reference point, she recalled MSF's role, together with the ICRC and supportive States, in advancing UN Security Council Resolution 2286 and questioned what concrete effect it has had in practice. Ms. Maon maintained that the complete destruction of a fully functioning hospital is not realistically lawful under IHL given the limited and temporary military advantage and the enormous, long-lasting humanitarian harm. She then proposed practical safeguards before, during and after attacks, including sustained dialogue and clarified doctrine, humanitarian notification mechanisms, a clearer operational understanding of "acts harmful to the enemy", stringent and specific due warnings, and support for medical evacuation. Finally, she emphasized the importance of applying distinction, precautions and proportionality, including by taking reverberating effects into account, alongside credible fact-finding, transparency and accountability measures, stressing that States bear primary responsibility for doctrine and practices that prevent attacks and mitigate humanitarian consequences.

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The framing of the protection of medical structures has been perfectly drawn out by the previous panellists whom I thank for their interventions.

For us, in MSF, attacks on hospitals are at the heart of our daily reality.

A month ago, we commemorated the tenth anniversary of the bombing of our hospital in Kunduz, Afghanistan, which killed 42 people, wounded dozens and completely destroyed the biggest hospital in this Afghan province. This was a traumatic event for the organization, as it discovered that even the well-known MSF could be bombed by a coalition of States that included Western countries.

As the first shock of the drama passed, MSF was instrumental in pushing the humanitarian sector and good-willed States to table a UN Security Council Resolution on the protection of

hospitals in conflict: Resolution 2286, adopted in May 2016.[122] This was a ground-breaking resolution, drafted with the support of the ICRC and MSF and co-sponsored by more than 80 nations.

The Resolution was necessary. It was a political reassertion of the legitimacy and protected status of humanitarian medical action at a time when medical care was under deadly aerial attack from States, including members of the UN Security Council or coalitions they backed.

The Resolution also enhanced the protection of healthcare in conflict. It formally extended protection under IHL to humanitarian and medical personnel "exclusively engaged in medical duties": key terminology that goes beyond the definition in the Geneva Conventions. This includes the staff, medical activities and facilities of private humanitarian organisations, such as MSF.

10 years later, where are we with the protection of hospitals in armed conflict?

What will States have to say in May of 2026 to celebrate the anniversary of this Resolution, should they want to do so?

Who even remembers it, I am sometimes sincerely tempted to ask?

In these past 10 years, attacks against hospitals have been a hallmark of almost every conflict: Syria, Yemen, South Sudan, Sudan, Nigeria, Myanmar, Haiti, Ukraine, Gaza. What we have witnessed and denounced seems to be today a new norm.

To the point that it feels sometimes necessary to remind ourselves that intentional attacks on the medical mission – probably the most protected object in IHL – are absolutely prohibited under IHL and constitute, at least, war crimes under the ICC Statute.

Of course, exceptions to this protection exist, but they are poorly defined and unilaterally assessed by belligerents launching the attacks, leading to opacity and abuses, and seem to offer wide room for interpretation. The very existence of these exceptions provided by IHL, some argue, is behind this normalization of attacks.

Based on MSF's extensive operational experience in conflict zones, we consider that there are no realistic circumstances where bombing and totally destroying a fully functioning hospital could be lawful under IHL. This statement is made because the military advantage gained is invariably limited and temporary, while the foreseeable harm for civilians is enormous and lasting, given hospitals' crucial, life-saving role for entire populations.

[122] UN Security Council, Resolution 2286, 3 May 2016, UN Doc S/RES/2286 (2016), available at: https://digitallibrary.un.org/record/827916.

Having given that long introduction, I would like to focus on different measures that could be taken before, during and after attacks to safeguard the medical mission and minimize humanitarian consequences.

1. Before an attack on medical premises

1.1. Pre-attack: monitoring, dialogue and clarification of military doctrine

This could be defined as “talk to each other”. The protection and criteria for any loss of protection of the medical mission must be predictable for both medical personnel and parties to the conflict. Any concerns or patterns of abuse should be raised in transparent discussions way before operations are launched.

Good practices here should include the development of specific standard operating procedures (SOP) dedicated to the protection of civilian medical facilities drafted in consultation with medical authorities.

Similarly, dialogue can strengthen the protection of medical facilities by integrating them into targeting processes, in the early planning of operations.

Direct channels of information exchange between military personnel and medical and humanitarian staff running medical facilities can include potential problems and accusations of misuse:

(1) Information on military doctrine to avoid attacks on hospitals;

(2) Mapping and presentation of medical structures functioning in the area of operations;

(3) Concrete examples of misuse (i.e. acts harmful to the enemy allegedly taking place under the cover of medical activities specially protected under IHL);

(4) Discussions to promote a common understanding of such misuse and of what is expected by the different stakeholders present in the zone;

(5) Possible adjustments to the internal security and control procedures of medical facilities.

1.2. Pre-attack: humanitarian notification

Humanitarian notification for deconfliction mechanisms can be a precious tool to enhance the legal protection already granted to the medical mission by sharing with parties to the conflict the GPS coordinates of static or mobile medical premises, as well as the necessary movements operated.

In practice, humanitarian notification is a choice for security risk mitigation which can help military actors to implement this mapping of medical structures as well as develop a dialogue with medical and humanitarian actors.

Of course, as long as the individual, facility or asset retains its humanitarian character, the absence of notification or its removal thereof from the notification list does not alter the fact that they are protected as civilians or civilian objects. In the same way that an intentional attack on a not-notified medical premise would remain a war crime.

Still, when efficient systems are in place with bona fide parties on each side the communication tool – and as long as these mechanisms do not turn into an authorization system for humanitarian access –, the choice of humanitarian notification for static and mobile medical premises as a security risk mitigation measure can be successful, even if outside the frame of IHL.

1.3. Pre-attack: description and communication of the "act harmful to the enemy"

This raises the crucial question: what qualifies as an "act harmful to the enemy"?

While IHL treaties do not define the term, they list acts that do not constitute acts harmful to the enemy: small arms and ammunition taken from the wounded and sick and not yet handed back to the proper service and found in these units; or wounded and sick combatants in civilian medical facilities for medical reasons.[123]

Practice and customary law also should make us all agree that treating wounded enemies is not an act harmful to the enemy.

While this list helps narrow down the acts that could be considered acts harmful to the enemy, the lack of a definition or exhaustive list in IHL treaty law leaves room for ambiguity.

This creates a dangerous environment in which, on the one hand, medical facilities can appear misused for military purposes, and, on the other hand, allegations by attackers that such acts have been committed can also be made extremely easily.

In practice, there is a worrying tendency to consider a wide range of acts as being harmful to the enemy. An additional challenge lies in the difficulty of verifying assertions made by parties to an armed conflict that hospitals are being used by their enemy to commit acts harmful to them. Such claims are rarely accompanied by information about how the existence of an act harmful to the enemy was identified and what process was then used to determine the consequences of such acts.

From a medical staff perspective, personnel can mainly act on what is visible: the presence of a combatant with a weapon hiding in, fighting in or fighting from the hospital, the hospital being used as military barracks or an observation post, or being used to open fire. Other concepts,

[123] Article 13(2) of Additional Protocol I, Article 22 of the First Geneva Convention, and Article 35 of the Second Geneva Convention also list conditions under which special protection of hospitals and hospital ships is not lost.

such as command-and-control centres, are not well defined: it may be an individual with a cell phone in today's modern conflict.

In addition, it may be difficult, from a medical perspective, to distinguish between an attack on the hospital linked to loss of protection of the hospital itself and an attack in the hospital that may be linked to the loss of protection of either the medical personnel or of some wounded and sick.

Good practice should remain that a person receiving medical care as wounded or sick in a hospital should be protected from attack. Medical personnel or wounded and sick suspected of acts harmful to the enemy should be targeted only outside the hospital.

A red line should be that no targeted killings or attacks on wounded and sick should take place in or on a hospital.

Using medical facilities for military purpose is not the norm and should be considered as an exceptional military practice. Medical practitioners express that the temptation to use hospitals for military purposes often exists, but that it is possible to resist it. This requires active engagement with the parties and implementation of practical procedures for controlling admission, visitors, caretakers, prohibition of weapons in the premises as much as possible, etc.

1.4. Pre-attack: due warning

Prior to an attack against a medical unit which is allegedly being used to commit acts harmful to the enemy, a warning must be issued, setting, whenever appropriate, a reasonable time limit, and an attack can only take place after such warning has remained unheeded.[124]

This requirement of warning is both conventional, protocolar and customary.

The warning is due when an act harmful to the enemy is being committed outside the medical function.

The first objective of the warning is to allow the act harmful to the enemy to stop. It is not aimed at immediate evacuation.

The absence of a further definition of this concept of "due warning" has the advantage of allowing a determination to be made about how to implement this requirement in light of the concrete circumstances and technologies available.

The warning may take various forms. Whatever the method selected, it must reach those committing the "act harmful to the enemy" to achieve the purpose of the warning, that is, to allow for termination of the act or, failing that, the safe evacuation of the wounded and sick.

[124] Article 13(1) of Additional Protocol I (no 7).

The requirement to give due warning in relation to medical facilities is not subject to any caveat, unlike the requirement to warn civilians, which applies “unless circumstances do not permit”.. Despite the stringency of the obligation to issue such a warning, it is currently unclear whether parties to armed conflict systematically issue them and, when they do so, how they apply the rule. For instance, there is insufficient information on whether and how warnings meet the requirement for specificity, on how parties adapt the format of these warnings to ensure their accessibility, and on the parameters guiding the timing and expiry time granted for ceasing acts harmful to the enemy.

Medical actors have few recent experiences of warnings having been shared. This may be explained by the fact that warnings – when and if made – are primarily addressed to the armed forces of the warring parties instead of to other actors who might be closer to the hostilities or to the medical structures at risk of losing their special protection.

Medical authorities or hospital managers seem to be left out of the initial recipient list, although they have a primary capacity to act on the neutralization of the act harmful to the enemy. Good practice should include channelling the warning to the medical facility itself, in addition to the adverse party to the conflict allegedly misusing the facility.

The content of the warning is another important question: the warning and information provided to the medical authorities should be as specific as possible to allow remedial action to be taken: you need to know what you are expected to react to.

The format of the warning is also important in modern field realities.

All these questions should also benefit from good practices that are totally absent today in the theatre of military operations.

2. When an attack is decided and somehow imminent

2.1. During-attack: allow and support medical evacuation of patients and medical personnel

It is only when the loss of specific protection is considered effective that the potential consequences of this can come into effect. The medical structure could turn into a military objective if the 2-pronged conditions of IHL are fulfilled: effective contribution to military action and definite military advantage.[125]

Only at that point can an evacuation under the warning be considered, organized and put in place. This is why the initial warning must also be timely and specific, providing indications about the limit of time within which an evacuation might be considered in case the warning is considered unheeded. The warning should allow for sequencing: first, allowing an action aimed

[125] Article 52(2) of Additional Protocol I (no 7).

at neutralizing the act harmful to the enemy and, second, considering the evacuation for the protection of the wounded and sick, medical personnel and the medical infrastructure.

The humanitarian consequences of an attack on a medical structure can at that time be partially mitigated if an evacuation of patients and staff to allow for the continuation of care is facilitated and respected. Referrals of patients to other medical structures can even be facilitated by warring parties, including the attacking one, when they have functional medical premises available at a near distance.

3. During an attack on medical premises

3.1. During attack: respect of the principles applicable in the conduct of hostilities: distinction, precaution and proportionality

As we all know, the principle of proportionality in the conduct of hostilities requires a balancing of the expected military advantage anticipated from the attack with the reasonable foreseen collateral damage. Attacks which are expected to cause loss of civilian life, injuries to civilians and damage to civilian infrastructure which are excessive in relation to the concrete and military advantage anticipated are considered as “disproportionate attacks”.

This assessment of proportionality and related precautions is based on what a reasonable commander knew, or should have known, at the time of launching the attack and must consider not only the immediate “collateral damage” expected to result from the attack, but also the foreseeable harm that would directly follow: the so-called “reverberating impact” on the civilian population, which should be considered as constituting both a direct and indirect consequence of this military operation.

It is almost impossible today to believe that a proportionality examination was implemented for the strikes that destroyed so many hospitals in the Gaza Strip. When a military operation leaves a 700-bed hospital “non-functional”, thousands of civilians are deprived of access to life-saving medical care for an extended period of time.

This data is easy to collect for those who want to do so, *a fortiori* for a military commander allegedly performing a proportionality test.

Beyond the patients killed in attacks on health care, hundreds of thousands of men, women and children no longer have access to medical care, probably for many years in some parts of the Strip. We can expect thousands of lives to be lost as trauma injuries go untreated, diseases undiagnosed and care for chronic conditions discontinued.

Considering the incredible level of foreseeable civilian harm inflicted upon the population through the destruction of medical structures, it should be widely and easily agreed that these attacks are disproportionate. The immediate and long-term consequences of this destruction for the population were predictable when these many attacks were launched on hospitals, one

after the other. This is regardless of whether these medical structures were rightly or wrongly considered legitimate military targets at that time; proportionality should still be applied.

4. After an attack targeting medical premises

4.1. Post-attack: support measures to ensure access to medical care

When damage to medical premises prevents them from functioning and allowing the treatment of patients, measures should be put in place to allow access to care and prevent further humanitarian catastrophe. This includes allowing medical evacuations and safe access for medical staff, assets and supplies. In practice, this is not a granted reality, and access is, on the contrary, often more complicated after such attacks. This is not to mention when double-tap attacks are perpetrated, which is also a situation increasingly witnessed in the last 10 years.

This also highlights one of the reasons for targeting hospitals which is less often commented on or mentioned than misuse: the temptation to intentionally deprive the enemy of access to medical care by targeting medical facilities where wounded enemy fighters are being treated. This is particularly prevalent in non-international armed conflicts, in which the non-State enemy can be framed as terrorist or criminal, leading to increased military interference in medical facilities and access to care for wounded non-State enemies. Some States have openly claimed that wounded enemy combatants will be denied medical care in an attempt to deter them from, or punish them for, participating in armed hostilities against the State.

4.2. Post-attack: fact-finding

A main challenge after an attack is to avoid being carried away by the war of narratives between parties to the conflict and/or medical management of the hospital targeted.

While the allegation of the loss of protection will be quickly and easily made, the real information sustaining this allegation will probably never be shared and will quickly and conveniently be stamped as “secret defence” by the only ones detaining it, making the fight for transparency a very unfair one.

The contribution of warring parties and all involved stakeholders, including the management of the medical structure attacked, to an independent – or even internal, when this is the only option available – fact-finding exercise aiming to allow the truth to emerge should be pursued with the utmost care and attention each time a medical structure is attacked. This should be made mandatory within the signatory States to the Geneva Conventions.

These initiatives would also support the management of medical structures in taking measures to improve guarantees of full control over the medical structure for future potential demonstrated use outside its humanitarian function.

4.3. Post-attack: accountability and judicial consequences

For the same reasons already exposed, when it comes to their practical implementation on the battlefield, it is extremely difficult to challenge the military rationale. There is no consolidated jurisprudence from international tribunals on this topic that could create an effective framework of accountability for the protection of civilians, including attacks on hospitals.

This is particularly true when it comes to analysing and ensuring accountability for the long-term consequences of destruction on vital medical infrastructures.

International tribunals know that they cannot reach the high threshold of proof required by criminal law to establish criminal responsibility beyond reasonable doubt without having access to restricted military information. This is probably why almost no cases have reached the level of a judgement within international justice.

But it does not mean that no public accountability can be achieved beyond promises of investigations that go nowhere.

Zero tolerance for attacks on hospitals can be an objective, leaving career-ending commanders with no alternative but to comply with IHL.

For these reasons, it is ineffective and hypocritical to rely on criminal justice or on the individual responsibility of commanders to define and implement the proportionality test related to the protection of civilians. It is first and foremost the responsibility of States parties to define, share and adopt dedicated political and military doctrine and best practices that effectively limit civilian harm and attacks on hospitals in conflict.

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Moderated discussion

At the end of the panel discussion, a Q&A session allowed the audience to raise several questions.

Verifying allegations of misuse of hospitals

One participant asked whether protecting powers or their substitutes could be tasked to verify allegations of misuse of hospitals.

A panellist responded that it would not be a good idea for protecting powers or their substitutes to take on such a role, as it is linked to the conduct of hostilities and could take humanitarians too far away from their core mandate.

Protection of persons: *hors de combat* and warning requirements

a) Hors de combat

One participant asked for further elaboration on *hors de combat*, questioning whether the determination that a wounded or sick person is *hors de combat* depends on the assessment of the military or of medical personnel.

A panellist replied that *hors de combat* is always a question of fact rather than law: the question is when someone has ceased to conduct hostilities because of wounds or illness, which changes their status and engages protection against attack. The panellist added that this status could change again if the person directly participates in hostilities.

b) Loss of protection of medical personnel and warning requirements

One participant asked about the loss of protection of medical personnel, noting the absence of explicit treaty rules on when medical personnel lose protection, and asking whether there is, by analogy with the law governing medical facilities, an absolute warning requirement for persons, or whether one falls back on Article 57(2)(c) of Additional Protocol I.

A panellist questioned whether, in practice, such an approach is workable from a military perspective: while, in preparation for attacking a medical facility, a warning serves to ensure that the act harmful to the enemy is ended and to evacuate people, this may not be as workable in decision-making on targeting a specific individual. That said, the panellist emphasized that the general warning requirement under Article 57(2)(c) of Additional Protocol I does apply.

Another panellist added that it also depends on where the medical personnel are physically located at the time: if they are inside a medical facility, the warning should apply because the medical facility will be affected. If they are outside the facility – for example, in the streets – it may be different.

The loss of special protection of hospitals: acts harmful to the enemy, military objective and targeting process

a) Acts harmful to the enemy

One participant asked whether bringing a military objective close to medical units constitutes an act harmful to the enemy, noting that an attack against the military objective could become more difficult in terms of the proportionality assessment due to potential damage to nearby medical units.

A panellist recalled that certain measures do not reach the threshold of acts harmful to the enemy, including that personnel may carry light weapons and use them in self-defence or in defence of the wounded and sick, and that a structure may be protected with portable weapons to a certain extent. However, the panellist added that if a military unit is brought around a hospital, that would be interpreted as an act harmful to the enemy, while emphasizing that it is not the hospital that "commits" that act.

b) Military objective, special protection and targeting process

One participant asked whether, when a hospital is used to commit an act harmful to the enemy, that use also means the hospital meets the first prong of the definition of military objective under Article 52(2) of Additional Protocol I, namely that, by its use, it makes an effective contribution to military action, or whether these are distinct thresholds. A panellist said that there are separate thresholds for "effective contribution" and "acts harmful to the enemy", and that the former has a higher threshold. The panellist added that there is likely significant overlap between them.

In a related question, one participant asked about the relationship between the use of a hospital as an act harmful to the enemy and the effective contribution to military action needed to qualify as a military objective. The participant noted that targeting processes often start with an assessment of whether an object is a military objective before proceeding to questions of special protection, precautions, proportionality and a "fire/no fire" decision. The participant asked whether qualification as a military objective leads to an automatic loss of special protection of the hospital if the standard for military objective is higher than for loss of special protection. A panellist replied that it is the reverse: loss of special protection is the framing

question that must be answered first, and only then does one proceed to the targeting analysis. The panellist linked this to a "by exception" approach to the possibility of a hospital being targeted.

Restoration of special protection

Another participant asked when a hospital's special protection is restored, noting that, in current conflicts, attacks may not be isolated incidents. Two panellists agreed that restoration is "very simple": as soon as the act harmful to the enemy ceases or is neutralized, and no other act harmful to the enemy is identified within the premises, the special protection is restored. The panellists also recalled that loss of protection is not indefinite.

Replacing medical personnel and interference with medical duties

One participant posed a thought experiment: if a belligerent, to avoid attacking a hospital, were to replace the medical personnel of a medical facility in order to end acts harmful to the enemy, would that be lawful?

A panellist responded that, aside from practical questions as to how this would be done, it risks conflating rules protecting infrastructure with rules protecting the medical profession. While it may seem like an alternative to attacking a hospital, the panellist suggested that it raises problems under the rules protecting doctors, including the requirement that doctors be allowed to carry out their medical duties, and that forcing them to step down may not respect those principles.

Military interference with medical duties and military presence in hospitals

One participant asked about military interference in hospitals through verification, inspection or interrogation of the wounded and sick, noting concerns about militarization of hospitals and potential military advantage, and asking whether this has been spelled out in doctrine.

A panellist suggested that it would be appropriate to limit questioning of wounded and sick to obligations required under the Third Geneva Convention. The panellist added that setting up an interrogation facility inside a medical facility would likely constitute misuse of the facility and added that, while military personnel may need to elicit certain information from wounded and sick persons, "full-on interrogation procedures" would be inappropriate.

Neutrality of hospitals and counterterrorism concerns

One participant raised concerns about a seeming movement away from the neutrality of hospitals in counterterrorism contexts, including situations where donations to hospitals were treated as problematic because the hospital might treat members of certain armed groups. The participant linked this to broader concerns about the politicization or securitization of medical facilities and constraints on civil society operating in conflict settings.

A panellist responded that, from an IHL perspective, “a hospital is a hospital” and that, if the people treated inside are wounded and sick – and are not directly participating in hostilities –, the fact that a hospital might be funded by money allegedly coming from a “terrorist provenance” is not, in itself, relevant to justify an attack. The panellist added that this could change if, with that money, weapons are bought and stored in the structure, or if the structure is used as a tool for participating in hostilities. The panellist also recalled that there is no definition of “terrorism” in IHL.

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PANEL 3

STANDING UP FOR IHL IN CYBER OPERATIONS: STRENGTHENING PROTECTION IN DIGITALIZED WARFARE

CHAIRED BY LAURENT GISEL, HEAD OF THE ARMS AND CONDUCT OF HOSTILITIES UNIT, ICRC

How IHL rules impose limits on cyber operations during armed conflict: a State perspective

Marie van Hoofstat
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Summary

Ms. van Hoofstat presented a State and operational perspective on how IHL limits cyber operations, highlighting several legal questions that, in her view, remain under-examined in current debates. She emphasized that cyber operations are typically complex and slow, often prepared in "hybrid" situations before an armed conflict is legally qualified, raising questions about the legal assessment of preparatory acts once the applicable framework shifts. She argued that operational efforts to avoid attribution, and the slow pace of attribution more generally, create practical tensions with legal requirements, particularly in relation to distinction and the feasibility of effective cyber-attacks that comply with IHL. Ms. van Hoofstat also pointed to challenges arising from the prevalence of cyber operations carried out as crime rather than State action and from the borderless nature of cyberspace. Finally, she described cyber operations as operationally comparable to conventional operations in planning and targeting processes, while noting the prominent role of civilian expertise, and reflected on the drafting of national positions on international law in cyberspace, concluding that such positions may be less relevant for day-to-day operations than clear reliance on core IHL principles.

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Overlooked legal questions in operational cyber practice

Cyber operations today often take place in hybrid situations. One reason is that cyber operations are complex and, in practice, slow. The notion that a cyber intrusion can create effects within minutes, hours or even on the same day is, in my view, not realistic. Cyber operations take time. As a result, what we would, from a military perspective, call the shaping phase, often occurring before the existence of an armed conflict, may already involve preparatory work for cyber operations. This can happen from an intelligence perspective, but not always. It may also occur in a legal "grey zone" under international law. Once an armed conflict is established, there is a shift in the applicable legal framework. One question is therefore how preparatory work conducted before the qualification of an armed conflict affects the legal qualification of those preparatory actions once that qualification changes.

A further aspect of preparatory actions, in my experience, is that they are often aimed at avoiding attribution. Cyber operations in hybrid situations frequently seek to avoid attribution, and States take steps to that end. This leads me to ask whether the centrality of attribution in cyber operations is not, in some respects, in tension with the principle of distinction, and

therefore whether a cyber-attack that respects the principle of distinction under IHL could ever be effective. This is a question that would merit discussion between legal experts and operational cyber personnel, because I personally do not see how respecting the principle of distinction in an armed conflict could lead to an effective attack in cyberspace.

The issue of attribution also has consequences from a legal perspective. International law responses generally require that cyberattacks be attributed to an actor. Yet attribution, like cyber operations themselves, is very slow. I think this is sometimes overlooked in theoretical debate, and the practical implications of that mismatch are, as a result, often neglected.

Third, and not necessarily specific to cyber operations, there is the prevalence of cyberattacks occurring as crime rather than necessarily as State action. This is highly relevant today. Where infrastructure or systems are subject to a cyberattack, even where they perform State functions, victims may not necessarily come forward as victims of a cyberattack. This can complicate the way international law approaches questions of cumulative events and the assessment of thresholds.

Finally, cyber has no boundaries. This is not entirely unique, similar issues arise in other domains, but the extent to which cyber operations are borderless is particularly striking, and this has a relevant impact on international law. In my view, this dimension is not yet addressed extensively.

Overall, from my perspective, there is a lack of technical understanding of cyber operations and how they work in parts of the theoretical debate today.

Cyber operations and conventional operations

From my perspective, at least in planning and execution, cyber operations are essentially the same as conventional operations. The targeting process that applies is the same as the process used for conventional operations. Consequently, the legal advice provided is also the same, whether to the commander directly or through established procedures in military operations.

In that sense, cyber is simply another vector to achieve military effects.

At the same time, one practical difference is that cyber operations today are often conducted by civilians. Many cyber experts are civilians rather than military personnel. It also affects the military planning and process: when many civilians are involved, there is a need to familiarize them with military planning and the way military operations are organized and conducted.

Drafting a national position on the applicability of international law in cyberspace

With respect to the drafting process of a national position on the applicability of international law in cyberspace, it may be helpful to briefly explain how such a position came about in Belgium.[126] The publication of a national position was, in our case, prompted by requests from like-minded States, in part to counter initiatives arguing for new cyber treaties or new cyber law. From this perspective, the starting point was that there is no need for new cyber law; rather, there is a need to apply existing international law.

In Belgium, the Ministry of Foreign Affairs is the competent service to publish such a national position. However, the Ministry of Defence is the executing part of the State's obligations under international law in this area. In practical terms, this meant a joint venture between the Ministry of Foreign Affairs and the Ministry of Defence. It also meant reconciling different interests around the same table: diplomatic and political interests on the Ministry of Foreign Affairs side, and political and operational interests on the Ministry of Defence side. Those interests do not necessarily align, and the process requires convergence across them.

The result, in our case, was a relatively minimal position. One reason is the lack of operational experience. From the Ministry of Defence side, the question is often: what would you like to declare? The response, from an operational perspective, may be that we do not yet know what we want to declare, because we lack the operational experience that would justify taking firm positions.

Cyber capabilities also matter. Reciprocity is one factor, but a State's cyber capacities play a role in how it positions itself on the applicability of international law in cyberspace and how it interprets certain issues. If a State has significant cyber capacities and is more on the "attacker" side, it may tend to place thresholds differently. If it is more often on the "victim" side and its cyber capacities are limited, it may take a different position. This helps explain, for example, why some issues, such as collective countermeasures, may be treated cautiously in national positions. From a Belgian perspective, the position may not be expansive, but it may also not exclude certain options, reflecting Belgium's broader position in today's geopolitical context.

From a process perspective, there are also practical limits. While guidance exists on how to draft a national position, my experience is that such guidance can be very theoretical and not particularly useful for the hands-on negotiations required to agree on a final text.

Finally, I have broader reflections on the process as such. A national position is, in some sense, an opinion – but to what end? Is it intended to create customary law, or to confirm it? On some

[126] Kingdom of Belgium, *The National Position of Belgium on International Law Applicable to Cyberspace – 2025* (2025), available at: https://docs-library.unoda.org/Open-Ended_Working_Group_on_Information_and_Communication_Technologies_-_(2021)/National_position_BE_on_international_law_DEF_171025.pdf

rules that are already widely recognized as customary, States nonetheless take positions that "straddle" issues. Positions also evolve: some States have published second or third national positions, shifting their views on certain topics.

From an operational perspective, that leads to a practical conclusion: in day-to-day cyber operations, national positions may not be especially relevant. When speaking to commanders, it is not the detailed legal discussion in a national position that will interest them. What helps a legal advisor in cyber operations is often returning to the basics, to the principles that commanders know, respect, and seek to apply in operations. Long and detailed national positions are unlikely to be read by military commanders who must conduct cyber operations.

In that sense, operationally, "less is more": keep it simple.

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The legal implications of the military use of civilian ICT infrastructure, and the involvement of civilians in cyber operations during armed conflict

Dr. Heather Harrison Dinniss
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Summary

Dr. Harrison Dinniss discussed the protection implications of the military's reliance on civilian ICT infrastructure and the increasing involvement of civilians in cyber operations during armed conflict. She emphasized that civilian infrastructure may lose protection and become a lawful target where it meets the definition of a military objective under Article 52(2) of Additional Protocol I, highlighting the risks created by extensive military use of civilian systems. To better protect civilians, she advocated recognizing certain forms of data as an "object" for IHL purposes and requiring proportionality assessments to account for "internal" civilian harm within a targeted system, as well as external effects. She also stressed that civilians who participate in cyber operations risk losing civilian protection for the duration of such direct participation and may face criminal liability, while remaining bound to respect IHL. The contribution underlined State responsibilities to inform and ensure compliance and encouraged private technology companies to mitigate risks to personnel and civilian data.

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Introduction

Thank you for the invitation to participate in this important and timely discussion. In this contribution I want to examine the legal implications both of the military's use of civilian infrastructure, and the impact of the increasing involvement of civilians in cyber operations during armed conflict, whether they act as individuals, as part of a hacker group, or as civilian employees of an ICT or technology company. Then, as this panel is about protecting civilians and standing up for IHL, I want to highlight some steps that can be taken to further that goal.

Military use of civilian infrastructure

One of the more compelling issues in ensuring the protection of civilians in and from cyber operations comes from the infrastructure itself. The vast majority – it is often cited that as much as 96% – of military communications go over civilian infrastructure. That reliance on civilian infrastructure has only increased in recent years, as private companies contract with States to provide a myriad of services, from cloud computing and secure storage to enterprise solutions and other mission-critical digital capabilities.

The main legal implication of the military use of civilian Infrastructure is that it results in the infrastructure losing its protection as a civilian object and makes it vulnerable as a lawful target of military operations. Article 52(2) of Additional Protocol I sets out the definition of a military objective and is widely accepted as reflective of customary international law: military objectives are *"those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage*".[127] Civilian objects, on the other hand, are framed in the negative: they are "*all objects which are not military objectives"*.[128] So, the classification is, of necessity, a binary one: either an object meets the definition and is a military objective, *or* it is a civilian object. It cannot be both. So, while we hear a lot of talk of dual-use objects – and it is certainly a useful descriptor of what things do – there is no such thing in international humanitarian law. If the military uses civilian infrastructure in such a way that it makes an effective contribution to military action, and destroying or neutralising it creates a definite military advantage for the opposing forces, the infrastructure becomes a military objective and may be lawfully targeted.

Two things flow from that which are important in order to stand up for IHL and protect civilians.

First, we need to accept the idea of data (at the very least operational data or code), as an object, something that is capable of protection and attack under IHL.[129] This allows us to define the most *appropriate* military objective in a world that is increasingly defined by virtualisation and separation between virtual infrastructure and hardware components. When a single piece of hardware is hosting both military and civilian virtual infrastructure and data, such an approach allows us to target that which is a lawful target and protect that which is civilian.

Second, and regardless of where we end up on the first point, when it comes to cyber operations in particular – given the interconnected nature of the domain and the dual-use nature of much of the infrastructure – we also need to insist on proportionality assessments that include so-called "internal" proportionality. In other words, the assessment should account for the civilian harm caused *within* the targeted system, as well as external to it, rather than considering only external effects once a system (or other piece of infrastructure) has been classified as a military objective. Take the previous example: imagine a server running multiple instances of an operating system, only one of which is being used by the military. The attacking State may designate the server itself as the military objective;[130] the subsequent proportionality

[127] Article 52(2) of Additional Protocol I (no 7).
[128] Article 52(1) of Additional Protocol I (no 7).
[129] Operational data is the data that gives software its ability to function (also functional data). For example, operating systems or software code. The author has written about this elsewhere. See Heather Harrison Dinniss, 'The Nature of Objects: Targeting Networks and the Challenge of Defining Cyber Military Objectives' (2015) 48 *Israel Law Review* 39-54.
[130] As opposed to merely the military instance in the previous example.

calculation should include all the damage caused to the civilian instances and data contained on that server, as well as the damage caused external to it. The example can be scaled to any piece of infrastructure that may be treated as a single military objective.

Individual civilians involved

The second question that I want to address is the legal implications of the increasing numbers of civilians, whether individuals, hacker groups or tech company personnel, becoming involved in cyber operations during recent armed conflicts.

Civilians have always had a role to play in armed conflicts, but the increasing digitisation of the battlespace has meant that there are now more ways in which civilians can become involved.[131] This is particularly true when it comes to cyber operations. One does not even have to be that tech-savvy – many of the tools are readily available online and easy to use. In addition, one does not have to be living anywhere near the conflict – one can be sitting half a world away and still be directly involved in ongoing hostilities.

International humanitarian law does not prohibit civilian participation in hostilities, whether they are acting independently, in a group or as employees of an ICT company, but individuals need to be aware of the *risks* that their participation brings. For example, and perhaps most importantly, they lose protection as civilians for the duration of their participation and can be targeted. They should also be aware that targeting under IHL is not restricted to cyber means – if you hack, you can still be shot![132] In addition, it is clear that some of the acts that individuals conduct will be criminal, and they need to be aware that they can be prosecuted for those acts.

In addition to the risks involved, civilians taking part in cyber operations must also be aware of their *obligations*. Regardless of how they participate – whether individually, as members of a hacker group, or as employees of a private company – they must respect and comply with IHL. That entails a responsibility to educate themselves on the rules and principles applicable in armed conflict. States will also have a role to play here both in educating their own populations and well as those who act on their behalf and ensuring respect of IHL by such individuals.[133]

States must demand that civilians respect IHL, suppress any violations and prosecute war crimes that are committed by civilians – even when it is politically inconvenient or does not fit

[131] The author had the pleasure of contributing to an expert meeting process with the ICRC and Geneva Academy which deals with this topic. For a full examination of the topic, see the resulting report: ICRC and Geneva Academy of International Humanitarian Law and Human Rights, *International Humanitarian Law and the Growing Involvement of Civilians in Cyber and Other Digital Activities During Armed Conflict*, Geneva, November 2025, available at: https://www.icrc.org/en/article/international-humanitarian-law-growing-involvement-civilians-cyber-operations-digital-activities-conflict.

[132] Clearly this will be subject to other restrictions such as where the individual is operating from and the applicable legal framework.

[133] Common Article 1 of the Geneva Conventions of 1949.

the prevailing narrative. Moreover, if States are allowing or even encouraging individuals to take part in cyber operations, they should:

1. Clearly inform them of both the risks involved in their participation and their obligations under IHL;
2. Consider incorporating such individuals into their armed forces;[134]
3. Consider including IHL compliance as a standard part of any contract for services with companies or contractors engaged by the State.

As for private technology companies involved in the provision of products or services, like individuals they need to be aware of the risks of providing such services to a party to an armed conflict and take appropriate measures to insulate both their staff and their infrastructure or other property from those risks. While personnel of private technology companies are civilian, any activities that they engage in that would constitute direct participation in hostilities will cause them to forfeit that protection and render them liable to attack, even if such activities are provided as commercially contracted services.

The infrastructure and property of private technology companies are generally civilian in nature; however, the use of such property or infrastructure by the military exposes it to attack by an opposing force where it meets the definition of a military objective. Additionally, while it is States rather than private technology companies that have a legal obligation to take precautions in defence,[135] as a commercial imperative, private companies should also take measures to protect their civilian customer's data by segregating it, as far as feasible, from military data, as well as by having robust data security and recovery processes in place to mitigate any incidental harm caused as a result of attacks against their military clientele.

Standing up for IHL in cyber operations will require us to think again about the increasing reliance on civilian infrastructure and the growing involvement of civilians in armed conflict and the roles and responsibilities of different actors. Protection of civilians must remain fundamental to the law of armed conflict, despite the trajectory of modern warfare.

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[134] Whether as members within the meaning of Article 43 of Additional Protocol I or perhaps as volunteer or militia forces within the meaning of Article 4(A)(2) of the Hague Regulations.
[135] Article 58 of Additional Protocol I (no 7).

The protection of civilians and other protected persons from the spread of harmful information during armed conflict

Chantal Joris
Senior Legal Officer, ARTICLE 19

Summary

Ms. Joris discussed how "harmful information" in armed conflict should be assessed under both IHL and IHRL, emphasizing that IHRL imposes important constraints on cyber and information operations and on State responses to speech. She outlined how IHL and IHRL place limits on certain forms of expression, including through prohibitions on propaganda for war and incitement under Article 20 of the International Covenant on Civil and Political Rights, and through obligations linked to the rights to life, freedom from ill-treatment and freedom of expression. The contribution cautioned that responses to "harmful information" can themselves cause harm when they become vehicles for censorship or control, such as internet shutdowns, broad cybercrime laws, or platform bans, often failing legality, necessity and proportionality requirements and undermining civilians' access to vital information and accountability. Ms. Joris argued that effective approaches should prioritize enabling measures that strengthen resilience, including access to reliable information, media diversity and transparency, ideally beginning in peacetime. She also highlighted the role of social media companies, calling for heightened due diligence under the UN Guiding Principles on Business and Human Rights and warning that platform design, moderation practices and State pressure, alongside evolving regulation such as the EU Digital Services Act, can significantly shape the spread of harmful information and the availability of conflict-related documentation.

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Introduction

Ensuring robust protection in digitalised warfare for civilians and other protected persons requires attention not only to international humanitarian law (IHL), but also to international human rights law (IHRL). IHRL imposes important constraints on cyber and information operations, including during armed conflict.[136] For example, the use of spyware against civilians, internet shutdowns, or the dissemination of dehumanising content should be assessed under both IHL and IHRL in order to capture the full scope of protection and responses these legal frameworks have to offer.

[136] Any assessment under international human rights law must take into account the extraterritorial application of human rights obligations, how and to what extent non-State actors are bound by these obligations, and whether any derogation measures apply.

The interplay between IHL and IHRL is particularly relevant to the topic of this contribution – "harmful information".[137] State responses to such "harmful information", which might also include related forms of expression such as "disinformation" or "hate speech", must comply with IHRL. At the same time, it is essential that responses to "harmful information" by other stakeholders, including humanitarian actors, also be grounded in a thorough understanding of the protection of freedom of expression in armed conflict, a central component of which is the right to information.[138]

This contribution first discusses how IHRL complements IHL in placing limitations on the dissemination of "harmful information". It then considers how responses to such speech can themselves cause harm and violate rights, and explores how States and other stakeholders can address "harmful information" effectively while upholding the right to freedom of expression. Finally, it considers how social media companies might contribute to, or help mitigate, the spread of "harmful information" in armed conflict.

IHRL limitations on "harmful information" during armed conflict

Neither IHL nor IHRL prohibit "harmful information" *per se*, but both legal frameworks place specific limits on such speech. For example, under IHL, the prohibition of perfidy, the prohibition of information operations primarily intended to spread terror among the civilian population, and the obligation to respect IHL under Common Article 1 of the Geneva Conventions impose limitations on certain types of "harmful information".[139]

In addition to IHL, IHRL constrains the dissemination of "harmful information" in at least three ways.[140]

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[137] For the purposes of this contribution, the term "harmful information" is used in line with the terminology applied in the ICRC harmful information response framework, which focuses on information that can cause or contribute to physical, psychological, economic and social harm during conflict. See ICRC, *Addressing Harmful Information in Conflict Settings: A Response Framework for Humanitarian Organizations,* 30 January 2025, page 6, available at: https://www.icrc.org/en/publication/addressing-harmful-information-conflict-settings-response-framework-humanitarian. Given time constraints, the presentation did not address debates over what constitutes "harmful information" or related concepts such as "disinformation". Nevertheless, it is worth highlighting that, as a freedom of expression organisation, ARTICLE 19 generally opposes defining or categorising such content, as such definitions are inherently ambiguous and risk overly broad and subjective interpretations that may conflict with freedom of expression standards; this is why these terms are used in inverted commas.

[138] Article 19 of the International Covenant on Civil and Political Rights (ICCPR), (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. For an analysis of the protection of freedom of expression in armed conflict more specifically, see ARTICLE 19, *Clearing the Fog of War: Protecting Freedom of Expression in Armed Conflict*, Policy Brief, December 2024, available at: https://www.article19.org/wp-content/uploads/2021/07/Clearing-the-Fog-of-War-3-December-2024.pdf.

[139] See Tilman Rodenhäuser, 'The Legal Boundaries of (Digital) Information or Psychological Operations Under International Humanitarian Law' (2003) 100 *International Law Studies* 541–573.

[140] While not the focus of this contribution, it is worth noting that international criminal law imposes additional limitations that may apply to situations of armed conflict.

First, Article 20 of the International Covenant on Civil and Political Rights (ICCPR) imposes an obligation on States to prohibit (though not necessarily criminalise) certain forms of speech, namely "propaganda for war" and "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".[141] As stated by the Human Rights Committee in its General Comment on Article 20, States should also refrain themselves from any such propaganda or advocacy.[142]

Second, the obligation to protect, respect, and fulfil the right to life,[143] as well as the right to be free from torture or cruel, inhuman, or degrading treatment or punishment,[144] arguably requires States to refrain from communications (and to take active measures against such communications by third parties) that can escalate tensions or fuel hatred and mistrust, and thereby increase the likelihood of violence by either State forces or third parties.[145]

Third, the obligation to respect, protect and fulfil the right to freedom of expression should be understood as requiring States to refrain from systematically degrading the information environment by encouraging or disseminating "disinformation" during armed conflict.[146]

IHL and IHRL interact in additional ways, as their respective obligations inform one another in armed conflict. Factors such as the target audience can further be relevant in determining whether IHL or IHRL is primarily applicable. Whether based primarily on IHL or IHRL, any restriction under these frameworks must meet the requirements for limiting the right to freedom of expression.[147]

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[141] Article 20 of the ICCPR (no 138). It is worth highlighting that several States have made reservations to both paragraphs of Article 20. See Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Status of Ratification Interactive Dashboard', available at: https://indicators.ohchr.org/.

[142] See UN Human Rights Committee, *General Comment No. 11: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred (Article 20)* (1983), para. 2.

[143] Article 6 of the ICCPR (no 138).

[144] Article 7 of the ICCPR (no 138).

[145] For a similar reasoning in the context of propaganda for war and incitement of national, racial or religious hatred, see UN Human Rights Committee, *General Comment No. 36, on Article 6: Right to Life* (2019), UN Doc CCPR/C/GC/36, para. 59: *"Failure to comply with [the] obligations under article 20 [of the ICCPR] may also constitute a failure to take the necessary measures to protect the right to life under article 6".*

[146] See UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Disinformation and Freedom of Opinion and Expression During Armed Conflicts*, 12 August 2022, UN Doc A/77/288, para. 110.

[147] See, specifically for the relationship between Article 19 and Article 20 of the ICCPR, UN Human Rights Committee, *General Comment No. 34, on Article 19: Freedoms of Opinion and Expression* (2011), UN Doc CCPR/C/GC/34, paras. 49-50.

Upholding freedom of expression when responding to "harmful information"

While the spread of radical, false, inciting or dehumanising speech can contribute to harm and exacerbate the vulnerabilities of communities impacted by conflict,[148] so too can responses which result in violations of the right to freedom of expression.

In fact, measures often presented as responses to such types of speech – or to what those in power label as "disinformation", "terrorist speech", or similar – are frequently used to increase control over the information space. From internet shutdowns to broadly drafted cybercrime laws that outlaw criticism of the armed forces, from blocking social media platforms to closing media outlets, such measures are sometimes justified as responses necessary to protect public order or national security.[149]

More often than not, such measures conflict with Article 19 of the ICCPR, which requires that any restrictions on freedom of expression to meet the criteria of legality, legitimacy, necessity, and proportionality. It is a fundamental necessity for those impacted by conflict that these requirements be met. Violations of the right to freedom of expression can prevent civilians from accessing life-saving information, calling medical services or communicating with loved ones. Journalists and others may be hindered from documenting events, thereby limiting public awareness and hampering future accountability efforts. Blanket internet shutdowns – which are highly unlikely ever to be permissible under Article 19 of the ICCPR since their indiscriminate effects render them disproportionate[150] – can impede the proper operation of hospitals and humanitarian organisations.[151]

Even when references to "harmful information" are not merely a pretext to justify censorship, the potential of "disinformation" or "hate speech" to cause serious harm during conflicts, combined with the urgent and time-sensitive need to address such threats, often leads States (including non-belligerent States), companies, and other actors to adopt and support excessively restrictive measures that fall short of freedom of expression standards.

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[148] For a typology of harms related to the spread of "harmful information" on social media, see Bailey Ulbricht and Joelle Rizk, 'How harmful information on social media impacts people affected by armed conflict: A typology of harms', 106 *International Review of the Red Cross* 823 (2024), pp. 823–862, available at: https://international-review.icrc.org/articles/how-harmful-information-on-social-media-impacts-people-affected-by-armed-conflict-926

[149] See ARTICLE 19, *Clearing the fog of war* (no 138), pp. 19-25.

[150] See UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights: Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights* (2022), UN Doc A/HRC/50/55, para. 13.

[151] See Tilman Rodenhäuser 'International humanitarian law and connectivity disruptions during armed conflict' (ICRC Humanitarian Law & Policy Blog, 3 July 2025), available at: https://blogs.icrc.org/law-and-policy/2025/07/03/international-humanitarian-law-and-connectivity-disruptions-during-armed-conflict/.

Striking the right balance can be difficult and it is certainly important that States appropriately address "harmful information" during armed conflict. Too often, even the most dangerous type of expression, such as propaganda for war or direct and public incitement to genocide, is met with inaction. Still, the issue of "harmful information" in armed conflict – much like in times of peace – is most effectively addressed through enabling measures that tackle its root causes and strengthen societal resilience. These measures should begin in peacetime and pre-conflict periods. They include improving access to reliable information, strengthening strategic communication capabilities, promoting media diversity, and increasing transparency.

The role and responsibilities of social media companies

Any discussion of "harmful information" is incomplete without considering the role and responsibilities of social media companies. They have become powerful actors in shaping how information circulates in armed conflict, for better and for worse. They offer a key channel for people to communicate and access critical information. The ability to document events as they unfold would be severely impaired without online platforms.[152] But social media is also increasingly used as a tool to manipulate narratives, spread fear and incite violence.[153]

The challenges posed by social media companies in armed conflict are closely linked to their problematic platform design and business models, including their data-collection practices, algorithmic systems, and monetisation strategies.[154] In conflict settings, there is an increased risk that these practices translate into offline harm. Social media companies have further been criticised for inappropriate content moderation (largely associated to inadequate resourcing) of inciting and dehumanising narratives while at the same time limiting political speech or graphic material that may be in the public interest. They have further been accused of responding inconsistently to different armed conflicts, including in their content moderation, monetisation, and advertising practices.[155] Issues can also arise from content moderation

[152] See the work of Mnemonic to preserve digital information documenting human rights violations, including on social media platforms, available here: https://mnemonic.org/en/.

[153] See UN Special Rapporteur on freedom of expression, *Disinformation and freedom of expression during armed conflicts* (no 146), para. 3.

[154] See, among many others, Ranking Digital Rights, *It's the business model how big tech's profit machine is distorting the public sphere and threatening democracy* (2020), available at: https://rankingdigitalrights.org/its-the-business-model/; Giovanni De Gregorio, 'Monetising harmful content on social media' (Verfassungsblog, 24 May 2023), available at: https://verfassungsblog.de/monetising-harmful-content/; Amnesty International, 'What is Big Tech's surveillance-based business model?' (16 February 2022), available at: https://www.amnesty.org/en/latest/campaigns/2022/02/what-is-big-techs-surveillance-based-business-model/.

[155] See Caroline Tynan, 'The Implications of Inconsistent Content Moderation: Reflections on Ukraine and Yemen Conflicts' (Global Policy Journal, 7 April 2022), available at: https://www.globalpolicyjournal.com/blog/07/04/2022/implications-inconsistent-content-moderation-reflections-ukraine-and-yemen; Human Rights Watch, *Meta's Broken Promises, Systematic Censorship of Palestine Content on Instagram and Facebook,* 21 December 2023, pp. 33-36, available at:

policies themselves (not only their enforcement). For example, some content policies prohibit any "glorification", "support" or "representation" of specific banned organisations and entities, which can include armed groups. At times, this can risk reinforcing a narrative dominated by one of the parties to the conflict, while potentially limiting access to entire communities under the other party's control.[156]

Like all businesses, social media companies have a responsibility to respect IHRL and IHL if they offer services in conflict-affected areas. This is articulated in the UN Guiding Principles on Business and Human Rights.[157] More specifically, companies should conduct heightened due diligence to identify, prevent, mitigate and account for how they address any adverse impacts of their activities during armed conflict. ARTICLE 19 has issued a number of recommendations in this respect, specifically addressing the risks associated with social media companies in conflict settings.[158]

While there have been some limited improvements in recent years, such as social media companies incorporating references to IHL into their content policies, significant problems remain. Reductions to human rights and trust and safety teams, along with declining engagement with civil society, suggest a weakening commitment to upholding IHL and IHRL and to protecting communities affected by armed conflict and other situations of violence.

Companies' actions are also shaped by State measures that directly target them. States increasingly request that social media companies restrict content or provide access to user data in armed conflict.[159] Such requests may come from parties to a conflict as well as from third States. In recent years, many States have also adopted or updated regulations governing digital services. Even where enacted outside conflict zones, these regulations have the potential to affect how social media companies handle content related to armed conflicts. The

https://www.hrw.org/report/2023/12/21/metas-broken-promises/systemic-censorship-palestine-content-instagram-and.

[156] This issue has been highlighted in the context of Meta's Dangerous Organizations and Individuals (DIO) policy, targeting armed groups like Sudan's Rapid Support Forces or Hamas. See Oversight Board, 'Sudan's Rapid Support Forces Video Captive' (11 April 2024), available at: https://www.oversightboard.com/decision/fb-14uy7pvn/; Business for Social Responsibility, *Human rights due diligence of Meta's impacts in Israel and Palestine in May 2021*, September 2022, p. 8, available at: https://www.bsr.org/en/reports/meta-human-rights-israel-palestine.

[157] See UN Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011), UN Doc A/HRC/17/31, annex.

[158] See ARTICLE 19, *Clearing the fog of war* (no 138), pp. 38-42.

[159] For examples from the conflicts in Myanmar, Russia-Ukraine and Israel-Palestine, see ARTICLE 19, *Clearing the fog of war* (no 138), fn. 193.

EU Digital Services Act, adopted in July 2022, is a particularly prominent example.[160] Although it makes no mention of armed conflict or IHL, its transparency, risk-management and data-access provisions have the potential to impact how social media companies address "harmful information" and to affect the availability of documentation on the effects of armed conflicts, including digital evidence of potential crimes.[161] Actors engaging with social media companies should be mindful of this broader regulatory context and of how it may influence social media companies' decisions on recommending and moderating conflict-related content.

Conclusion

The challenge of addressing the spread of "harmful information" is intensifying with the rapid development of new technologies, including generative AI. While this raises novel questions under international law, it remains clear that responses to "harmful information" during armed conflict must be grounded in both IHL and IHRL. Actors working on these issues, including those engaging with conflict parties or social media companies, should avoid promoting restrictions on broadly defined categories of content that exceed the permissible limits on freedom of expression under IHRL. While certain forms of expression do require restriction, overly broad or poorly designed responses risk limiting conflict-affected communities' access to information and exposing them to further harm.

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[160] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27 October 2022, pp. 1–102, available at: https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng.

[161] See DSA Human Rights Alliance, *Principles for a Human-Rights Centred Application of the DSA: A Global Perspective*, 28 January 2026, available at: https://www.eff.org/document/principles-human-rights-centred-application-dsa-global-perspective; Alena Gribanova, 'The Hidden Risks of Platform Control Over Historical Memory' (Lawfare, 26 November 2025), available at: https://www.lawfaremedia.org/article/the-hidden-risks-of-platform-control-over-historical-memory#:~:text=In%20modern%20conflicts%2C%20the%20first,a%20strategic%20asset%20in%20war; ARTICLE 19, 'EU: Call for precise interpretation of Digital Services Act' (18 January 2024), available at: https://www.article19.org/resources/eu-call-for-precise-interpretation-of-digital-services-act/.

Moderated discussion

At the end of the panel discussion, a Q&A session allowed the audience to raise several questions.

Direct participation in hostilities in the digital space

One participant asked how IHL assesses the status of civilians who use digital platforms to report enemy movements and targets, and the risks this may create for civilian ICT infrastructure. The participant asked whether such activity could amount to direct participation in hostilities.

A panellist responded that IHL takes the view that providing tactical intelligence to a party to an armed conflict amounts to direct participation in hostilities, for such time as the person directly participates. The panellist added that walking around with a cell phone, or having an app capable of sending intelligence, is not in itself direct participation in hostilities, as it does not provide sufficient causality.

Civilian volunteers and loosely affiliated cyber units

One participant asked about loosely State-affiliated cyber units involving civilian volunteers, the main legal risks they rise, and why States may use such units instead of formal cyber commands.

One panellist expressed concern about the increased blurring of civilian applications and military uses, and the implications for the protections associated with technologies and for individuals transmitting information. Referring to work on digital rights, the panellist noted that simply reporting or sharing information would not be sufficient to amount to direct participation in hostilities and cautioned against extending that categorization too broadly. The panellist added that, where the conduct constitutes a crime under domestic law, that framework may often be preferable, depending on the specific context.

Addressing why States may use such units, another panellist noted that there is nothing "special" about cyber under international law. However, cyber-related realities may explain the different forms of employing cyber means by States, including the rapid evolution of technology and States' limited capacity and resources to keep pace.

Doxing, privacy and the "militarization of criminality"

One participant asked about practices whereby civilian cyber actors obtained and disseminated phone numbers of soldiers' family members, which were then used to locate soldiers. The participant asked whether this should be considered direct participation in

hostilities, a cybercrime, or an exercise of freedom of expression, and whether expanding IHL to capture such activities reflects a dangerous trend of “militarization of criminality”.

A panellist responded that whether such conduct is a crime depends on national law. From the perspective of direct participation in hostilities, the panellist suggested it is not proximate enough and does not constitute tactical intelligence. The panellist added that serious privacy rights concerns may arise in relation to the release of personal information.

Another panellist agreed that the conduct would not necessarily amount to direct participation in hostilities, while emphasizing that this does not mean it is lawful under IHL. The panellist noted that other IHL rules may be violated depending on the circumstances, including the prohibition of threats or acts of terror and the obligation to take constant care to spare the civilian population in all military operations.

Internal proportionality and civilian harm within a military objective

One participant asked about the concept of internal proportionality, and whether it applies only when a military objective has a simultaneous civilian function (a “dual-use” object), or more broadly to any civilian object that has become a military objective.

A panellist responded that it applies to any civilian object being used by the military, and that the question is what harm is included in the calculations. By way of example, the panellist referred to an apartment building where one apartment is used as a command centre and noted that the presence of such use does not mean civilians inside the building can be disregarded. The panellist added that similar questions arise for cyber or virtual objects.

A participant added that operational lawyers would always assess whether there are potential civilians in the area, and that this is always part of the analysis.

Attribution, proxies and due diligence in cyber operations

One participant asked how attribution should be assessed where private individuals conduct cyber operations that may be sponsored by States, including where a State institution employs a private individual who then launches a cyber-attack. The participant asked whether attribution depends on strict liability or State intention.

A panellist responded that the described situation is comparable to the use of proxies in conventional warfare, and attribution would depend on the degree of control the State has over the individual. The panellist also noted that States have due diligence obligations under international law, including where their infrastructure is used to mount a cyber-attack.

Developing national positions on IHL and multi-domain operations

One participant asked how the use of various capabilities in multi-domain operations, in conjunction with cyber operations, plays a role in developing national positions on how IHL applies to cyberspace.

A panellist explained that, in one national practice, the legal advice of the Ministry of Defence was centralized for all forces. The panellist noted that, in that practice, Cyber Command was part of the intelligence services and was not the same as the cyber force. The panellist added that legal advisors represented all the forces, which helped guarantee interoperability and support the application of international law in developing a national position on cyber, while avoiding positions that would diverge from those taken in other forces.

Precautions and the preservation of civilian data

One participant asked whether, with technological advances (including in AI), there may be discussions around affirmative obligations for States with the capacity to use technological measures to preserve civilian data while offensive cyber operations are taking place.

A panellist responded that such arguments would need to be framed under precautions, and that they would relate to data, not merely incidental information, potentially with some State involvement. The panellist noted that concerns about preserving essential civilian records have arisen in past conflicts, including through efforts to safeguard demographic and other vital records.

Information operations, propaganda and the interplay between IHL and IHRL

a) Propaganda for war and *lex specialis*

One participant asked how the prohibition of propaganda for war relates to information operations in armed conflict, including whether *lex specialis* applies.

A panellist responded that propaganda for war primarily concerns threats of breaches of the UN Charter and does not generally raise a *lex specialis* issue under IHL for information operations. The panellist noted discussions around whether the relevant prohibition applies only before war or also once hostilities are ongoing and emphasized that use-of-force rules continue to apply and are not subject to derogation. The panellist also observed overlap between hate speech, disinformation, information operations prohibited by IHL, and other legal frameworks, including under the Genocide Convention.

b) Information operations directed at enemy combatants and human rights law

Another participant asked about limitations on information operations directed at enemy combatants, including the role of human rights law. A panellist responded that this may depend

on whether it is an international armed conflict or a non-international armed conflict, and that human rights obligations may still apply extraterritorially at least with respect to negative obligations, though not everyone agrees. The panellist noted that IHL allows ruses of war and may provide most of the answer in some cases, while emphasizing that a human rights analysis should also be undertaken and that human rights implications may become particularly relevant where information operations have knock-on effects harming civilians.

c) Responsibility of the media

Finally, one participant asked about the responsibility of the media, seeking clarity in light of examples where media dissemination contributed to conflict dynamics. A panellist replied that, while mere reporting would generally not reach the threshold of direct participation in hostilities, this does not exclude accountability under other legal frameworks, including for incitement to genocide, depending on the circumstances and applicable law.

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PANEL 4

STANDING UP FOR IHL AT SEA: TAKING STOCK OF PROTECTION CHALLENGES IN CONTEMPORARY NAVAL WARFARE

CHAIRED BY ROMINA MORELLO, LEGAL ADVISOR ON THE GLOBAL IHL INITIATIVE, ICRC

Think before you sink: the position of merchant vessels under the law of naval warfare

Tom Ruys
Professor of International Law, Ghent University

Summary

Prof. Ruys discussed economic warfare and the treatment of merchant vessels under the traditional law of naval warfare, critically examining the rules on visit, search and capture reflected in the San Remo and Newport Manuals. He illustrated what these rules could entail in practice for modern shipping, characterized by flags of convenience, complex ownership structures and container vessels carrying goods of different origins to multiple destinations. He challenged the view that the law of naval warfare constitutes a lex specialis *that has remained largely unscathed by more recent developments. He argued that there is misplaced faith in the traditional rules, given their weak and piecemeal treaty basis, inconsistent historical practice, criticism of their application and the absence of practice in many conflicts. He also stressed that the shipping industry has changed fundamentally and that developments in the prohibition of the use of force, human rights law, international criminal law and the law of the sea must be taken into account. Finally, he called for the progressive development of the law, including moving away from the language of "belligerent rights," reconsidering how vessels are classified as enemy vessels, and placing greater emphasis on reasonableness, proportionality and military necessity. He concluded that resistance to visit, search or capture should not automatically render a merchant vessel liable to attack and should instead be approached through a law-enforcement paradigm rather than a conduct-of-hostilities paradigm.*

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My presentation will focus on economic warfare, the treatment of merchant vessels under the traditional law of naval warfare and take a more critical approach. For that reason, I would also have to say that I am speaking strictly in my personal capacity. I will not touch upon blockade law or on questions of targeting in a naval context.

Starting with some basics: it is common knowledge that there is a gap in treaty law when it comes to naval warfare. We have a number of old instruments from the late 19th and early 20th centuries that deal only with specific, limited topics and do not provide a comprehensive assessment of what is permissible in terms of economic warfare or the capture, search and

visit of merchant vessels, save perhaps for the 1909 London Declaration,[162] which reflected existing practice but was never adopted as a binding treaty. When States adopted the two Additional Protocols in 1977, a deliberate decision was made not to look too deeply into questions of naval warfare and to leave the old rules untouched, also in light of the practice of the World Wars and subsequent conflicts. In a nutshell, therefore, there is a clear gap in treaty law with which we are confronted and which some have sought to fill through the development of non-binding instruments.

Back in the early 20th century, we had the Oxford Manual[163] and, more recently, the 1995 San Remo Manual,[164] which has been highly impactful. To give you one example, the other day I briefly looked through the Belgian Operational Law Handbook, focusing on the section on economic warfare, and found about a dozen references to the San Remo Manual and one additional reference to the 1936 London Procès-Verbal relating to the Rules of Submarine Warfare.[165]

What does the San Remo Manual say about the treatment of merchant vessels? It proceeds from the idea that belligerents must be treated equally, whether they are the aggressor or the victim of aggression; no distinction is made in this regard. Enemy merchant vessels may, of course, be captured under these rules, and the goods they carry may also be captured, at least if they are enemy goods. Neutral goods on board those vessels would not be liable to capture, save when they constitute contraband.

What about neutral merchant vessels? They may be visited and searched when there are reasonable grounds to suspect that they are carrying contraband. If that suspicion proves to be well-founded, the vessels may be captured. There are also rules determining when enemy or neutral merchant vessels become liable to attack – for instance, if, after being warned, they actively resist an attempt to visit, search or capture them. In addition, there are rules allowing these vessels to be diverted so that inspections can be conducted. There are also exceptional circumstances in which such vessels may be destroyed if, for military reasons, they cannot be taken to port for capture and the subsequent conduct of prize proceedings.

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[162] Declaration concerning the Laws of Naval War (London Declaration) (adopted 26 February 1909, not entered into force), available at: https://ihl-databases.icrc.org/en/ihl-treaties/london-decl-1909

[163] Institute of International Law, *Manual of the Laws of Naval War* (Oxford Manual), Oxford, 9 August 1913, available at: https://ihl-databases.icrc.org/en/ihl-treaties/oxford-manual-1913

[164] International Institute of Humanitarian Law, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (San Remo Manual), Louise Doswald-Beck (ed.) (Cambridge University Press 1995), available at: https://iihl.org/san-remo-manual/

[165] Procès-Verbal Relating to the Rules of Submarine Warfare, Part IV of the Treaty of London of 22 April 1930 (signed and entered into force 6 November 1936) 173 LNTS 353, available at: https://ihl-databases.icrc.org/en/ihl-treaties/submarine-warfare-rules-pv-1936/proces-verbal

What about the distinction between enemy and neutral vessels? That distinction is made first and foremost on the basis of the vessel's flag. If a merchant vessel is flying the flag of an enemy State, that is conclusive evidence of its status. If it is flying a neutral flag, however, if the ship is owned or registered in a belligerent State, it may also be classified as an enemy merchant vessel and would therefore be liable to capture.

What do these rules entail in practice? Let us assume, for the sake of argument, that there is a conflict between the United States and Panama. At the start of the current US administration, there were some suggestions that military action might be taken. Panama is the flag State of 15% of the global fleet, meaning that 15% of the global fleet would be fair game for capture. In essence, that is what it boils down to. One might say that these vessels could simply change their flag, as is common practice among the shadow fleet and in other parts of the world for various reasons. But that would not do the trick: if a vessel changes its flag simply to evade the application of the law of naval warfare, the change may be disregarded by the belligerent parties. The vessel would therefore remain liable to capture and could still be taken for prize proceedings and ultimately confiscated.

Let us think about it more broadly: what about a potential conflict between Türkiye and Greece? 10% of the global fleet is owned by Greek shipping companies. As I mentioned before, ownership itself is also a factor that may lead a vessel to be classified as an enemy merchant vessel. Or take the case of Israel and Iran. We have heard on occasion, including recently in connection with Operation Rising Lion, that Israel considers itself to be in an international armed conflict with Iran. Israel's ZIM is one of the ten largest shipping companies in the world. In theory, therefore, these Israeli-owned vessels would be liable to capture under the relevant rules.

Let us assume that we have a vessel carrying 20,000 containers sailing across the ocean. It is neither flying an enemy flag nor owned by a belligerent party. Nevertheless, it is sailing towards a region where all these containers will be distributed across a variety of countries. Under the continuous voyage approach, if some of these containers are destined for enemy territory, we may want to ascertain whether they contain contraband. Depending on the approach taken, the list of contraband goods can be construed quite flexibly. Can you imagine a sailing city being subjected to such visit and search? If contraband were found, think of drones, thermal equipment or binoculars, that alone could render the vessel liable to capture.

Another example: many allies have been actively providing military equipment to Ukraine, some of which is shipped by sea. If Bradley Fighting Vehicles were being shipped from the Port of Antwerp, then, in theory – if we accept that an aggressor also has belligerent rights – Russia would be entitled to visit and search those vessels. If military equipment were found, it

could capture the vessels and take them for prize proceedings. This is, in fact, what the rules allow.

You might say that the San Remo Manual itself is already somewhat outdated. Fortunately, we have something more recent: the Newport Manual,[166] first published in 2023 and updated in 2025. The Newport Manual certainly has a number of novel features. It looks more closely at technological developments in the field of cyber warfare and the advancement of unmanned systems. But when it comes to economic warfare and the capture and inspection of merchant vessels, nothing changes. If anything, where there are certain changes, the approach adopted 30 years later is more conservative than that of the San Remo Manual. To give you one illustration, when it comes to the visit and search of neutral merchant vessels, the San Remo Manual states that there must be reasonable grounds to suspect that the vessel is carrying contraband. If you now consult the Newport Manual, the position taken there is that this is not a legal requirement, but merely a practical consideration. Therefore, even in the absence of reasonable suspicion, you could still proceed to visit and search a vessel carrying 20,000 containers.

I am opting here for a more critical analysis of the traditional law of naval warfare. I was relieved to see that my esteemed colleague Wolff Heintschel von Heinegg is not in the room. He is one of the foremost experts on the traditional law of naval warfare and someone whom I hold in high regard. However, he is also part of an epistemic community of experts who are highly knowledgeable in this field, who have studied past practice in great detail, and who continue to reiterate the view that the law of naval warfare constitutes a *lex specialis* that has remained largely unscathed by developments over recent decades. This is something I would humbly like to challenge. Why would I question this approach? Why is it too easy simply to rely on the notion of *lex specialis* to preserve a 120-year-old idea, namely, that the protection afforded to private property in land warfare has not also become applicable in the domain of naval warfare?

First, I think we place misplaced faith in the traditional law of naval warfare. As I said before, there is no strong treaty basis. If you go back to the various instruments, they are all piecemeal. Some of them were never transformed into binding law, while others have only a limited number of States parties. You will not find a clear, black-letter approach to economic warfare in any of these instruments. Practice at the time was also inconsistent. People tend to refer to practice during the two World Wars. However, this was practice in which States acted in complete disregard of the supposedly existing rules, including by engaging in total warfare by submarines.

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[166] Newport Manual Expert Group, *Newport Manual on the Law of Naval Warfare*, 2nd ed., *International Law Studies*, vol. 105 (2025), available at: https://digital-commons.usnwc.edu/ils/vol105/iss1/1/.

Interestingly, economic warfare was already rather controversial at the time. During the 1907 Hague Conference,[167] the United States submitted a proposal to protect private enemy and neutral property, including in the maritime domain. In other words, it proposed doing away with the idea that enemy merchant vessels and enemy goods could simply be captured at sea. That proposal failed by only two votes. Can you imagine? One hundred and twenty years ago, we fell two votes short of doing away with economic warfare at sea. We would be having a completely different conversation today had it not been for those two votes. This is a particularly striking excerpt from the records of the 1907 Peace Conference:

> "*Mais il est permis de penser que lorsque, dans un avenir plus ou moins rapproché, les diverses autres questions du droit des gens maritime auront été réglées, les intérêts pacifiques des particuliers en cas de guerre sur mer pourront alors recevoir un régime conventionnel approprié au progrès des mœurs*".[168]

In other words, we were not able to resolve this issue in 1907. However, it was hoped that, in the near future, once the rules governing the law of the sea in peacetime had been clarified, we would be able to revisit the issue and translate the progressing customs into the law of naval warfare. You might say that practice remains what it used to be and that we continue to reiterate the same rules. Indeed, if you look at military manuals, most of them restate the rules found in the London Declaration and the San Remo Manual. You might also say that some of these rules continue to be applied in practice. We have seen some conflicts, such as India-Pakistan or the Gulf War, in which some belligerent rights were indeed put to practice. More recently, Israel's conduct of prize proceedings might be regarded as another example.

Still, I think we are focusing on only part of the puzzle. Firstly, military manuals appear to be moving towards a more cautious approach to economic warfare, as reflected, for instance, in the New Zealand Manual,[169] but if we look at practice, we are also overlooking the fact that some applications of these old rules are being criticized. The United Kingdom, for instance, criticized Iraq's exercise of belligerent rights in the Persian Gulf during the 1980s, arguing that Iraq was not acting within the confines of its claimed right of self-defence. More recently, we saw Sweden criticize prize proceedings against one of the vessels attempting to break the Gaza blockade.

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[167] Deuxième Conférence internationale de la paix, *La Haye, 15 juin–18 octobre 1907: Actes et documents*, vol. I, *Séances plénières de la Conférence* (Imprimerie nationale, La Haye, 1907), available at: https://bibliotheque-numerique.diplomatie.gouv.fr/ark:/12148/bpt6k56139030/f112.item.texteImage

[168] Ibid, p.102.

[169] New Zealand Defence Force, *Manual of Armed Forces Law*, DM 69, 2nd ed., vol. 4: *Law of Armed Conflict* (2017), available at: https://www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/DM-69-2ed-vol4.pdf

Secondly, I think we are also overlooking omissions in practice. We focus on the practice that exists, but no one considers the absence of practice: the fact that, in many conflicts, the extensive belligerent rights I have outlined are simply not exercised. You might say that this is due to practical or operational considerations, but perhaps it should also count for something in legal terms.

Thirdly, there is another reason why we should be critical of the traditional rules: the shipping industry has changed in many ways. It is a completely different game from what it was in the early 20th century. In 1909, when the London Declaration was adopted, there were close ties between vessels and their flag States. The crew would often be of the same nationality, as would the shipowner, and ships could be requisitioned when an armed conflict erupted. This bears little resemblance to what we see today, where a single vessel may sail under a flag of convenience, be owned by a company in one country, be chartered in another and have a crew composed of a variety of nationalities. The goods on board may be of different origins and have a multitude of destinations, while the master of the vessel may have no knowledge of what is inside the containers.

Let me give you another quotation, this time from a publication written around ten years ago by Steven Haines, a retired British naval commander who drafted the language on economic warfare in the 2004 UK Manual of the Law of Armed Conflict.[170] He essentially argues that these old rules of naval warfare, at least those concerning economic warfare, are simply inapplicable. They serve no useful purpose and are not amenable to implementation in today's world. There is also a footnote in the article in which he explains that, in 2004, they decided to import the rules on economic warfare from the San Remo Manual into the UK Manual. The footnote then states: "I think this was a mistake."[171] For those legal advisers in the room who are working on these issues or revising existing manuals, I would advise you to think twice, and perhaps to think somewhat more creatively.

Fourthly, we have seen significant developments in the legal domain that must also count for something. In 1909, of course, there was no Kellogg–Briand Pact, let alone a UN Charter. There was no prohibition on the use of force. Today's legal landscape is fundamentally different. We distinguish between aggressors and victims of aggression, and even States acting in self-defence are bound by considerations of necessity and proportionality. They are

[170] UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, JSP 383 (Oxford University Press, 2004), available at: https://www.gov.uk/government/publications/jsp-383-the-joint-service-manual-of-the-law-of-armed-conflict-2004-edition

[171] Steven Haines, 'War at sea: Nineteenth-century laws for twenty-first century wars?', 98 *International Review of the Red Cross* 419 (2016), pp. 446, fn. 87, available at: https://international-review.icrc.org/articles/war-sea-nineteenth-century-laws-twenty-firstcentury-wars

not simply free to do anything they choose, whether on land or, I would argue, in the naval domain.

Think also of the development of human rights law. To anyone following the case law of the European Court of Human Rights, I think it is fair to say that, whenever a belligerent State member of the Council of Europe would capture an enemy vessel during an armed conflict or visited and searched a neutral merchant vessel at sea, the Strasbourg Court would likely consider this to fall within the jurisdiction of the acting State. What about the right to property? What about, potentially, the right to life if military action is involved? The European Court of Human Rights would look into those issues and apply the law. But which law would it apply: the rules of 1909, or something different?

Think of international criminal law. If you look at the Rome Statute, there is a provision, building on grave breaches in the Geneva Conventions, under which wanton destruction or appropriation of private property may constitute a war crime.[172] The ICC may have jurisdiction not only when war crimes take place on the territory of a State Party, but also when they take place aboard a vessel registered in a State Party. So, what would the Court do if confronted with such practice? That remains an open question. There is, of course, much more that could be said, including about the development of due-regard obligations under the law of the sea.

So, who is afraid of the progressive development of the law? It seems that we all are. But I would invite us to think more creatively. I think we need an alternative. One of the main reasons why we continue to reiterate the same message over and over again in military manuals is a lack of creativity, perhaps also a lack of courage. In my view, that is simply unacceptable. It is not enough. I know that, in the context of the update of the San Remo Manual, there is a certain degree of caution and trepidation about once again entering the realm of progressive development. But I would resist that tendency.

Let me offer a few thoughts. I think there is a range of possible changes to consider, and we do not necessarily need to throw everything overboard. First, we should move away from speaking in terms of “belligerent rights” and speak instead of limits on what belligerents may do at sea. This may simply be a semantic difference, but it is nonetheless a relevant one.

More importantly, when it comes to the inspection and capture of enemy and neutral merchant vessels, we need to start being more creative. We need to involve people from the shipping industry to understand that there are significant differences between container vessels and oil tankers. We also need to reconsider how a vessel is classified as an enemy vessel. I find it

[172] Articles 8(2)(a)(iv) and 12(2)(a) of the Rome Statute of the International Criminal Court (no 11); see also, Article 51 of the Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (GC II).

unacceptable that a vessel flying the flag of a particular State, when it may never enter a port in that State and when neither its owner nor any other relevant element has a genuine link to that State, should automatically be regarded as an enemy vessel for the purposes of capture and prize proceedings. In my view, we should put greater emphasis on reasonableness, proportionality and military necessity. One could either argue that the capture and inspection of vessels should not be permitted unless there is a military justification, or that such action is generally permitted but must nevertheless be subject to considerations of necessity and proportionality. There are different ways of approaching the issue, but we need to rethink the old rules.

What about attacks against enemy and neutral merchant vessels? If you look at the San Remo Manual and the Newport Manual, merchant vessels that ignore requests to submit to capture, inspection and search may be treated as military objectives liable to targeting. I do not think the Strasbourg Court would accept this approach. We need to view such situations through a law-enforcement paradigm rather than through the conduct-of-hostilities paradigm.

These are some of the provocative thoughts I wish to put before you.

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The humanitarian impact of naval warfare on land and at sea

Commander Peggy McGregor
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Summary

Commander McGregor discussed the humanitarian impact of naval warfare at sea and on land, focusing on how States can uphold IHL obligations amid evolving means and methods of warfare and increasing economic interdependence. She highlighted the challenges posed by long-range weapons and unmanned systems for fulfilling the duties under the Second Geneva Convention to search for, collect and care for the wounded, sick and shipwrecked, emphasizing that these obligations fall on parties to the conflict and require planning, notification systems and coordination, including potential deconfliction mechanisms and protected maritime arrangements. Turning to land-based consequences, she underscored how naval warfare can disrupt global trade and essential supplies, including for neutral States, and stressed that blockade and contraband measures must not aim to deprive civilians of goods indispensable to survival. She also discussed the growing vulnerability of sea-based civilian infrastructure, such as cables and offshore installations, and noted the relevance of UNCLOS and related guidance in protecting neutral States' rights and mitigating harm, including through safety zones for certain installations. The contribution concluded that the humanitarian consequences of naval warfare require anticipation and coordinated mitigation measures across the maritime battlespace.

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Let me first begin by expressing my sincere thanks to the ICRC for inviting me to take part in this panel and to the College of Europe for hosting such an inspiring event.

Over the course of the next 10 minutes, I will be presenting the humanitarian impact of naval warfare on land and at sea. As highlighted by the previous presentation, the effects of naval warfare extend far beyond the seas, significantly influencing populations and economies. I will explore the legal challenges both humanitarian organizations and armed forces may encounter at sea and on land in the event of armed conflict.

The first question I would like to address pertains to the development of emerging means and driving changes in the methods of warfare such as long-range precision strike weapons and unmanned systems. How can States uphold their obligations and deliver humanitarian assistance at sea to the wounded, the sick and shipwrecked, in a context where the officer responsible for launching the strike might well not be on the scene, or even at sea if power projection originates from land-based fires?

The second point I wish to address is the critical dependence of our economies on both global maritime trade and sea-based infrastructures. The dependence of civilian populations on land to what happens on the seas is not a new phenomenon. However, given the interdependence of our global economies, States that are not parties to a conflict are more likely to suffer humanitarian consequences than before in the event of naval warfare.

1. How should parties to the conflict ensure their obligation of humanitarian assistance at sea in a remote war waged with long-range or unmanned weapons?

The first major challenge facing humanitarian assistance at sea lies in the technological evolution of means of warfare, which allows parties to a conflict to wage war remotely. The old saying attributed to Napoléon, “in war as in love, to bring matters to a close, you must get closer”, appears increasingly anachronistic in the context of modern warfare.

The use of advanced weaponry as long-range missiles (ballistic, cruise and hypersonic), and the development of surface, underwater unmanned vehicles raise an even greater challenge than the one presented by the introduction of submarines into naval warfare in the beginning of the 20th century. While submarines already questioned the obligation to provide assistance at sea, concerns arise that the development of unmanned systems, with varying degrees of autonomy, may further endanger the wounded, sick and shipwrecked.

Under IHL, the obligation to provide humanitarian assistance at sea is enshrined in Article 12 and is reinforced by Article 18 of the Second Geneva Convention (GC II). Article 12 impose a negative obligation on parties stating that “members of the armed forces and other assimilated persons who are at sea and who are wounded, sick or shipwrecked […] shall not wilfully be left without medical assistance and care”.[173]

Article 18 of GC II complements Article 12 by imposing on the parties to the conflict a positive obligation to "take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled”.[174]

It is important to note at this stage that challenges posed by these systems in providing humanitarian assistance at sea do not render their use inherently unlawful according to IHL. Nevertheless, it does require States to find innovative strategies to fulfil their obligations under the Second Geneva Convention.

It is also crucial to emphasize that this positive obligation under IHL, “to take all possible measures to search for and collect”, falls on the parties of the conflict and not on the

[173] Article 12 of the Second Geneva Convention (no 172).
[174] Ibid., Article 18.

commanding officer responsible for the strike. IHL provisions encourage States to appeal for assistance, including from humanitarian organizations and private individuals from their own country or from neutral States, to fulfil their duties of humanitarian assistance, providing they notify all the parties to the conflict in a reasonable timeframe (ten days). This of course requires robust planning and anticipation. If rescue crafts can be either managed by the State or be officially recognized by the State and notified to conflict parties as such, there must be a permanent capacity at the outbreak of the conflict.

Mechanisms for deconfliction at sea to identify and protect humanitarian vessels could also prove very useful. If a hospital ship has to stay miles outside the actual zone of hostilities, its rescue activity is diminished. For this reason, a Red Cross Box was created during the Falklands war, within which Argentina and UK hospital ships were allowed to rescue shipwrecked persons. Addressing these protection risks will indeed require coordination, such as negotiating humanitarian maritime corridors and safe passage and ensuring safe movement outside of affected areas. Satellite surveillance could also play a crucial role in States' ability to fulfil their obligations in this regard.

Medical aircraft, whose status was not recognized during World War II, are now disciplined by both GC II and Additional Protocol I. Article 39 of GC II allows the utilization of medical aircraft if all belligerents agree.[175] Additional Protocol I has widened the protection, and the consent of the belligerent is no longer requested if the aircraft is operating in a zone not controlled by the adversary. Otherwise, consent is requested.[176] Search and rescue, for instance of downed pilots, requires the consent of the adverse party if the sea area is under its control.

In a nutshell, under IHL, the obligation incumbent on States is not so much that the drones carrying the strike should be crewed or have sufficient capacity to accommodate the wounded, sick or shipwrecked persons. But rather that the State has established an effective notification and reporting system enabling the mobilization, within a reasonable time after the strike, of adequate available resources, whether State-owned or not, to fulfil its obligations under Articles 12 and 18 of GC II.

In addition, under Article 21 of GC II, parties to the conflict may appeal to the charity of merchant vessels, yachts or crafts to take on board and care for wounded, sick or shipwrecked persons and to collect the dead. In this context, these vessels enjoy special protection to carry out such duty. Resorting to the assistance of civilian vessels in the vicinity should however be considered as a default or last resort option. It is also worth noting that the neutral merchant vessel providing assistance in this context will intervene on the legal basis established by

[175] Ibid., Article 39.
[176] Articles 25-27 of Additional Protocol I (no 7).

SOLAS convention[177] and by Article 98 of the United Nations Convention on the Law of the Sea (UNCLOS).[178] This provision imposes, in peacetime as in wartime, a positive obligation on the ship's master to render assistance to those in distress at sea as long as it does not put its own crew in danger.

2. How to mitigate the humanitarian impacts of traditional methods of naval warfare on land from a State perspective?

Historically, naval warfare against private shipping has been extensively practiced, notably during the two World Wars (more than 5000 Allied merchant ships were sunk during World War II) as well as during the tanker war between Iran and Iraq in the 1980s (around 350 merchant ships were under attack). Impeding the enemy ability to sustain war has long been a cornerstone of naval strategy, despite debates about its efficacy, given the significant resources required and the resilience of targeted societies.

Naval warfare can cripple economies, especially if waged to disrupt vital shipping lanes (e.g., the Strait of Hormuz and the Houthi attacks in the Red Sea and their consequences for the price of goods delivered to Europe due to increased delays and transportation costs). It can also have unforeseen consequences for civilian populations of neutral States, which may suffer greater harm than the populations of belligerent nations due to the mutual dependence of our economies on food resources.

The conflict opposing Moscow to Ukraine, and the immediate port shutdowns and *de facto* blockade of Ukrainian ports, have recently reminded the world of the sensitive, if not essential, nature of maritime trade as well as the immediate impacts associated with it. Egypt, the world's largest wheat importer, found itself threatened within days by shortages and a dramatic increase in the price of this vital commodity for food security.

As a traditional naval warfare tactic, naval blockade remains relevant today from an operational standpoint by allowing control of flows directed to the shore. However, there is a broad consensus amongst States to recognize that a naval blockade should never aim to deprive the civilian population of medicine or of goods indispensable for their survival, such as food and water. Similarly, parties to the conflict should refrain from listing the same essential goods as contraband subject to seizure under prize law, even if their final destination is enemy territory. This principle was already enshrined in the 1909 London Declaration[179] under the qualification of “free goods” and needs to be uphold.

[177] International Convention for the Safety of Life at Sea, 1974 (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 278 (SOLAS Convention).
[178] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS).
[179] London Declaration (no 162).

Beyond the disruption of global trade on land-based civilian populations, the dependence of our economies on civilian infrastructures at sea has never been higher. First, because of the importance of digital technology that relies on communication cables for the resilience of our economic systems, and second, because of the increasing share of renewable energies, such as wind farms, in the global energy mix, encouraged by State's environmental policies.

Technological and operational advancements have brought geopolitical competition to the seabed. Our social, economic, political and military systems therefore entirely depend on our ability to monitor and protect the cables that extend beyond our territorial waters. Since 2021, there have been eight unattributed yet suspicious cable-cutting incidents in the Euro-Atlantic, in a peacetime context. Ease of access and the near impossibility of attributing intentional interference are compounded by the difficulty of monitoring and policing such vast areas, to an extent unparalleled by other infrastructures.

Fixed installations located on the enemy's continental shelf may be targeted if they are used for military purposes. In 1988, the United States attacked some oil platforms located on Iran's continental shelf, claiming that they were used to collect intelligence and as bases for warlike operations. The ICJ, in its judgment in the *Oil Platforms* case, did not dwell on the *ius in bello* side of the case,[180] since the issue before the Court was one of treaty law and *ius ad bellum*, namely whether the United States was entitled to react in self-defence against Iran. However, the Court established that the limited military presence on the platforms, together with the evidence as to communications to and from them, could not be regarded as justifying treating the platforms as military installations. At the time, the three offshore oil-production complexes where owned and operated by the National Iranian Oil Company. Nowadays, such an attack on infrastructures would very likely factor in the private sector as the owner of the cable, pipeline, wind farm or oil platform.

In this context, UNCLOS must be considered, as most of its provisions remain applicable in times of war and contribute to upholding humanity in war, especially from a neutral State perspective. As the San Remo Manual, which reflects the law as it is (*lex lata*), specifies, belligerents should have due regard to the rights of the coastal States and should not conduct hostilities in exclusive economic zones (EEZ) of neutral States where this could damage energy infrastructure, such as oil platforms or wind farms.[181] States can enhance the protection of wind farms and artificial islands by establishing safety zones, already in peacetime, based on Article 60 of UNCLOS.[182] This provision however does not apply to cables and pipelines.

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[180] ICJ, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, 6 November 2003, ICJ Reports 2003, p. 161, para. 44: "The Court has no jurisdiction to enquire into the question of the extent to which Iran and Iraq complied with the international legal rules of maritime warfare."
[181] San Remo Manual (no 164), para. 34.
[182] Article 60 of UNCLOS (no 178).

Conclusions and perspectives

Regarding the obligation of assistance at sea, the IHL approach is comprehensive and suited to the context of armed conflict by focusing on the responsibilities of the parties rather than those of the commanding officers. It also provides means to manage and mitigate the risks posed by the use of missiles and drones in contemporary naval warfare.

With regard to impacts on land, ranging from displacement and economic disruption to digital shutdowns, the effects of naval warfare are far-reaching and require anticipation, proactive planning and coordination by States to identify civilian harm mitigation measures across the maritime battlespace, from seabed to space.

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Protection of the natural environment at sea during armed conflict: the law and the practicalities

Alexander Lott
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Summary

Mr. Lott discussed how international law limits harm to the marine environment during armed conflict, focusing on contested questions such as whether UNCLOS peacetime obligations continue to apply, the meaning of "due regard", and whether parts of the natural environment can qualify as military objectives. He argued that the natural environment is generally a civilian object, while suggesting that specific marine features may become military objectives by use or purpose in limited circumstances, and emphasized prohibitions on reprisals against or weaponization of the environment and on wanton damage not justified by military necessity. The contribution highlighted divergences in State practice and expert manuals, including differing views on the customary status and interpretation of Articles 35(3) and 55(1) of Additional Protocol I and the environmental protection rules in the San Remo and Newport Manuals. Mr. Lott concluded by stressing the relevance of distinction, proportionality and precautions for operations affecting undersea infrastructure and by proposing protected zones around dumping grounds of chemical or radioactive war remnants.

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States have a duty to protect and preserve the marine environment in peacetime.[183] But does this obligation apply in armed conflict? If yes, then to what extent does it apply? Is the operative standard that of "due regard"? And if so, should it be assessed from an objective *ex post* perspective or from the commander's perspective at the time of decision-making? Is it possible to treat a part of the natural environment itself as a military objective?

I do not have definite answers to these questions. The relevant State practice is difficult to distil, *inter alia,* from the different approaches adopted in various States' military manuals. Furthermore, several maritime powers are not parties to Additional Protocol I. Worse still, one of the main dividing lines between the law of naval warfare expert manuals is the standard of protection afforded to the natural environment. The 1994 San Remo Manual purports to reflect customary international law on this matter, but the 2025 Newport Manual openly challenges this ambition.

[183] Article 192 of UNCLOS (no 178).

Nonetheless, I am pleased to provide my perspective on these difficult questions. I begin with my conclusion.

As reflected by the inclusion of Article 55(1) of Additional Protocol I in its chapter on "Civilian Objects" and as clearly stated in the ICRC 2020 Guidelines, the natural environment is a civilian object.[184] The San Remo Manual was drafted on the premise of an "emerging rule" that the marine environment cannot be an object of attack.[185]

By contrast, the French military manual[186] and Yoram Dinstein[187] note that a part of the natural environment can become a military objective whose total or partial destruction offers a specific military advantage. In the 2022 Draft Principles, the International Law Commission (ILC) adopted the same position.[188] Dinstein illustrates this with a mountain pass from a logistical perspective and with a forest that can be used for concealment.

In my view, specific parts of the marine environment may serve as military objectives due to their use or purpose. This is relevant where they function much like human-made bridges or airfields. Think of, for example, natural causeways (a narrow strip of land) or ice that can be destroyed to obstruct enemy landing. Similarly, straits, canals, ports, and fairways can be blocked for surface and submarine navigation by intentionally sinking a bridge or a ship. The military advantage of such operations is illustrated by the entrapment of several Ukrainian warships by Russia during the invasion of Crimea in 2014 by way of scuttling two ships in the fairway of a narrow gulf. The six-day-long obstruction of the Suez Canal in 2021 is equally relevant.

By contrast, in my view, reprisals against or the weaponization of the natural environment are outright prohibited as also clearly stated in the ILC 2022 Principles.[189] The same applies to deliberate damage to or destruction of the natural environment not justified by military necessity in the case of both IACs and NIACs.

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[184] ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations Relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary*, Geneva, September 2020, p. 28, available at: https://www.icrc.org/en/publication/4382-guidelines-protection-natural-environment-armed-conflict

[185] San Remo Manual (no 164), Explanation of Rule 44, p. 119.

[186] French Ministry of Armed Forces, *French Manual of the Law of Military Operations* (2022), p. 133, available at: https://www.defense.gouv.fr/sites/default/files/sga/French%20Manual%20of%20the%20Law%20of%20Military%20Operations%281%29.pdf

[187] Yoram Dinstein, 'Protection of the Environment in International Armed Conflict', 5 *Max Planck Yearbook of United Nations Law* 523 (2001), p. 533.

[188] International Law Commission, *Draft Principles on Protection of the Environment in Relation to Armed Conflicts, with Commentaries* (2022), UN Doc A/77/10, draft principle 13(3), available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf.

[189] Article I(1) of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (adopted 10 December 1976, entered into force 5 October 1978) 1108 UNTS 151 (ENMOD Convention); ILC 2022 Draft Principles (no 188), draft principles 15 and 17.

In addition, in my view, it is prohibited to cause widespread, long-term, and severe damage to the environment. This follows from Article 35(3) of Additional Protocol I, which, however, does not specify the perspective from which the scale of collateral damage to the environment needs to be assessed. Both the UK Military Manual[190] and the Newport Manual[191] find that this is subject to the *ex-ante* assessment by the attacking commander as opposed to the *ex post* objective assessment. This flexible approach is warranted given that even the ILC 2022 Draft Principle 13(2)(a) significantly relaxes the threshold of Additional Protocol I Article 35(3) by using the operative standard "care shall be taken" [to protect the environment against widespread, long-term, and severe damage].

The UK interprets Article 35(3) of Additional Protocol I rather cautiously. Damage to the environment needs to last for decades to be categorized as "long-term" under Additional Protocol I. Therefore, damage inflicted on, for example, the natural environment in France during World War I does not meet this high threshold.[192] According to the German position, the damage needs to "significantly exceed normal combat damage".[193]

The UK position is that nuclear attacks and attacks against nuclear submarines or super tankers would not automatically violate the prohibition of causing "widespread" and "severe" damage to the natural environment.[194] But how about systemic attacks against oil tankers in semi-enclosed seas, such as the Baltic Sea? In this context, environmental and other factors play a crucial role. For example, the circulation time for the Baltic Sea water mass is over 30 years. The Baltic Sea accounts for 60% of Russia's maritime crude oil exports. Leaving aside the question of whether tankers, as civilian objects that contribute to war-sustaining efforts, are military objectives, would a belligerent target its enemy's economic artery at the expense of causing an environmental disaster in its own and neutral waters? In practice, one might assume it might, as shown by the tanker war in the 1980s.

In 2001, Dinstein stated that there is "no doubt" that Articles 35(3) and 55(1) of Additional Protocol I constituted an innovation and that they are not part of customary international law.[195] The Newport Manual comes to the same conclusion and states that the rule stipulated therein

[190] UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press 2004), para. 5.29.3, available at: https://assets.publishing.service.gov.uk/media/5a7952bfe5274a2acd18bda5/JSP3832004Edition.pdf.
[191] Newport Manual (no 166), p. 167.
[192] UK LOAC Manual (no 190), para. 5.29.2.
[193] Federal Ministry of Defence of the Federal Republic of Germany, *Law of Armed Conflict Manual*, Joint Service Regulation (ZDv) 15/2, May 2013, para. 435, available at: https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf.
[194] UK LOAC Manual (no 190), para. 5.29.3-4.
[195] Dinstein (no 187), p. 534.

binds only States parties to Additional Protocol I and not the United States.[196] This is also echoed in the ILC 2022 Draft Principles.[197]

Naval warfare inherently involves the risk of collateral damage to the marine environment. Based on the ICJ's advisory opinion in the Nuclear Weapons case, the belligerent needs to take environmental considerations into account in the pursuit of legitimate military objectives.[198] It seems to me that State practice does not support a high threshold of this requirement under the principle of proportionality.

For example, the Baltic Sea is particularly prone to mine warfare since it includes an unprecedented number of international straits. Such large-scale mine warfare has a detrimental effect on marine life. Nonetheless, it is unlikely that anyone would consider such a method of warfare unlawful solely on environmental grounds. Navies may show care for marine mammals in their mine operations already in peacetime by preferring the reportedly cheaper and safer deflagration method to blowing up mines out of inertia.

NATO estimates that over 160,000 mines were placed in the Baltic Sea during the two World Wars (mostly in the Gulf of Finland), of which approximately only a fifth have been neutralized.[199] It has been observed that the noise pollution that results from the detonation of a single naval mine spreads as far as 23 km away from the epicentre of the explosion.[200] This causes fatal noise pollution to marine mammals at a great distance.

The previous discussion of Article 35(3) of Additional Protocol I is relevant in the context of Rule 44 of the San Remo Manual. Rule 44 stipulates the "due regard" requirement and provides that: "Damage to or destruction of the natural environment not justified by military necessity and carried out wantonly is prohibited."[201] The Newport Manual laconically disagrees with this statement and finds that these rules are "aspirational and do not reflect treaty or customary international law."[202]

Nonetheless, in my view, Rule 44 is supported by case law (ICJ's *Nuclear Weapons* Advisory Opinion), State practice (numerous States' military manuals), and treaty law, in particular Articles 35(3) and 55(1) of Additional Protocol I. The United States has not accepted these provisions and has repeatedly expressed the view that these provisions are "overly broad and

[196] Newport Manual (no 166), p. 167.
[197] ILC 2022 Draft Principles (no 188), commentary to Principle 13, para. 6.
[198] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 226, para. 30.
[199] NATO Allied Maritime Command, 'NATO Forces Clear Mines from the Baltic in Open Spirit Operation' (7 May 2021), available at: https://mc.nato.int/media-centre/news/2021/nato-forces-clear-mines-from-the-baltic-in-open-spirit-operation.
[200] Nord Stream 2: Natura screening, 2017, p. 14.
[201] Rule 44 of San Remo Manual (no 164).
[202] Newport Manual (no 166), p. 111.

ambiguous and 'not a part of customary law.'"[203] However, this objection seems to be due to a cautious approach to interpretational ambiguities. The San Remo Manual's explanation of Rule 44 should alleviate these fears. It states that "the 'due regard' formula, widely used in the UNCLOS, left flexibility for an assessment of the conflicting interests in each particular case."[204] Proposals to place a higher burden on the belligerents via the use of the operative standard of "respect" for the marine environment were outvoted. By comparison, in this context, the ILC 2022 Draft Principle 13 adopted the term "respect".[205]

Yet I agree with the Newport Manual that a different Rule – 11 – of the San Remo Manual is aspirational. Rule 11 itself is drafted using aspirational language as it "encourages" belligerents "to agree" that certain marine areas are not used as a theatre of operations. The San Remo Manual's explanation of Rule 11 states that it is a "soft-law guideline".[206] The call to designate such protected zones is included in Principles 4 and 18 of the ILC Draft Principles. I will shortly return to the potential of protected zones in the context of underwater warfare.

According to the French position, "[t]reaties protecting the environment in peacetime may continue to apply during an armed conflict."[207] The current version of the San Remo Manual is explicitly open to this prospect as Rule 44 on environmental protection requires belligerents to "take into account the relevant rules of international law". Inherently, they include environmental rules. For example, according to the ICRC database, a summary of practice on Rule 44 of the San Remo Manual shows that the precautionary approach is also relevant in an armed conflict.

At the same time, such regime interaction is one of the most legally challenging aspects of the protection of the marine environment in naval warfare. According to the ICRC, determining the extent to which environmental treaties apply in parallel to IHL is a "complex question".[208]

Finally, the requirement of due regard is included in Rules 34 and 35 of the San Remo Manual. The Newport Manual states that these requirements "are a scholarly attempt to progressively develop the law."[209]

However, these rules have particular significance to the legal protection of the marine environment and private property, as demonstrated by the Nord Stream explosions of 2022. It follows from these rules that if pipelines or platforms are damaged in a neutral State's exclusive

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[203] U.S. Department of Defense, *Department of Defense Law of War Manual* (June 2015, updated July 2023), p. 387, available at: https://ogc.osd.mil/Portals/99/Law%20of%20War%202023/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.pdf.
[204] San Remo Manual (no 164), Explanation of Rule 44, p. 121.
[205] ILC 2022 Draft Principles (no 188), commentary to Principle 13, para. 3.
[206] San Remo Manual (no 164), Explanation of Rule 11, p. 83.
[207] French LOAC Manual (no 186), p. 132; see also, ILC 2022 Draft Principles (no 188), commentary to Principle 13, para. 4).
[208] ICRC Guidelines (no 184), p. 21.
[209] Newport Manual (no 166), p. 83.

economic zone or on its continental shelf, then precautions need to be taken to ensure due regard for the protection and preservation of the marine environment.

In addition, Rule 68 of the Oslo Manual provides that: “During an armed conflict, submarine pipelines and high voltage cables exclusively serving one or more Belligerent States may – if it is militarily necessary – be seized or destroyed subject to the applicable principles and rules of LOAC, in particular distinction, proportionality and the obligation to take feasible precautions.”[210] Importantly, this rule concerns submarine cables and pipelines that serve exclusively belligerents. For example, the Nord Stream pipelines transported gas from belligerent Russia to non-belligerent Germany.

Therefore, both the San Remo Manual and the Oslo Manual demonstrate the significance of the principles of distinction and proportionality and the need for precautions if attacking belligerent submarine pipelines.[211]

The Nord Stream explosions posed a significant danger to the Baltic marine environment in many respects. Surprisingly, neither the developers nor the States concerned included such risk of sabotage in their environmental impact assessments. The explosions resulted in heavy gas leakage and supposedly the world’s heaviest methane emission event to date. These consequences of the successful sabotage operation were largely unavoidable.

But the pipelines were attacked in an area next to the main Baltic Sea dumping ground for World War II chemical warfare agents. In the wake of the war, the containers were thrown overboard not only at the official dumping grounds, but also outside of it, rather randomly. In this context, the explosions had the potential of breaking the heavily corroded chemical containers, thereby causing a sudden release of toxins into the marine environment. Under Rule 44 of the San Remo Manual, taking the risk of causing such severe damage to the marine environment would be difficult to justify under the principle of proportionality.

This leads me to propose that, in the spirit of Rule 11 of the San Remo Manual and the ILC 2022 Draft Principles, States should designate all dumping grounds of chemical or radioactive war remnants and their adjacent areas as protected zones that are exempt from underwater warfare.

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[210] Yoram Dinstein and Arne Willy Dahl, *Oslo Manual on Select Topics of the Law of Armed Conflict: Rules and Commentary* (Springer 2020), Rule 68, pp. 62–63, available at: https://doi.org/10.1007/978-3-030-39169-0.
[211] See Article 51(5)(b) of Additional Protocol I (no 7).

Moderated discussion

At the end of the panel discussion, a Q&A session allowed the audience to raise several questions.

Prize law and human rights

One participant questioned whether prize law and prize courts remain workable today, in particular in light of human rights concerns in relation to property seizure. The participant noted that there is no international prize court and argued that reliance on domestic prize proceedings would be difficult to reconcile with such constraints. The participant also argued that merchant vessels should not be treated as targetable simply because they are considered "enemy" vessels or refuse to cooperate with search, but only where they qualify as military objectives.

One panellist was sceptical about this critique of prize proceedings. The panellist suggested that, if one accepts the permissibility of measures such as capture, visit and search, and the continued relevance of blockade law, then prize proceedings could still serve as a tool to restrict practice and avoid excesses.

Another panellist cautioned against discarding prize law in its entirety, while emphasizing that practice and domestic frameworks would need to be adapted to current legal obligations, including human rights law. The panellist underlined that prize courts may provide a form of judicial oversight of seizures and can trigger compensation where a seizure was not justified. The panellist also recalled the historical origins of prize law in efforts to regulate practices linked to privateering and to limit what navies could do to merchant shipping, and suggested that one avenue for reform could be to define contraband more restrictively and link it more directly to military activities. The panellist added that prize-related issues may also arise in ceasefire arrangements and noted that the status of persons on merchant vessels, including questions of detention and protection, would also warrant attention.

Merchant vessels and military objectives

One participant asked whether the targeting of merchant vessels alleged to provide economic and logistical support to an armed force, and to finance a war effort, could be considered, under the law of naval warfare, as an attack against a military objective.

One panellist responded that whether such vessels could be attacked depends, *inter alia*, on how the definition of military objective is interpreted. The panellist also noted that related questions may arise as to whether such vessels could be captured, visited and searched or inspected. Against that background, the panellist observed that different approaches exist, including a more flexible approach that would allow consideration of "war-sustaining" functions, and recalled that such debates were also present when the San Remo Manual was drafted.

Another panellist emphasized that some States do not support a “war-sustaining” approach and would not attack a vessel on the ground that it is merely sustaining a war effort. The panellist suggested that the link may be too indirect where the activity consists in generating revenue that may later support the war effort, but that the assessment could change if it could be shown that the activity is directly connected to military support. By way of comparison, the panellist referred to a context in which oil-related infrastructure was targeted after an assessment that there was a direct connection between production and military support, including fuel directly used for military equipment by an armed group. The panellist also observed that such questions may evolve quickly and that additional links to State interests may emerge over time.

A further panellist noted that they did not have a definitive answer either but pointed to recent practice in which neutral merchant vessels were repeatedly attacked, sometimes resulting in heavy casualties and deaths among crew members, and without prior warning or search to the extent of the panellist’s knowledge.

Warships, proportionality and precautions

One participant asked about incidental civilian harm when targeting warships and, specifically, the notion that naval warfare is often described as “platform-based”, meaning that the proportionality and precautions analysis focuses on the vessel as a whole rather than on who is on board. The participant asked whether this is a matter of practice or law. Noting that warships usually have few, if any, civilians on board, the participant suggested that, as a practical matter, there may be limited precautions that can be taken, and it may be unusual for such harm to be excessive compared to the military advantage of sinking the warship. The participant linked the question to the relationship between the traditional law of naval warfare, *lex specialis* arguments and the relevance of Additional Protocol I.

A panellist responded by recalling the historical assumption that the crew follows the orders of the commanding officer and shares the vessel’s objectives, and that naval warfare has relied on a vessel-based construct grounded in assessments of customary international law. The panellist noted that States made clear they did not want Additional Protocol I to apply to the law of naval warfare, except for bombardment of land objectives, and suggested that a key question is the extent to which relevant Additional Protocol I provisions are recognized as customary law. The panellist described the difficulty of reconciling a vessel-based approach with an individualized proportionality approach and drew an analogy to questions about applying the concept of direct participation in hostilities at sea. The panellist noted that the San Remo Manual does not suggest an individualized approach in this respect and added that the issue has been identified for further work in the ongoing revision process.

Manuals and progressive development

One participant asked whether the role of manuals of this kind, in particular non-State manuals, is to be "progressive", or whether this should more properly be a matter for States. Another participant asked whether a body such as the International Law Commission (ILC) might be better placed to approach the topic, given its mandate for codification and progressive development.

A panellist responded that, in this field, States have not taken initiatives for a long period to question or advance the rules, in part because many of the rules have not been put to practice. The panellist suggested that the prospect of more large-scale naval warfare increases pressure to look more closely at these rules, and that other communities may need to take up a role where States have not. The panellist emphasized that the expert group working on the San Remo Manual is diverse and operationally experienced, including with input from industry, and is not an exclusively academic effort. The panellist expressed frustration with the idea of simply sticking to *lex lata* in this field. As regards the ILC, the panellist expressed respect for its work but suggested that it is not the most appropriate body to undertake an in-depth examination of a highly technical area such as the law of armed conflict. The panellist also recalled the specific role of the ICRC under the Geneva Conventions as a relevant reason why other fora may be more appropriate.

Customary law and persistent objection

One participant asked about the status of Article 35(3) of Additional Protocol I, noting that it is often considered to reflect customary international law, and whether a State that disagrees with it could be considered a persistent objector or as a violator of that rule.

A panellist replied that some scholars have examined this issue extensively, and suggested that if the provision were to solidify into customary international law, the State in question could potentially be considered a persistent objector.

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PANEL 5

STANDING UP FOR IHL BEFORE, DURING, AND AFTER CONFLICT: CREATING PATHWAYS FOR PEACE

CHAIRED BY VAIOS KOUTROULIS, PROFESSOR OF INTERNATIONAL LAW, UNIVERSITÉ LIBRE DE BRUXELLES

How respect for IHL can support peace processes: enabling dialogue, building and creating space for mediation and reconciliation

Itonde A. Kakoma
President and CEO, Interpeace

Summary

Mr. Kakoma argued that the relationship between IHL and peace is both longstanding and increasingly critical in today's conflict environment. As political space for conflict resolution becomes increasingly narrower and armed conflicts become more protracted and destructive, IHL plays a dual role: violations aggravate conflict dynamics and undermine prospects for peace, while compliance helps create the conditions for sustainable recovery and reconciliation. Framing IHL as a people-centred and peace-oriented body of law, he highlighted its relevance across all phases of conflict, from prevention and the conduct of hostilities to post-conflict accountability and peacebuilding. He also showed how specific patterns of violations, such as sexual and gender-based violence or the destruction of civilian infrastructure, can drive instability, while IHL-compliant measures, such as dignified treatment of the dead or humane treatment of detainees, can lay the foundations for confidence-building and reconciliation. Ultimately, he called for renewed commitment to IHL alongside stronger protection of humanitarian space in an increasingly constrained political landscape.

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Introduction

The relationship between IHL and peace is not a new phenomenon. Since at least 1919, numerous resolutions, particularly within the Red Cross & Red Crescent Movement, have consistently referred to the pursuit of peace as an integral concern for humanitarian diplomacy.[212] What has evolved, however, is the understanding of peace itself, as well as the

[212] ICRC, *Red Cross as a Factor in World Peace: Report submitted by the International Committee of the Red Cross to the XXth International Conference of the Red Cross* (Vienna, October 1965), Geneva, June 1965, Ref. Conf. G 11/1, available at: https://library.icrc.org/library/docs/CI/CI_1965_074_ENG_014.pdf; League of Red Cross Societies, *Red Cross as a Factor in World Peace: Report submitted by the League of Red Cross Societies to the Council of Delegates, Centenary Congress of the International Red Cross (Geneva, 28 August – 10 September 1963),* Geneva, June 1963, Ref. DP/10/2, p. 11, available at: https://library.icrc.org/library/docs/CI/CC_1963_031_ENG_007.pdf; Council of Delegates of the International Red Cross and Red Crescent Movement, *Reaffirming the Role of the Movement as a Factor of Peace*, Background Document, September 2024, Doc CD/24/10, available at: https://rcrcconference.org/app/uploads/2024/09/CoD24_10-Peace-and-resilience-Background-document-EN.pdf.

extent to which this evolving conception is reflected in the advocacy, dissemination, and application of IHL.

This question is especially relevant today. The international system is marked by an exponential growth of armed conflicts. The ICRC estimates the number of armed conflicts to have reached 130 in 2024 – the highest number in more than a century of documentation – describing the moment as "our world succumbing to war".[213] All other conflict indices point to record numbers as well.[214] Simultaneously, the primary body responsible for maintaining international peace and security under the Charter of the United Nations, the UN Security Council, finds itself severely limited to address this heightened number of conflicts. Very few of the documented armed conflicts benefit from dedicated political attention or sufficient diplomatic engagement required to bring about a peaceful settlement.

Neglected conflicts, in particular, tend to become more protracted, more fragmented, and more difficult to resolve over time, with increasing humanitarian needs, regional instability, and the risk of conflict spillover across borders.[215]

As a result, the limited political space for advancing peace has placed increasing pressure on humanitarian action. The UN Security Council itself has devoted growing attention to humanitarian issues, often at the expense of its broader peace and security functions. This shift risks politicising humanitarian action if not carefully managed and underscores the urgency of revisiting the relationship between IHL and peace.

By contrast, the International Conference of the Red Cross and Red Crescent Societies stands out as a coveted space for seemingly universal dialogue. Held every four years, it brings together States parties to the Geneva Conventions, respective National Societies, and representation of both the ICRC and IFRC. The International Conference remains one of the few global platforms whereby States and non-State actors meet on equal terms, grounded in international law and shared humanitarian principles, to uphold basic norms and address

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[213] ICRC, *ICRC Humanitarian Outlook 2026: A World Succumbing to War*, December 2025, available at: https://www.icrc.org/en/article/humanitarian-outlook-2026.

[214] Uppsala Conflict Data Program (UCDP), 'Armed Conflict Dataset 2023', Uppsala University, available at: https://ucdp.uu.se/year/2023. UCDP recorded 59 State-based armed conflicts in 2023, the highest number since 1946; Geneva Academy of International Humanitarian Law and Human Rights, *IHL in Focus: Annual Report – Assessing Compliance in Contemporary Armed Conflicts, July 2023–June 2024*, February 2025, available at: https://archives.geneva-academy.ch/joomlatools-files/docman-files/IHL%20in%20Focus%20Annual%20Report%2023-24.pdf.

[215] United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, Washington DC, 2018, available at: https://documents.worldbank.org/en/publication/documents-reports/documentdetail/132551525113506026; ICRC, *Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences*, Geneva, September 2016, available at: https://www.icrc.org/en/publication/4265-protracted-conflict-and-humanitarian-action-some-recent-icrc-experiences.

urgent humanitarian challenges. In a fragmented international system, this kind of values-based convening authority serves an important role in sustaining dialogue and contributing to the broader conditions for peace.

1. IHL and peace: a conceptual relationship

The relevance of IHL to peace can be understood through two complementary dynamics. On the one hand, non-adherence to IHL exacerbates the consequences of war. Violations in the conduct of hostilities result in increased harm to civilians and generate profound obstacles to the achievement of peace. On the other hand, the effective application of IHL contributes to the conditions necessary for peace to emerge. When considered alongside international human rights law, international criminal law, and refugee law, IHL forms part of a broader legal architecture that reflects a holistic vision of peace.

It is therefore essential to recall that IHL itself is rooted in a tradition of peace. However, this also raises a fundamental question: what understanding of peace is relevant in the context of IHL?

Recent developments within the International Red Cross and Red Crescent Movement offer useful guidance. The 2024 Council of Delegates reaffirmed the role of the Movement as a factor for peace and articulated a positive conception of peace.[216] In this view, peace is not merely the absence of war, but a dynamic process grounded in cooperation among States and peoples, amicable settlement of disputes, respect for human rights, equitable distribution of resources, and adherence to international law.[217] Within this framework, respect for IHL during

[216] Council of Delegates of the International Red Cross and Red Crescent Movement, *Reaffirming the role of the Movement as a factor of peace,* Resolution, October 2024, Doc CD/24/R7, available at: https://rcrcconference.org/app/uploads/2024/10/CoD24_R7-Res-Peace-EN.pdf; Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (SAGE Publications 1996).

[217] Red Cross and Red Crescent Movement, 'What the Red Cross and Red Crescent Movement Does and Wants to Do for Peace: Fundamental Guidelines', 24 *International Review of the Red Cross* 243 (1984), pp. 327–334, available at: https://international-review.icrc.org/articles/what-red-cross-and-red-crescent-movement-does-and-wants-do-peace-fundamental-guidelines; International Committee of the Red Cross and League of Red Cross and Red Crescent Societies, *Through Humanity to Peace: Report of the Second World Red Cross and Red Crescent Conference on Peace, Aaland–Stockholm, 2–7 September 1984*, Geneva, December 1984, available at: https://library.icrc.org/library/docs/CI/PX_1984_050_ENG_061_CJ.pdf; XXIInd International Conference of the Red Cross, Resolution XI, 'The Red Cross as a Factor in World Peace', in 'Resolutions adopted by the XXIInd International Conference of the Red Cross', 14 *International Review of the Red Cross* 154 (1974), pp. 27–28, available at: https://international-review.icrc.org/articles/resolutions-adopted-xxiind-international-conference-red-cross; XXIst International Conference of the Red Cross, Resolution XX, 'The Red Cross as a Factor in World Peace', in 'Resolutions Adopted by the XXIst International Conference of the Red Cross', 9 *International Review of the Red Cross* 608 (1969), pp. 608–638, available at: https://international-review.icrc.org/articles/xxist-international-conference-red-cross.

armed conflict can contribute to a return to sustainable peace, while promoting a shared sense of humanity.[218]

Importantly, IHL should be understood as a "people-centred body of law", placing the protection of civilians at its core.[219] This orientation is central to its relevance in both humanitarian and peacebuilding contexts.

a) Protecting humanitarian space in a constrained political environment

In the current context, where political space for comprehensive peace processes is limited, there has been an increasing focus on ceasefires rather than broader political settlements. While ceasefires may provide necessary relief, they do not substitute for inclusive and sustainable peace agreements.

This environment underscores the importance of reaffirming the historical and normative foundations of IHL as part of a broader peace project. At the same time, it highlights the need to protect humanitarian space from politicisation. While peace processes are inherently political, the application of IHL, particularly through confidence-building measures, must be safeguarded to preserve neutrality and effectiveness.[220]

b) The changing nature of conflict

The role of IHL in advancing peace must also be considered in light of the changing nature of contemporary conflicts. Three interrelated dynamics are particularly salient. First, conflicts are increasingly protracted, with their duration extending over many years or even decades.

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[218] Galtung (no 216); XIXth International Conference of the Red Cross, Resolution 37, 'The Red Cross as a Factor for World Peace', in *Proceedings of the XIXth International Conference of the Red Cross, New Delhi, October–November 1957*, p. 162, available at: https://disasterlaw.ifrc.org/media/4358; Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, (Henry Dunant Institute 1979), available at: https://volunteeringredcross.org/wp-content/uploads/2019/02/The-Fundamental-Principles-Pictet-Commentary.pdf; League of Red Cross Societies, *Report on the World Red Cross Conference on Peace (Belgrade, 11–13 June 1975) and Programme of Action of the Red Cross as a Factor of Peace*, Geneva, August 1978, available at: https://library.icrc.org/library/docs/CI/CD_1979_007_ENG_009_LG.pdf; XXth International Conference of the Red Cross, Resolution X, 'The Red Cross as a Factor in World Peace', Vienna, October 1965, reproduced in Council of Delegates, *Follow-up to Certain Resolutions of the XXth International Conference of the Red Cross*, The Hague, 5 September 1967, Doc CD/1a and b/1, available at: https://library.icrc.org/library/docs/CI/CD_1967_006_ENG_006.pdf.

[219] World Red Cross Conference on Peace, *Programme of Action of the Red Cross as a Factor of Peace*, Belgrade, June 1975, available at: https://library.icrc.org/library/docs/CI/PX_1975_005_ENG_005_HD.pdf; Jean Pictet, 'The Red Cross as a Factor of Peace', 7 *International Review of the Red Cross* 72 (1967), pp. 3-14, available at: https://international-review.icrc.org/articles/red-cross-factor-world-peace-0.

[220] See Peter Maurer, 'The contribution of humanitarian action to peace', address at the SIPRI Forum on Peace and Development, Stockholm, 14 May 2019, available at: https://www.icrc.org/en/document/where-humantiarian-action-meets-peace-building.

Second, the scale of destruction has intensified, particularly with regard to civilian infrastructure and urban environments. Third, many conflicts exhibit a cyclical nature, often linked to unresolved grievances from previous conflicts.

These trends raise important questions about the effectiveness of existing peace processes. A significant proportion of peace agreements fail to produce sustainable outcomes.[221] One explanation of this failure often lies in the way such agreements are designed. They tend to focus narrowly on the interests of a limited group of actors, primarily armed belligerents, and frequently exclude broader segments of society. As a result, they fall short of reflecting a more inclusive and positive conception of peace, thus reducing the probability of durable settlements.

2. IHL across conflicts: from prevention to peacebuilding

a) Linking IHL across conflict phases

The relationship between IHL and peace can be observed across the different phases of conflict. Before the outbreak of violence, the dissemination and understanding of IHL contribute to prevention efforts by establishing norms that can limit escalation. During conflict, the application of IHL plays a critical role in protecting civilians and regulating the conduct of hostilities. In the post-conflict phase, accountability mechanisms and the enforcement of legal norms support processes of justice, reconciliation and the restoration of relationships between communities.

This continuum mirrors broader peacebuilding processes, encompassing prevention, cessation of hostilities and post-conflict recovery. It also highlights the extent to which IHL is not confined to moments of active conflict but remains relevant throughout the cycle of conflict.

b) IHL violations as drivers of conflict

Patterns of IHL violations can also serve as direct drivers of conflict and have lasting implications for peace. Violence against women, particularly sexual and gender-based violence, is one example. These violations, while having immediate humanitarian consequences, also generate long-term, intergenerational impacts that complicate recovery and reconciliation.

Similarly, the recruitment and use of children in armed conflict undermine the prospects of peace by disrupting social structures and perpetuating cycles of violence. The widespread

[221] Stockholm International Peace Research Institute (SIPRI), *SIPRI Yearbook 2009: Armaments, Disarmament and International Security* (Oxford University Press 2009), available at: https://www.sipri.org/sites/default/files/SIPRIYB0901.pdf.

destruction of civilian infrastructure further exacerbates these dynamics, creating long-term socio-economic challenges that can fuel renewed conflict.

These examples illustrate how violations of IHL extend beyond the immediate conduct of hostilities and directly shape the conditions in which peace processes occur.

c) IHL as a foundation for peace

Conversely, the application of IHL can serve as a foundation for confidence-building and the advancement of peace. The humane treatment of detainees and prisoners, the safe and dignified burial of the dead, and the provision of humanitarian access all contribute to building trust between parties. Mechanisms for tracing and identifying missing persons are particularly important in addressing the legacy of conflict and enabling societies to move forward.

The integration of IHL into processes such as security sector reform further reinforces its relevance for long-term stability. When these measures are effectively implemented, they contribute to restoring relationships, strengthening accountability, and fostering the conditions necessary for sustainable peace.

Conclusion

Reaffirming the relationship between IHL and peace requires both a recognition of its historical roots and a clear understanding of its contemporary relevance. Non-compliance with IHL exacerbates conflict and undermines the prospects for peace, while its effective application contributes to the conditions necessary for sustainable and inclusive peace.

In a context marked by an increasing number of conflicts and constrained political processes, strengthening adherence to IHL and protecting humanitarian space are essential steps. By doing so, the international community can help create pathways towards a more durable, equitable, and human-centred pursuit of peace.

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Disarmament treaties and their contribution to lasting peace: the importance of continued adherence

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Summary

Mr. Meeussen set out Belgium's view that arms control, disarmament and non-proliferation should support security and lasting peace by ensuring that weapons can be used in accordance with international law, including IHL. He argued that effective arms control requires a balanced approach, avoiding both inadequate capabilities and destabilizing excess, and stressed that respect for IHL is an essential criterion in Belgium's policies, particularly amid perceived erosion of IHL and pressure on arms control architecture. Drawing an analogy to management standards, he outlined practical elements needed to generate lasting impact, including appropriate capabilities, clear rules and procedures, training, awareness-raising, monitoring, enforcement and periodic evaluation. He highlighted measures "before" conflict, such as integrating IHL considerations into research and development ethics, strengthening IHL-based export controls, and resisting rhetoric and policy shifts that undermine humanitarian disarmament treaties, including the anti-personnel mine ban. Finally, he emphasized the importance of enforcement and accountability at the national and international level, including through the ICC and domestic prosecutions, and called for broader public engagement and awareness to sustain respect for IHL and international law.

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The views expressed in this article are personal and do not represent the official views of the Belgian Ministry of Foreign Affairs.

Introduction on the view of Belgium on arms control and the link with IHL

Military weapons are an indispensable tool for deterrence and defence against military aggression. Weapons can protect security, freedom, and finally peace, provided that they are used in accordance with international law, including human rights, and international humanitarian law. In addition, weapons can also fuel and even provoke conflicts and are by nature capable to cause death and destruction.

Because of this ambivalence, the production, trade, storage and use of weapons must be regulated and controlled. States must ensure that only weapons that can be used in accordance with international law are produced and procured, that they are traded, stored, and

used responsibly, and that they do not end up in the hands of aggressors, terrorists, criminals or war criminals.

Therefore, States have agreed to ban and limit certain categories of weapons, to regulate the arms trade, including on humanitarian grounds. There are agreements aimed at the peaceful application of emerging technologies, and to combat illicit arms trafficking. States are wary of costly and destabilising arms races that do not serve the objective of peace and security.

For Belgium, armament or disarmament are not an end in themselves. The overall goal remains increasing security and protecting our interests and values, including the international rules-based order.

In our view, arms control is about striking the right balance: States can have too few weapons, inviting external or internal aggression, but they can also have too many or the wrong weapons, which can lead to destabilization, insecurity and large-scale human suffering. Another important consideration is that budgetary resources need to remain available for other expenses that are also essential to security. Advanced weapons are very costly. It comes down to achieving an optimum: not too few, not too many.

The rules-based international order is currently under intense pressure. Consequently, a series of arms control agreements have ended in recent years and others are under serious pressure. Belgium strives to maintain the remaining arms control architecture and identify opportunities to create global governance on emerging technologies such as AI and autonomous weapons.

For Belgium, respect for IHL is an essential criterion in arms control, disarmament and non-proliferation policies. Today, IHL is being eroded by massive and brutal violations, by undermining political rhetoric – like calling rules of engagement "stupid" – and by direct political attacks against the institutions that underpin IHL, such as the International Criminal Court and the ICRC. The ICRC's Global Initiative for IHL came therefore very timely.

I will now touch upon some actions that can support and strengthen IHL.

If you want to generate lasting impact, it can be enlightening to look at the structure of the International Organisation for Standardization (ISO) management standards, which prescribe how to achieve a strategic goal within a large organization. Take, for example, the ISO 9001 quality management standard,[222] which prescribes the following actions:

1. The right infrastructure and tools. In our case, weapon systems that can be used in accordance with IHL.

[222] International Organization for Standardization (ISO), 'Management System Standards', available at: https://www.iso.org/management-system-standards.html; ISO, *ISO 9001:2015, Quality Management Systems—Requirements*, 5th ed., ISO, September 2015, available at: https://www.iso.org/standard/62085.html.

2. Legal basis, clear rules and procedures.
3. Training on these rules and procedures.
4. Awareness raising – winning hearts and minds.
5. Monitoring – measure what is going on.
6. Enforcement and sanctioning of violations.
7. And every so often – Evaluation and adjustment of your management system.

Every element is an essential part. If one is missing, the effort will eventually fail. Many of these elements have been incorporated into the Global Initiative.

I will now touch upon some elements in the before, during and after conflict phases.

Before-conflict phase

Before weapons are produced and procured, there is a research and development phase. Certainly, in these times of exploding budgets for defence and shrinking budgets for practically everything else, universities and research institutions are writing research proposals for dual-use and military purposes. These proposals are assessed on their scientific value, but also according to a list of ethical and juridical criteria. The existing codes include criteria on privacy, GDPR, human rights and the environment, but not on IHL – which is, of course, very pertinent to research for military purposes. This is something that we are working on with the ethical advice council of the Royal Higher Institute for Defence.

Another element in the "before phase" is the arms trade. IHL is strongly embedded in national laws on arms export control, the EU Common Position[223] and the Arms Trade Treaty.[224] The political will to respect the IHL criterion is something else, as we can observe that some States continue exporting military goods to end users where there is a clear risk that the goods will be used for IHL violations. In this light, it is encouraging to see court action that, in some cases, leads to the halting of exports and has a chilling effect on export control authorities.

Still in the "before-conflict phase", we unfortunately see an erosion of humanitarian disarmament treaties. Take the Anti-Personnel Mine Ban Convention[225]: this year, five EU member States announced that they are leaving the treaty. Belgium deeply deplores this decision. We asked our allies and partners to be careful with their communication. It is one thing to say, *"We have viewed our military assessment and deem it necessary to re-introduce*

[223] *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment*, OJ L 335, 13 December 2008, pp. 99–103, available at: https://eur-lex.europa.eu/eli/compos/2008/944/2025-04-15/eng.
[224] *Arms Trade Treaty* (ATT) (adopted 2 April 2013, entered into force 24 December 2014) 3013 UNTS 269.
[225] *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction* (APMBC) (adopted 18 September 1997, entered into force 1 March 1999) 2056 UNTS 211.

anti-personnel mines in our arsenals in order to be able to defend our borders". It is another thing to say: *"The Convention was great in peacetime but is no longer fit for wartime",* or, even worse, *"If the Russians do it, we should be able to do it too".* Such rhetoric may be even more damaging than the withdrawal itself because it risks undermining the whole arms control and IHL architecture. We have also discussed so-called mitigating measures, for example that withdrawing States continue to submit their Article 7 transparency reports, continue participating as Observer States to the meetings of States parties (MSP), continue complying with Amended Protocol II and Protocol V to the Convention on Certain Conventional Weapons (CCW),[226] continue to support mine action, and consider limiting the geographical scope in which anti-personnel mines could be laid.

Following phase: during and after conflict

Belgium participates actively in the Explosive Weapons in Populated Areas (EWIPA) process next week in Costa Rica.[227] Two colleagues from our Ministry of Defence will participate. In general, Belgian armed forces have a strong tradition on IHL with veto powers for red-card holders in military targeting, illustrated by the phrase: "If there is doubt, there is no doubt".

But like for any law or rule, without enforcement, compliance tends to erode quickly and the rules risk becoming mere words on paper. As it was mentioned by several speakers yesterday, impunity encourages perpetrators to keep pushing the limits ever further.

Yesterday, Judge Meron spoke about the importance of national enforcement.

More than 25 years ago, Belgium had a universal jurisdiction law that allowed Belgian courts to prosecute grave breaches of IHL, war crimes, crimes against humanity and genocide, regardless of where they were committed or the nationality of the perpetrators or victims. After complaints were filed against Israeli Prime Minister Ariel Sharon and dozens of other political leaders, including those of allies, the Belgian government decided to modify the law by requiring a link with Belgium. Under the current version, presence or residence of the suspect in Belgium is a requirement. This law recently led to the referral to the court for trial of a woman accused of war crimes committed in Liberia in the early 1990s, who was living in Ghent.

For more than 20 years, we have also had the International Criminal Court.

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[226] *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* (CCW) (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 137; *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996* (Amended Protocol II to the CCW) (adopted 3 May 1996, entered into force 3 December 1998) 2048 UNTS 93; *Protocol on Explosive Remnants of War* (Protocol V to the CCW) (adopted 28 November 2003, entered into force 12 November 2006) 2399 UNTS 100.

[227] Second International Conference of the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas (EWIPA), held on 19-20 November 2025 in San José, Costa Rica.

Specifically regarding prohibited weapons, over the past decade Belgium has submitted amendments to the Rome Statute introducing the use of biological weapons, weapons with undetectable fragments and blinding laser weapons as war crimes, thereby strengthening the norm against these weapons, which are prohibited respectively by the Biological and Toxin Weapons Convention (BTWC)[228] and Protocols I and IV to the CCW.[229] We are now actively calling on other States parties to the Rome Statute to ratify the amended Statute. This appeal was repeated, for example, in Belgium's statements to this year's First Committee of the UN General Assembly.

Finally, and more generally, I would like to stress the importance of raising awareness of IHL in particular, and international law in general, towards the broad public The current crisis is partly caused by democratically elected leaders: politicians who announced that they would violate international law, were elected, and are now violating international law – with a "democratic mandate", so to say. Civil society, academics and international organisations can advocate as much as they want, and they should continue to do so – but in a democracy, it is voters who decide the direction of the government. And voters' eyes are glued to a small rectangular screen that is filled with polarizing disinformation and powered by an algorithm based on the "enrage to engage" rule.

Yet even more powerful than the small screen is a physical meeting: a dialogue with a family member, friend, colleague or a neighbour. And this is something that we can and should all engage in: find a local group, political, cultural, and try to set up an event on international security and IHL in your town, in your house. Explain IHL and international law in simple terms. We can all write excellent articles, notes and reports. But in the end, the electorate decides on the direction of the country and its policies. And the broad electorate does not read our reports or articles or attend events like this one. But when they hear and see an engaged speaker in real life, with their own eyes, they might remember it in the ballot box.

Thank you.

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[228] *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* (BTWC) (adopted 10 April 1972, entered into force 26 March 1975) 1015 UNTS 163.
[229] *Protocol on Non-Detectable Fragments* (Protocol I to the CCW) (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 168; *Protocol on Blinding Laser Weapons* (Protocol IV to the CCW) (adopted 13 October 1995, entered into force 30 July 1998) 2024 UNTS 163.

IHL obligations beyond active hostilities and their impact on post-conflict recovery

Romina Morello
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Summary

Ms. Morello examined the relationship between IHL and peace, arguing that, while respect for IHL does not produce peace, it can preserve the human, social and institutional foundations upon which peace processes depend. Drawing on the IHL and peace workstream of the Global IHL Initiative, she identified practical entry points across the conflict cycle. Before conflict, she presented preparedness as a foundation for restraint, structured around resilient systems and safeguards, the protection of civilians and essential services, and humanitarian disarmament as a confidence-building measure. During conflict, she explained how humanitarian clauses can translate legal obligations into practical arrangements concerning detainees, missing persons, humanitarian access, displaced persons and essential infrastructure. Such arrangements can create channels for dialogue, practical cooperation and de-escalation without requiring agreement on the underlying dispute. Finally, she outlined post-conflict measures aimed at rebuilding trust, including clarifying the fate of missing persons, supporting reintegration, addressing serious violations and mitigating the physical and environmental legacy of conflict. She concluded that political commitment to IHL must be translated into concrete action so that societies retain the capacity to rebuild, reconcile and move forward once violence subsides.

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The contemporary international system is marked by an unprecedented proliferation of armed conflicts, with more than 130 worldwide. Many are protracted, cyclical and deeply entangled with regional and global dynamics. In such contexts, the traditional boundary between war and peace has become increasingly blurred. Post-conflict environments are often characterized less by resolution than by fragile transitions, recurrent violence, and unresolved humanitarian consequences.

If IHL is to remain relevant, it must be understood not only as a body of rules governing the conduct of hostilities, but also as a framework whose implementation, or violation, has lasting implications for the trajectory of societies affected by war.

Reframing IHL: from regulation of war to conditions for peace

International humanitarian law is often described in deliberately modest terms. It does not seek to prevent war, nor to resolve the political disputes that give rise to it. Its primary purpose is to

limit the effects of armed conflict by protecting persons who are not, or are no longer, participating in hostilities, and by restricting the means and methods of warfare.

Yet this "modest" function has far-reaching consequences. The way wars are fought profoundly shapes the conditions in which they end.

This insight is not new, but it has gained renewed prominence in recent years. As explored in the International Review of the Red Cross[230], the relationship between IHL and peace is best understood not in terms of direct causality, but in terms of enabling conditions. Respect for IHL does not produce peace. However, it contributes to preserving the human, social and institutional foundations upon which peace processes depend.

It is worth emphasizing that exploring the links between IHL and peace must not blur the distinction between *jus in bello* (the law governing conduct in war) and *jus ad bellum* (the law governing the use of force). The equal application of IHL to all parties to a conflict, irrespective of the legality of their resort to force, remains a cornerstone of the legal framework.

The objective, therefore, is not to instrumentalize IHL as a tool of political negotiation, but to better understand how its faithful implementation may generate stabilizing effects that extend beyond the battlefield.

The Global IHL Initiative

These reflections are at the heart of the Global Initiative to Galvanize Political Commitment to IHL (Global IHL Initiative), launched in 2024 by Brazil, China, France, Jordan, Kazakhstan and South Africa together with the International Committee of the Red Cross (ICRC). The Global IHL Initiative seeks to reinforce political support for IHL at a time when its norms are under increasing strain.

Within this broader framework, a dedicated workstream has been established to explore the relationship between IHL and peace. This workstream aims to achieve two complementary objectives.

First, it seeks to clarify the conceptual links between respect for IHL and conditions conducive to peace. This involves examining how compliance with humanitarian norms influences factors such as trust, communication, and the preservation of essential infrastructure.

[230] 'IHL & Peace', 106 *International Review of the Red Cross* 927 (2024), available at: https://international-review.icrc.org/reviews/irrc-no-927-ihl-and-peace.

Second, it aims to identify practical entry points through which States and other parties to armed conflict can translate legal obligations into concrete measures that reduce humanitarian suffering while supporting long-term stability.

The workstream's approach is grounded in practice. It draws on consultations with States, military practitioners, mediators and humanitarian organizations, reflecting a shared recognition that the humanitarian consequences of armed conflict cannot be confined to the period of active hostilities.

Before conflict: preparedness as a foundation for restraint

One of the most striking contributions of the outcome document of the IHL and peace workstream[231] lies in its detailed articulation of what "preparedness" entails. Too often invoked as a general principle, preparedness is here broken down into three interrelated pillars that anchor the "before" phase. While many of these measures form part of States' ongoing efforts to prevent conflict and strengthen respect for IHL in peacetime, preparedness refers more specifically to the legal, institutional and operational steps that must be progressively reinforced as the likelihood of armed conflict increases. As States move closer to the possibility of war, ensuring that domestic legal frameworks, military doctrine, institutions, resources and personnel are ready to implement IHL becomes increasingly urgent. In this sense, preparedness is not simply about preventing conflict; it is about ensuring that, should prevention fail, the capacity to comply with IHL exists from the very outset of hostilities.

1. **Systems and safeguards**

The first pillar concerns the establishment of legal, administrative and technical systems capable of functioning during conflict. These include mechanisms to account for detainees, missing persons and the dead, as well as civil registration systems that preserve legal identity.

The emphasis is not merely on existence, but on resilience. Systems must be fully resourced and tested in advance of a crisis so that they can function without interruption. This includes safeguards against data loss, cyber threats and manipulation, an acknowledgment that in modern conflicts, information itself is a humanitarian asset.

The rationale is both humanitarian and political. When families receive answers about missing relatives, when detainees are properly registered, and when the dead are treated with dignity,

[231] Global Initiative to Galvanize Political Commitment to International Humanitarian Law, Workstream 3, *IHL and Peace: Outcome Document*, September 2026, available at: https://www.upholdhumanityinwar.org/sites/default/files/2026-09/Global%20IHL%20initiative%20-%20Outcome%20document%20Workstream%203%20IHL%20and%20Peace%20-%20%20September%202026.pdf.

societies carry less resentment and are less likely to become trapped in cycles of grief. These are not abstract benefits; they are conditions that shape the possibility of reconciliation.

2. Protection of civilians and essential services

The second pillar addresses the protection of civilians and civilian infrastructure. It calls for mapping essential services, integrating continuity planning into emergency frameworks, and establishing civil–military coordination mechanisms.

This reflects a growing recognition that the destruction of infrastructure is not only a humanitarian issue but also a structural one. The collapse of water, energy or health systems does not simply increase suffering; it destabilizes entire societies.

Incorporating assessments of cumulative societal and environmental impacts, as well as long-term destabilization risks, into planning was advised. In other words, military and security decisions must be informed not only by immediate operational objectives, but also by their downstream consequences.

3. Humanitarian disarmament as confidence-building

The third pillar situates disarmament within a broader logic of restraint and peacebuilding. At its core, humanitarian disarmament seeks to reduce the human cost of armed conflict by limiting the production, accumulation, proliferation and circulation of weapons, thereby reducing both the means and the incentives for armed violence. In a context of rapidly increasing global defence spending and expanding military stockpiles, these measures acquire renewed importance, as the large-scale production and availability of weapons can heighten tensions, fuel arms races and increase the risks of armed conflict.

Humanitarian disarmament is therefore not only a means of mitigating the humanitarian consequences of war but also an important confidence-building measure that contributes to maintaining peace by reducing mistrust and the potential for escalation between States.

This objective is pursued through a range of mutually reinforcing measures, including arms control agreements, responsible regulation of arms transfers, rigorous legal reviews of new weapons, means and methods of warfare under Article 36 of Additional Protocol I,[232] and the integration of humanitarian considerations into national procurement and acquisition policies.

In practice, this may include establishing robust national mechanisms to review the legality of emerging weapons technologies before they are fielded, strengthening export control systems to prevent transfers where there is a clear risk of serious IHL violations, reducing excessive stockpiles that could contribute to regional instability or diversion, and participating in

[232] Article 36 of Additional Protocol I (no 7).

international frameworks aimed at limiting or prohibiting weapons with indiscriminate or unacceptable humanitarian effects.

Taken together, these measures reinforce restraint, build confidence among States, and contribute to reducing the likelihood that disputes escalate into armed conflict. Taken together, these three pillars suggest that the foundations of peace are not laid at the negotiating table alone. They are built through systems that preserve dignity, limit harm and maintain trust before conflict begins.

Preparedness, therefore, is not merely a technical exercise. It reflects a broader political commitment to the law. States that invest in dissemination, training and institutional coordination are better equipped to ensure compliance under the pressures of armed conflict. Moreover, such preparedness may influence decision-making and operational conduct, reducing the likelihood of violations once hostilities begin.

In this sense, the “before” of IHL is not an abstract prelude. It is an integral part of the continuum that shapes how conflicts unfold.

During conflict: humanitarian clauses as bridges to dialogue and de-escalation

The central phase of IHL application remains the conduct of hostilities. It is here that the law’s protective function is most visible, and where its violations are most devastating.

This part examines humanitarian clauses as bridges between opposing parties, creating channels for dialogue, practical cooperation and confidence-building even in the midst of armed conflict. By facilitating humanitarian arrangements, such as local ceasefires for humanitarian purposes, evacuations, the exchange of detainees or the delivery of humanitarian assistance, these provisions help preserve communication, reduce human suffering and create opportunities for de-escalation without requiring agreement on the underlying political or military disputes. Rather than merely reaffirming existing legal obligations, the humanitarian clauses developed through the Global IHL Initiative illustrate how these obligations can be translated into practical arrangements that parties can negotiate and implement during hostilities.

For example, regarding persons deprived of liberty, the clauses encourage parties not only to facilitate their safe release and return but also to ensure access to health care, psychosocial support, social welfare, reintegration and livelihood services, while adopting measures to prevent stigma, retaliation and renewed violence upon return. Similarly, in response to mass displacement, the clauses recommend measures to facilitate the safe, voluntary and dignified return of displaced persons, including through transparent mechanisms to resolve housing, land and property claims and, where appropriate, provide restitution or compensation.

In many contemporary conflicts, the breakdown of essential services, including water systems, electricity networks and healthcare facilities, has consequences that extend far beyond immediate casualties. These systems form the backbone of civilian life, and their degradation can trigger cascading effects such as displacement, economic collapse and long-term public health crises, even in the absence of direct violence. Accordingly, the model clauses also encourage arrangements to protect and restore critical civilian infrastructure, facilitate rapid humanitarian access and repair essential services whenever feasible, recognizing that preserving these systems is essential both for civilian survival and for limiting further displacement.

From the perspective of IHL and peace, this dynamic is critical. Large-scale displacement not only exacerbates humanitarian suffering but also complicates post-conflict recovery and reconciliation. It disrupts social networks, strains host communities and creates conditions that may fuel further instability. By limiting the destruction of civilian infrastructure, respect for IHL helps ensure that societies retain a functional baseline upon which reconstruction can build.

This is not an abstract benefit. The humanitarian clauses demonstrate that even while hostilities continue, IHL can provide practical tools for cooperation that alleviate suffering, preserve human dignity and create conditions more conducive to dialogue, recovery and, ultimately, lasting peace.

Humanitarian issues as entry points for dialogue

Humanitarian issues often serve as catalysts for communication between parties to a conflict.

In highly polarized environments, political dialogue is often impossible in the early stages of conflict. Positions are entrenched, trust is absent, and the perceived costs of engagement are too high. Yet even in such contexts, certain humanitarian issues remain difficult to ignore.

Experience from mediation processes suggests that these interactions can serve as confidence-building measures. While they do not address the root causes of conflict, they create opportunities for limited cooperation. They establish communication channels, introduce a degree of predictability, and demonstrate that engagement is possible, even between deeply opposed parties. More fundamentally, however, they ensure that the most pressing humanitarian consequences of conflict are addressed as an integral part of mediation efforts, rather than being postponed until a political settlement is reached. By placing the protection of people at the centre of negotiations, humanitarian measures can help create conditions that are more conducive to dialogue, reduce grievances and lay stronger foundations for durable peace.

The Outcome Document of the IHL and Peace Workstream translates this insight into a set of illustrative clauses designed for inclusion in mediation processes, ceasefires and peace

agreements. These clauses are intended not only to facilitate dialogue between the parties but also to ensure that humanitarian considerations become a core component of negotiated arrangements. They reflect the understanding that mediation should extend beyond securing political agreements to include concrete commitments that alleviate suffering, protect affected populations and preserve the conditions necessary for long-term recovery and reconciliation. It begins with a reaffirmation of IHL obligations in good faith, a seemingly simple step that nonetheless carries weight in contexts of deep mistrust.

From there, the provisions move into operational commitments: humane treatment and registration of detainees, clarification of the fate of missing persons, dignified management of the dead, facilitation of humanitarian access, and protection of civilians and essential infrastructure. They also include specific measures for children, persons with disabilities and other at-risk groups, while recognizing the role of neutral intermediaries, community-based mechanisms and the meaningful participation of women.

Crucially, these clauses affirm that humanitarian engagement and negotiations may take place independently from political negotiations and should not be subordinated to them. This reflects the understanding that urgent humanitarian action should not be delayed or made contingent upon political progress. Instead, humanitarian measures should be pursued whenever possible to protect affected populations, reduce suffering and preserve the conditions necessary for dialogue, recovery and lasting peace.

After conflict: a checklist for rebuilding trust

Perhaps one of the most overlooked dimensions of IHL is that a number of its obligations continue to have effects after active hostilities. The end of fighting does not mark the end of humanitarian concerns; rather, it marks the beginning of a complex and prolonged phase in which the consequences of conflict must be addressed.

The Outcome Document of the IHL and Peace Workstream captures this phase through a detailed checklist that translates legal obligations into operational priorities. Rather than presenting post-conflict duties as abstract categories, it organizes them around people, institutions and systems.

At its core lies the question of trust. Post-conflict implementation is not only about compliance; it is about restoring confidence in institutions and rebuilding the social fabric.

Institutional coordination and participation form the backbone of this effort. Effective implementation requires designated authorities, inter-ministerial cooperation and the inclusion of local actors. Families of the missing, women’s organizations, children and community-based organizations and local actors are essential contributors. This reflects an understanding that legitimacy cannot be imposed; it must be built with those it seeks to serve.

The clarification of the fate of missing persons emerges as a priority with profound societal implications. Legal mandates, data systems and sustained engagement with families are essential. Uncertainty is itself a form of suffering, and addressing it is both a legal obligation and a step toward reconciliation.

Detention and reintegration processes are similarly central. The transition from detention to release requires legal clarity, oversight and support for reintegration. The checklist goes beyond release to address stigma, retaliation and community acceptance, recognizing that reintegration is as much a social process as a legal one.

Measures to address serious violations also have an important place in post-conflict transitions. Effective investigations, appropriate accountability processes, and access to remedies can help acknowledge harm, reinforce confidence in the law and reduce perceptions of impunity. These measures must be designed in a manner consistent with applicable international law and responsive to the needs of affected individuals and communities.

For displaced populations, return depends on concrete conditions: the clearance of explosive remnants of war, the restoration of essential services, access to documentation, and the resolution of housing and property issues.

Children occupy a central place in the recovery process. From immediate protection and family reunification to long-term access to education and psychosocial support, their reintegration is treated as a cornerstone of future stability.

Finally, the checklist addresses the environmental and physical legacy of conflict. Explosive remnants of war and environmental contamination continue to pose risks long after hostilities end. Their clearance and mitigation are therefore essential components of recovery, not technical afterthoughts. Together, these measures show that post-conflict implementation of IHL is not simply a process of resolving residual technical obligations. It can help restore confidence in institutions, address grievances that might otherwise persist, and create more credible foundations for recovery.

Conclusion

Reaffirming the importance of IHL is no longer sufficient. The challenge lies in translating political commitment into concrete action.

This requires sustained efforts at multiple levels, including strengthening domestic implementation frameworks, enhancing training and dissemination among armed forces, improving accountability mechanisms, engaging with non-State armed groups, and integrating humanitarian considerations into mediation and peace processes.

The Global IHL Initiative provides a platform for advancing these efforts, but its success will depend on the willingness of States and other actors to move beyond rhetoric.

Today's discussions offered a sobering yet constructive reflection on the role of IHL in nowadays' conflict landscape. IHL cannot end wars, resolve political disputes or eliminate the causes of violence. What it can do is shape the way wars are fought and, in doing so, influence the conditions in which they end.

By limiting human suffering, preserving essential infrastructure and maintaining channels of communication, respect for IHL helps safeguard the foundations necessary for recovery and peace.

In a world marked by protracted conflicts and deepening divisions, this is no small contribution. It is, in many respects, a prerequisite.

Standing up for IHL, therefore, is not only about defending a legal framework. It is about preserving the possibility that, when the violence subsides, societies retain the capacity to rebuild, reconcile and move forward.

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Moderated discussion

At the end of the panel discussion, a Q&A session allowed the audience to raise several questions.

Peace-making and the role of IHL and the ICRC

One participant underlined that the "first and most important object" of peace-making is to stop killings, violence and hostilities, and that one cannot always be "very choosy" about the methods used to achieve this quickly, including whether to pursue a ceasefire or a more permanent agreement. The participant stressed that violations of IHL, including their egregious nature, play a critical role in determining the prospects of bringing the parties together, and emphasized the importance of the ICRC's role during conflict in promoting compliance with the law and "humanizing the conflict". The participant also cautioned that care is needed regarding the provisions included in ceasefire agreements or peace treaties, referring to the Treaty of Versailles. The participant suggested that future discussions could further address the ICRC's role in facilitating peace-making, including through assisting repatriation of prisoners of war and efforts relating to missing persons.

In a related question, one participant asked how best to achieve complementarity between mediation organizations and humanitarian actors, noting that peace processes are highly political and that independent, impartial and neutral humanitarian organizations may be cautious about becoming embroiled in them. The participant referred to instances in which the ICRC moved from humanitarian intermediation to humanitarian mediation, while being wary of the potential consequences for its long-term acceptance as a neutral, independent and impartial humanitarian actor.

One panellist agreed that the manner in which armed conflict is carried out has a direct bearing on the quality of the peace sought, and that the quality of peace agreements also has direct consequences. The panellist referred to reviewing past agreements in Sudan to better understand conflict drivers, parties, interests, provisions and implementation mechanisms (or their absence), and how unresolved issues relate to current claims. The panellist emphasized that engagement that may advance peace is deeply contextual and depends on the level of trust enjoyed by the actor concerned. The panellist also highlighted the value of the ICRC's neutral intermediary role, including factors linked to the protected emblem and the ICRC's particular status, and referred to visible outcomes such as the release of prisoners, including political prisoners, and the importance of timing and synchronization with political processes.

Another panellist echoed the participant's points on agreements and described the ICRC's work as a neutral intermediary, including the operational efforts required in practice. The

panellist stressed the life-saving impact of a cessation of hostilities, referring to observed changes in the number of weapon-wounded patients arriving at a Red Cross hospital. The panellist also referred to the ICRC's work, with the Central Tracing Agency and States parties to an armed conflict, to identify and track where people are detained, establish the identity of POWs and share information with families, while stressing that preventing POWs from going missing is also an obligation of States. The panellist linked this to the need for the highest political levels to understand the minimum obligations that must be respected in war, including the creation of information bureaux in peacetime, accounting for the missing, and refraining from targeting civilian infrastructure so that reconstruction can be possible afterwards.

Prolonged occupation and perceptions of "legitimization"

One participant asked how to counter the view that the law of occupation is not a pathway to peace but a tool that legitimizes prolonged occupation, noting that IHL sets no strict limit on the duration of an occupation and grants prerogatives (or "rights") to the Occupying Power. The participant suggested that respect for IHL during occupation may lead to a form of "peaceful administration" but is distinct from bringing about peace, and asked how to respond to the argument that IHL, and the law of occupation in particular, legitimizes what would otherwise constitute a violation of international law.

A panellist responded by drawing an analogy with arguments raised in other debates about whether IHL "legitimizes" war. The panellist emphasized that IHL does not legitimize war but sets minimum standards in a situation in which violations of IHL and international law may already have occurred, including through an unlawful use of force. The panellist stressed that, in situations of occupation, IHL sets minimum standards to protect humanity, ensure the dignity of those under the authority of the Occupying Power and clarify the latter's responsibilities, while other branches of law and other processes may contribute to achieving sustainable peace.

Equality of belligerents, *jus contra bellum* and current challenges for peace processes

One participant asked how to preserve the principle of equality of belligerents in humanitarian diplomacy while addressing, in settings such as the UN Security Council, *jus contra bellum* questions relating to aggression and the restoration of peace. A panellist noted that the values-based elements described are highly contested in practice and, rather than responding to the question explicitly, highlighted broader challenges for peace-making today.

The panellist referred to situations in which multiple official mediation processes run in parallel, with distinct mandates and no clear centre of gravity, creating difficulties in moving from stopping the killing towards developing a post-conflict vision. The panellist also referred to the

rejection of the idea that comprehensive peace agreements are possible, stressing that this places greater pressure on humanitarian organizations to deliver humanitarian outcomes where political and diplomatic efforts fail. The panellist argued that this notion should be rejected because it also removes a positive vision of peace and weakens the institutions needed for prevention.

Justice and accountability in the "IHL and Peace" Workstream of the Global IHL Initiative

One participant asked whether the question of justice is being taken into consideration in the Global IHL Initiative Workstream on IHL and Peace, noting the common saying that there is "no peace without justice", but that this is a difficult promise to keep. A panellist responded briefly that the consultations under the Global IHL Initiative Workstream on IHL and Peace would not necessarily focus on accountability, given the limited timeframe and the number of topics to be covered, but that accountability is a transversal takeaway for the Global IHL Initiative as a whole. The panellist noted that, throughout the first round of consultations, many States across the different workstreams had raised accountability, primarily before national courts, and expressed the hope that overarching practical recommendations on accountability could be developed.

In a related question, one participant asked how a mediation organization balances the pursuit of peace and the involvement of belligerents with the need for justice, both to ensure lasting peace and to address the needs of victims. A panellist referred to their organization's work on justice and to the IHL & Peace issue of the International Review of the Red Cross,[233] highlighting challenges linked to transitional justice and reintegration in post-genocide environments. The panellist emphasized that peace agreements that fail to take accountability and justice into account will not be sustainable and are weak from the outset, and stressed the responsibility of mediators to ensure that agreement processes comply with the law. The panellist also referred to questions raised by attacks against negotiating parties and the sanctity of the mediation space, recalling a historical example involving a UN peace mediator who was killed in Jerusalem in 1948 while on a mediation mission, and the links between upholding IHL and advancing peace.

Maintaining humanitarian disarmament treaties

One participant asked, in practical terms, what argument could convincingly persuade States considering withdrawal from the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions to remain parties, noting that legal and values-based arguments may speak

[233] 'IHL & Peace' (no 230).

mainly to those who are already convinced, while military experts sometimes raise more concrete arguments about military advantage.

In a related question, another participant asked how disarmament regimes can ensure the security of States that voluntarily disarm, referring to a State's experience with disarmament commitments and its subsequent reliance on the Vienna Convention clause on fundamental change of circumstances (*rebus sic stantibus*) to suspend an agreement rather than denounce it.

One panellist responded that different States face different contexts and noted that, when many States joined the Anti-Personnel Mine Ban Convention, their militaries assessed whether anti-personnel mines were needed for national defence and concluded that other weapons could be used to repel an invasion. The panellist suggested that the use of a prohibited weapon in a conflict does not mean that other States should reintroduce it into their arsenals as a legitimate weapon.

Another panellist responded that it is relevant to consider the different arguments for maintaining such disarmament treaties, including humanitarian and legal arguments linked to the principle of distinction and the impact of weapons on civilians and on a society's ability to recover, including the impact on a State's own civilian population. The panellist also referred to military arguments, including the availability of alternative weapons and related considerations, while cautioning against relying exclusively on such arguments. The panellist additionally highlighted economic considerations, including the costs of clearing anti-personnel mines and the importance of clearance in enabling displaced populations to return, noting that some States have taken decades to clear their territory.

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CONCLUDING REMARKS

Eloi Fillion
Head of Delegation, ICRC Delegation to the EU, NATO and the Kingdom of Belgium

Excellencies,

Distinguished experts and colleagues,

Ladies and gentlemen,

As we draw the 25th Bruges Colloquium to a close, allow me to express my deep gratitude for your contributions over these two days.

Once again, Bruges has lived up to its reputation as a place of thoughtful exchange – a forum where experts in humanitarian law representing States, the EU, NATO, NGOs and academic institutions can come together to reflect constructively on the law that protects in war.

This year's theme – "Standing Up for IHL: Building a Common Understanding Around the Law that Protects in War" – resonates deeply with the times we live in. In ongoing conflicts, we frequently witness a blatant disregard for the rules and principles of humanitarian law – and, even more troubling, the distortion of IHL language to justify brutality. Precisely in times of heightened geopolitical tensions, we must remind ourselves and each other that military actions must always remain anchored in respect for the law and for human dignity.

Our discussions over the past two days were framed within the Global Initiative on International Humanitarian Law, introduced yesterday by ICRC Vice-President Mr Gilles Carbonnier. The panels of this year's Colloquium reflected five of the Initiative's seven substantive workstreams, each devoted to examining the legal substance, interpretive approaches, and practical application of existing rules of international humanitarian law.

More broadly, the overarching theme of this year's Bruges Colloquium echoed the central question that also lies at the heart of the Global Initiative: what does political support for IHL look like in practice? Or, in other words, how can we stand up for IHL?

This question was addressed in the inspiring keynote speeches by Judge Ted Meron, the EU and NATO. The keynote speakers explained that we should avoid referring to "permissive" interpretation of the law, but also highlighted that the result of the Global Initiative on IHL will depend on good faith efforts and partnerships.

They also reminded us that political support for IHL should be courageous, loud, explained, principled, unequivocal and consistent. Additionally, political support also means that organisations, including military alliances, must lead by example.

The Panels then focused on five topics covered by workstreams of the Global Initiative on IHL.

Panel 1 examined the protection of civilian infrastructure. We were reminded that application in good faith is a legal requirement that underpins the whole international legal system. It was also made clear that dual-use objects is not a legal category under IHL, but merely a factual description. From a military perspective, AI was suggested as a possible tool to help protect civilian infrastructure, for example in urban settings.

Panel 2 addressed the protection of medical facilities. We were reminded by the speakers that the specific protection of hospitals under IHL is the rule, and any loss of protection the absolute exception. We were invited to look at the protection of hospitals from an operational perspective and learnt about the robust processes that help ensure the highest protection standards are upheld. Lastly, it was made clear that there's no realistic circumstance where bombing and destroying a functioning hospital would be allowed by IHL.

Panel 3 moved us into the digital realm, where new technologies and cyber operations are reshaping the battlefield. Here, we learned more about the various elements considered by a State when developing a policy on the application of IHL to cyberspace. We also discussed the challenges linked to civilian involvement in armed conflict through digital means, and the need to acknowledge both the risks and obligations under IHL. Additionally, speakers explored how IHL and human rights law interconnect to limit the use of harmful information during conflict.

This morning, **Panel 4** explored naval warfare. The conversation highlighted that the dependence of our economies on infrastructure at sea has never been higher. In addition, we were invited to think about the sea as natural environment that enjoys protection against widespread, long term and severe damage to it. It was suggested that there is a misplaced faith in traditional Law of Naval Warfare. In this sense, speakers and the audience called for the need to abandon the traditional expression "belligerent rights", and to be courageous in reviewing some of the rules.

Finally, **Panel 5** reminded us that, despite IHL is often called "the law of war", its scope extends beyond the battlefield. The panellists stressed the importance of dealing with the past in order to envision an alternative to violence. They also shared indicators of conflict drivers, such as sexual based violence or recruitment of children. In discussion the role of disarmament for ensuring peace, it was noted that if all funding goes to weapons, no money is left for policy domains (we hope that includes IHL) that are equally or even more important to ensure security. Respect for IHL before, during and after conflict is therefore an early investment in lasting peace and stability.

These reflections form part of a much broader conversation. As you heard yesterday, the Global Initiative on IHL is now entering its next phase. A second round of State consultations will take place before the end of this year, complemented by expert meetings and regional events aimed at deepening engagement and widening perspectives. The Initiative will continue throughout 2026 and culminate in a landmark global conference on Humanity in War.

Your participation here – your ideas, your questions, your shared experiences – are of immense value to this effort. Your involvement in forums such as the Bruges Colloquium is more than a gesture of support; it is a reaffirmation of shared values and a commitment to a more humane world.

Before closing, allow me to express my sincere thanks.

To our speakers and chairs, for their clarity, courage, and depth of analysis.

To our partners at the College of Europe, especially Emelie Clauwaert and Claire Lawrence, for their tireless cooperation and warm hospitality.

To our colleagues from the ICRC's Legal Division in Geneva and the Global Initiative team, whose expertise and engagement have enriched our programme.

To the ICRC's Vice-President Gilles Carbonnier, who returned to Bruges on numerous occasions during his mandate: thank you for your continued support – we hope you pass on your experience to your successor, who will take over from you in 2026.

And to my dedicated team here in Brussels – Nele Verlinden, Helena Placentino, Ada Hernandez Lluis, Elisabeth Kervyn de Meerendre, Katarzyna Radwan, and Janet Craven – thank you for the professionalism and determination that make this Colloquium possible.

As always, we leave Bruges with more questions than answers – and that is as it should be. The questions raised here are not just academic; they are vital to ensuring that the law remains a living instrument, capable of protecting those who need it most.

Let us carry from these two days a renewed sense of purpose: to stand up for IHL not only in principle, but in practice; not only in words, but in the decisions that shape the conflicts of today and tomorrow.

And with that, I formally close the 25th Bruges Colloquium on International humanitarian law. Thank you – and I wish you all a safe journey home.

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ANNEX

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LIST OF ABBREVIATIONS

Additional Protocol I (AP I)	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
Additional Protocol II (AP II)	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
AI DSS	AI-enabled decision support systems
ATT	Arms Trade Treaty
AWS	Autonomous Weapons Systems
CCW	Convention on Certain Conventional Weapons, 10 April 1980
CMC	Civil-military coordination/cooperation
COIN	Counterinsurgency
Common Article 1	Article 1 common to the Geneva Conventions of 12 August 1949
DPH	Direct Participation in Hostilities
EU	European Union
EWIPA Declaration	Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas
GC or Geneva Conventions	The Four Geneva Conventions of 12 August 1949
First Geneva Convention (GC I),	Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949
Second Geneva Convention (GC II)	Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949
Third Geneva Convention (GC III)	Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949
Fourth Geneva Convention (GC IV)	Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949
HRDDP	Human Rights Due Diligence Policy
IAC	International Armed Conflict
ICC	International Criminal Court

ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International humanitarian law
IHRL	International Human Rights Law
ILC	International Law Commission
LEGADs	Legal Advisors
OHCHR	Office of the High Commissioner for Human Rights
OPEX	Operational Experimentation
OPLAN	Operational Plan
NATO	North Atlantic Treaty Organization
NIAC	Non-International Armed Conflict
NIB	National Information Bureau
POWs	Prisoners of War
RoE	Rules of Engagement
SOLAS	International Convention for the Safety of Life at Sea, 1 November 1974
UN	United Nations
UN Charter	Charter of the United Nations, 26 June 1945
UNCLOS	United Nations Convention on the Law of the Sea, 10 December 1982

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PROGRAMME

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Standing up for IHL: Building a Common Understanding Around the Law that Protects in War

25h Bruges Colloquium on IHL

Bruges, 13-14 November 2025

Day 1 – Thursday 13 November 2025, 08:45 – 18:00 (CET)

08:45 - 09:15 **WELCOME AND REGISTRATION**

09:15 - 09:45 **OPENING STATEMENTS**

- **Eloi Fillion**, Head of Delegation, ICRC Delegation to the EU, NATO and the Kingdom of Belgium
- **Marco Incerti,** Director of the Rectorate of the College of Europe
- **Gilles Carbonnier**, Vice-President of the ICRC

09:45 - 10:45 **INTRODUCTORY SESSION: WHAT SHOULD POLITICAL SUPPORT FOR IHL LOOK LIKE IN PRACTICE?**

- **Judge Theodor Meron**, Professor at Oxford University and NYU Law School, former President of the International Criminal Tribunal for the former Yugoslavia
- **Kajsa Ollongen,** EU Special Representative for Human Rights, International humanitarian law and International Criminal Justice
- **John Swords**, Legal Adviser and Director of the Office of Legal Affairs, NATO HQ

10:45 - 11:15 *Coffee break*

11:15 - 12:45 **PANEL 1: STANDING UP FOR HUMANITY THROUGH THE PROTECTION OF CIVILIAN INFRASTRUCTURE**

- **Protecting civilian infrastructure by a good faith application of the concept of "military objective" under IHL**
  – Arjen Vermeer, Assistant Professor of Military Law, Netherlands Defence Academy
- **Good practices to ensure the protection of civilian infrastructure: a military perspective**
  – Brigadier Joanna Bowen, Head of Operational Law, British Army, HM Forces
- **Legal issues relating to targeting of dual-use objects**
  – Laurent Gisel, Head of the Arms and Conduct of Hostilities Unit, ICRC

Chaired by Julia Grignon, Professor, Paris-Panthéon-Assas University & Member of the French National Committee on Implementation of IHL

12:45 - 14:15 *Lunch (Auditorium A and B)*

14:15 - 15:45 **PANEL 2: STANDING UP FOR A MEANINGFUL PROTECTION OF MEDICAL FACILITIES: IMPLEMENTING LEGAL SAFEGUARDS**

- **Specific protection of medical facilities: what does the law say?**
  – Dr. Nele Verlinden, Senior Legal Advisor, ICRC Delegation to the EU, NATO and the Kingdom of Belgium
- **Hospitals misused for military purposes: addressing the loss of specific protection in military practice**
  – Brigadier Lisa Ferris, Defence Advisor to the United Kingdom & Senior Military Representative to NATO & EU, New Zealand Defence Force
- **Medical facilities under attack: implementing safeguards to prevent humanitarian consequences**
  – Claude Maon, Intersectional Legal Director, Médecins Sans Frontières (MSF)

Chaired by Silvia Delgado González, Deputy Director General for the United Nations and Multilateral Affairs, Ministry of Foreign Affairs of Spain

15:45 - 16:15 *Coffee break*

16:15 - 17:45 **PANEL 3: STANDING UP FOR IHL IN CYBER OPERATIONS: STRENGTHENING PROTECTION IN DIGITALIZED WARFARE**

- **How IHL rules impose limits on cyber operations during armed conflict: a State perspective**
  – Marie van Hoofstat, Legal Advisor, Belgian Ministry of Defense Cyber Comm
- **The legal implications of the military use of civilian ICT infrastructure, and the involvement of civilians in cyber operations during armed conflict**
  – Dr. Heather Harrison Dinniss, Senior Lecturer, Swedish Defense University
- **The protection of civilians and other protected persons from the spread of harmful information during armed conflict**
  – Chantal Joris, Senior Legal Officer, ARTICLE 19

Chaired by Laurent Gisel, Head of the Arms and Conduct of Hostilities Unit, ICRC

18:30 - 20:30 *Reception at the Bruges City Hall (Burg 12, 8000 Bruges)*

Day 2 – Friday 14 November 2025, 09:00 – 13:00 (CET)

09:00 - 9:15 **WELCOME**

09:15 - 10:45 **PANEL 4: STANDING UP FOR IHL AT SEA: TAKING STOCK OF PROTECTION CHALLENGES IN CONTEMPORARY NAVAL WARFARE**

- **Think before you sink: the position of merchant vessels under the law of naval warfare**
  – Tom Ruys, Professor of International Law, Ghent University
- **The humanitarian impact of naval warfare on land and at sea**
  – Commander Peggy McGregor, Head of the Law of Armed Conflict (LOAC) Office, Legal Department, French Ministry of Armed Forces
- **Protection of the natural environment at sea during armed conflict: the law and the practicalities**
  – Alexander Lott, Researcher Professor, Norwegian Centre for the Law of the Sea, University of Tromsø - The Arctic University of Norway

Chaired by Romina Morello, Legal Advisor on the Global IHL Initiative, ICRC

10:45 - 11:15 *Coffee break*

11:15 - 12:45 **PANEL 5: STANDING UP FOR IHL BEFORE, DURING, AND AFTER CONFLICT: CREATING PATHWAYS FOR PEACE**

- **How respect for IHL can support peace processes: enabling dialogue, building and creating space for mediation and reconciliation**
  – Itonde Kakoma, President and CEO, Interpeace
- **Disarmament treaties and their contribution to lasting peace: the importance of continued adherence**
  – Frank Meeussen, Deputy-Director for Arms Control, Disarmament and Non-Proliferation, Belgian Ministry of Foreign Affairs
- **IHL obligations beyond active hostilities and their impact on post-conflict recovery**
  – Romina Morello, Legal Advisor on the Global IHL Initiative, ICRC

Chaired by Vaios Koutroulis, Professor of International Law, Université libre de Bruxelles

12:45 - 13:00 **CONCLUDING REMARKS**

Day 1: Thursday, 13 November 2025

Welcome and Opening Addresses

Mr. Eloi Fillion took on his current position as Head of Delegation to NATO, the EU and the Kingdom of Belgium, International Committee of the Red Cross (ICRC), in December 2024. After joining the ICRC in 1998 as Legal Adviser in Geneva, Mr. Fillion moved to the operations and served in India, Uganda, Afghanistan, Ethiopia, Iraq, Sudan, Israel and Palestine with increasing management responsibilities. In 2009 he became Deputy Head of Delegation in Afghanistan. Between 2011 and 2014 he was Deputy Head of Operations for the Middle East Region, mainly working on Syria. He worked as Head of Delegation in Sudan from 2015 to 2016, as Head of Delegation in Nigeria from 2017 to 2021, as Head of Delegation in Afghanistan from 2021 to 2024. Lastly, he served as Regional Director for the Near and Middle East region from June to October 2024. Mr. Fillion holds a Master's degree in Public International Law from the University of Aix-en-Provence (France) and a BA + Maîtrise in Public International Law from the Exeter University (UK) and the University of Aix-en Provence (France) respectively.

Mr. Marco Incerti is the Director of the Rectorate of the College of Europe, Bruges Campus. He has over two decades of experience across European academia and think-tanks. Most recently, he served as Adviser to the Secretary General of the European University Institute, after a seven-year stint as Director of its Communications Service. As Director of the Rectorate, Mr. Incerti oversees the operations of a strengthened office and supports Rector Mogherini in the coordination of the Heads of Services as well as the implementation of the action plan for her second mandate.

Dr. Gilles Carbonnier is the Vice-President of the International Committee of the Red Cross (ICRC) (appointed in 2018). Since 2007, Dr. Carbonnier has been a professor of development economics at the Graduate Institute of International and Development Studies (Geneva), where he also served as director of studies and president of the Centre for Education and Research in Humanitarian Action. His expertise is in international cooperation, the economic dynamics of armed conflict, and the nexus between natural resources and development. His latest book, published by Hurst and Oxford University Press in 2016, is entitled Humanitarian Economics: War, Disaster and the Global Aid Market. Prior to joining the Graduate Institute, Dr. Carbonnier worked with the ICRC in Iraq, Ethiopia, El Salvador and Sri Lanka (1989–1991), and served as an economic adviser at the ICRC's headquarters (1999–2006). Between 1992 and 1996, he was in charge of international trade negotiations (GATT/WTO) and development cooperation programmes for the Swiss State Secretariat for Economic Affairs.

Introductory session: what should political support for IHL look like in practice?

Judge Theodor Meron has been a Judge and, between March 2012 and January 2019, was the President of the International Residual Mechanism for Criminal Tribunals (Mechanism). He was also a Judge and Presiding Judge of the Appeals Chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda

(ICTR). He served a total of four terms as President of the ICTY and three terms as President of the Mechanism. A leading scholar of international humanitarian law, human rights, and international criminal law, and of Shakespeare and the war, Judge Meron is the author of a dozen books and more than a hundred articles, including some of the books and articles that helped build the legal foundations for international criminal tribunals. His latest book, "Standing up for Justice: Challenges of Trying Atrocity Crimes" was published by the OUP in 2021. He is a member of the Institute of International Law, member of the Council on Foreign Relations, a fellow of the American Academy of Art Sciences, and the recipient of numerous awards, honours, and medals, such as the Hudson Medal (ASIL) and the Haskins Prize (ACLS) as well as Officer of the French Legion of Honour, Grand Officer of the French National Order of Merit as well as Officer of the Order of Merit of Poland. A past honorary President of the American Society of International Law and past Editor-in-Chief of the American Journal of International Law, he is Charles L. Denison Professor of Law Emeritus at NYU Law School and, since 2014, a Visiting Professor of Law at Oxford University, he is a Visiting Fellow at Mansfield College and Academic Associate of Bonavero Human Rights Institute and Honorary Fellow in Trinity College. In 2019, HM Queen Elizabeth II appointed him a Companion of the Most Distinguished Order of St. Michael and St. George (CMG) for service to criminal justice and international humanitarian law. He is a special adviser on International humanitarian law to the Prosecutor of the International Criminal Court.

Ms. Kajsa Ollongren is the EU Special Representative (EUSR) for Human Rights, International humanitarian law and International Criminal Justice. Ms. Ollongren is a former Dutch politician who served in the Netherlands as Minister of Defence (2022–2024) and Minister of the Interior and Kingdom Relations (2017–2022) in two consecutive cabinets, also holding the role of Deputy Prime Minister (2017–22). Previously, she was an alderwoman and deputy Mayor of Amsterdam. Having entered the Dutch civil service in 1992, she served as the deputy secretary-general (2007-2011) and secretary-general (2011-2014) within the Prime Minister's office. Ms. Ollongren, who is a dual Dutch and Swedish national, studied history at the University of Amsterdam and Public Administration at the École Nationale d'Administration in Paris. She is a reservist at the Dutch airforce, a fellow at Chatham House and sits on various boards of non-profit organisations in the field of international relations and security and defence.

Mr. John Swords is the NATO legal adviser and director of NATO's Office of Legal Affairs. His team advises the Secretary General, the International Staff as well as the 32 NATO Allies in committees and Council. The work touches on all areas of law and, in addition to advice, the team conducts litigation and negotiates and drafts contracts and treaties. John also chairs the Annual Meeting of Allies Legal Advisers (AMALA), when the most senior MFA and MOD lawyers from capitals convene at NATO to discuss the key strategic legal issues confronting the alliance. Before joining NATO, John led the Operational and International humanitarian law division in the UK's MOD.

Panel 1: Standing up for humanity through the protection of civilian infrastructure

Mr. Arjen Vermeer is Assistant Professor of Military Law at the Netherlands Defence Academy. He is also conducting his Ph.D. research at the University of Amsterdam on the legal consequences for States under international law for the provision of satellite data by

commercial entities in support of a party to an international armed conflict. Prior he held various teaching positions, worked as an arbitrator for an international sports federation and as a consultant on legal and policy issues for national and international clients. He is the founder and former editor-in-chief of the Journal of International Humanitarian Legal Studies and worked for several years as assistant to a Special Rapporteur of the UN International Law Commission and as senior legal advisor to the Netherlands Red Cross. He holds an LL.M and MA from the University of Leiden and an LL.M from the Geneva Academy of International humanitarian law and Human Right.

Brigadier Joanna Bowen joined the Army Legal Service in 1996. During her early military career, she was assigned to the Army Prosecuting Authority after which she served as a staff officer advising on criminal and disciplinary cases. However, much of her career has been spent advising on international law. She has served in various operational Headquarters in the UK as well as NATO HQ including the Allied Rapid Reaction Corps in Germany and the Supreme Headquarters of Allied Powers in Europe (SHAPE) in Belgium. She has deployed on several military operations including Feb 1999 North Macedonia, Jun 99 Kosovo, Jan 04 North Macedonia (12-month deployment) and Jan 12 Afghanistan. In 2001, she was awarded a Distinction in a LLM in International Criminal Justice and the Law of Armed Conflict. In 2006 she was awarded the NATO Meritorious Service Medal for exceptional services to NATO. In 2011, while serving at the Doctrine, Concepts and Development Centre she wrote the capstone doctrine on CPERS (JDP1.10) As a Colonel, she has advised the most senior general officers on UK domestic operations and intelligence operations. She attended the Royal College of Defence Studies in 2023 and upon promotion to Brigadier took up the role of Head of Operational Law in January 2024.

Mr. Laurent Gisel is the Head of the Arms and Conduct of Hostilities Unit at the Legal Division of the International Committee of the Red Cross (ICRC) in Geneva. He leads the development and promotion of the ICRC's strategies and activities to reaffirm, clarify, and strengthen international humanitarian law with regard to weapons of humanitarian concern, new technologies of warfare and the conduct of hostilities. Mr. Gisel worked in the ICRC Legal Division in various positions since 2008, including Legal Adviser to Operations, and Senior Legal Adviser and Cyber Team Leader. From 2013 to 2020, he was the file holder for the rules governing the conduct of hostilities under international humanitarian law, including their application during urban warfare, cyber operations, and outer space operations, on which he publishes regularly. Mr. Gisel began his career at the ICRC in 1999 and held several positions in conflict areas, in Israel and the Occupied Territories, Eritrea, Afghanistan, and as Deputy Head of Delegation in Nepal. He served as Diplomatic Adviser to the ICRC Presidency from 2005 to 2008. Prior to joining the ICRC, Laurent became attorney-at-law in Geneva and worked at the Public and Administrative Law Court of the Canton de Vaud. He holds a Degree in Law from the University of Geneva and a Masters in International Law from the Graduate Institute of International Studies (Geneva, Switzerland).

Prof. Julia Grignon is a Visiting Professor at Paris-Panthéon-Assas and Chair of the Subcommittee on International humanitarian law and Humanitarian Action at the CNCDH (National Committee on Human Rights, France). Specialized in International humanitarian law, at Laval University Prof. Julia Grignon directed Osons le DIH! a development partnership that aimed at contributing to the promotion and strengthening of International humanitarian law. She also directed a research project on the extraterritorial application of International Human

Rights Law in the context of external military operations. At Paris-Panthéon-Assas she is currently the head of the International Law Clinic. Prof. Grignon is an alumnus of University of Geneva, where she obtained her Ph.D on The Temporal Scope of International humanitarian law, awarded the Paul Reuter and the Walther Hug prizes. She is the author of numerous publications in peer-review journals as well as in collective works. She is one of the co-authors of the Online Casebook How Does Law Protect in war?. She also directed a special issue of the Revue Québécoise de droit International on the law applicable in the armed conflict between Russia and Ukraine and edited the book Tribute to Jean-Pictet. In addition to occasional teaching and/or research as a visiting professor in North America, Europe and Africa, Prof. Grignon spent a year of study and research at the Institut des droits de l'Homme et de la paix of the University of Cheikh Anta Diop in Dakar (Senegal). From November 2022 to November 2025 Prof. Grignon was the Research Director of IRSEM (Strategic Research Institute at the Military Academy, France).

Panel 2: Standing up for a meaningful protection of medical facilities: Operationalizing legal safeguards

Dr. Nele Verlinden is a Senior Legal Advisor at the ICRC Delegation to the EU, NATO and the Kingdom of Belgium in Brussels, where she is responsible for the dialogue on International humanitarian law (IHL) with the EU, NATO and Belgium. Before joining the Brussels delegation, she served as Legal Advisor in the Paris Regional Delegation of the ICRC, covering inter alia national implementation of IHL, repression of IHL violations, responsible arms trade and various disarmament issues. She also worked as a lecturer at KU Leuven, as a legal advisor to the Belgian Ministry of Justice and in various other capacities for the ICRC's legal division in Geneva. Dr. Verlinden holds a Ph.D in international law from KU Leuven, an LL.M in International humanitarian law and Human Rights Law from the Geneva Academy (summa cum laude) and a Master in International and European Law from KU Leuven (summa cum laude).

Brigadier Lisa Ferris, originally from Gisborne, New Zealand, commenced her career with the New Zealand Army in 2003 as a Lieutenant in the Army Legal Service. Her early postings included serving as a Legal Adviser at Headquarters New Zealand Defence Force and Headquarters Joint Force New Zealand. She gained her first promotion to Captain in 2004 while working as Legal Officer for the Army Training Group. In 2008, she was promoted to Acting Major and deployed to the Arabian Gulf on board HMNZS Te Mana as a Legal Adviser, where her rank was substantiated. During her career, Brigadier Ferris took on key legal advisory roles in operational contexts, including deployments to Afghanistan in 2009 and again in 2012, where she advised on a Court of Inquiry. In 2012 she was seconded to the Government Communications Security Bureau, providing legal advice on intelligence matters. From 2013 onwards, appointments included Deputy Director Personnel Law, Deputy Director Operational Law and Chief of Staff/Commanding Officer for Defence Legal Services. In 2015, she visited Iraq as part of the Ministry of Foreign Affairs and Trade delegation, contributing to plans for New Zealand's Building Partner Capacity mission. In 2016 she was promoted to Acting Colonel and appointed as Acting Director of Defence Legal Services. She was appointed as Director of Defence Legal Services and substantiated as a Colonel in 2017. In 2018, she was promoted to Brigadier. In her current role, Brigadier Ferris serves as the

Defence Adviser to the United Kingdom and Senior Military Representative to NATO and the EU, a position she assumed in June 2024.

Ms. Claude Maon is currently the Legal Director of Médecins Sans Frontières (MSF) Intersectional Legal Department, that she joined in 2017. She specializes in International humanitarian law, protection of patients who are victims of violence and medico-legal issues. Prior to joining MSF, she worked for several years as an attorney at the Brussels Bar and as a project specialist on access to justice and the fight against impunity in the field for the United Nations Development Program (UNDP) as well as for Avocats Sans Frontières - Lawyers without Borders (ASF) in several African countries. She also worked as a protection officer with the United Nations High Commissioner for Refugees (UNHCR) in Geneva and supported missions in the field worldwide. She undertook numerous consultancies and project management roles in the area of justice support and the fight against impunity, both for the UN system and non-governmental organizations. Ms. Maon holds a Master's degree in law and a Master's degree in International Humanitarian Aid (NOHA) from the Université Catholique de Louvain (UCL) – Belgium. She also holds a certificate in Criminalistics Science and Medico-Legal Psychiatry from the Université Libre de Bruxelles (ULB). She is a member of the Board of Lawyers without Borders (Avocats Sans Frontières).

Ms. Silvia Delgado González is a career diplomat. Since 2024, she serves as Deputy Director General for the United Nations at the Spanish Ministry of Foreign Affairs. She has worked at the Spanish embassies in Tripoli, Beijing, and at the Mission of Spain to the United Nations in New York. She has worked at UNRWA, at its headquarters in East Jerusalem and in New York. She holds degrees in Law and in Translation and Interpreting from Jaume I University in Castellón.

Panel 3: Standing up for IHL in cyber operations: strengthening protection in digitalized warfare

Senior-Captain Marie Van Hoofstat holds master's degrees in Law and Political Sciences both from the Catholic University of Leuven and a European Master's degree in Human Rights and Democratisation from the European Inter-University center in Venice. Sr. Cpt. Van Hoofstat started her professional career as an intern at the Brussels Representation of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) handling GIZ contacts with European institutions and with partners in Brussels. Next, she completed an awarded internship from the European Inter-University Centre at the Human Rights Department of the Belgian Federal Public Service Foreign Affairs. In 2011 she joined the Belgian Armed Forces to become a Legal Advisor (LEGAD) in the Operational Law Section of the Directorate Legal Support and Mediation. From 2014 to 2017 she was detached to the service of the Assistant Chief of Staff - Operations and Training. As from 2017 she has launched the LEGAD function at the Belgian Air Force. Meanwhile, she also fulfilled the function of Secretary of the Belgian Commission for the Legal Review of new Weapons, Means and Methods of Warfare. Since 2012, Sr. Cpt. Van Hoofstat participates in operational deployment. She was involved in planning what was first the French-led Operation Serval and later the EU Training Mission in Mali in 2013 amongst others. She also saw operational service as the LEGAD to the Belgian ISAF Contingent in Kandahar. In both planning and execution, Sr. Cpt. Van Hoofstat was closely involved in the Belgian Homeland Ops, Operation Vigilant Guardian – running since

early 2015. In 2014 she was the LEGAD for the first F-16 detachment operating in Iraq (based in Jordan), and well as in 2017 she was deployed to Al-Udeid Air-base (Qatar) for Operation Inherent Resolve in Iraq and Syria. In 2021 she joined the Project Office Cyber created to establish the Belgian Cyber Command, to which she returned in 2023 after completing staff college. Since her return in 2023 she has continued to work as legal advisor to the Belgian Cyber Commander, who is also the Cyber Force Commander since its creation in 2025.

Dr. Heather Harrison Dinniss is a Senior Lecturer at the Centre for International and Operational Law at the Swedish Defence University. Her research focuses on the impact of modern warfare on international humanitarian law; in particular, on emerging military technologies such as cyber warfare, advanced and autonomous weapons systems and the legal aspects of human enhancement techniques on members of the armed forces. She is the author of Cyber War and Laws of War (Cambridge University Press, 2012) which analyses the status and use of cyber operations in international law and the law of armed conflict. Dr. Harrison Dinnis has served as a member of advisory groups to the Swedish Government on autonomous weapons systems and cyber operations, a member of the International Law Association's Study Group on Cyber Terrorism and International Law (2014-2016) and as a core expert for two projects to establish a Manual on International Law Applicable to Military Uses of Outer Space (MILAMOS (2016-18) & Woomera (2018-)).

Ms. Chantal Joris is a Swiss qualified international lawyer. She is a Senior Legal Officer at ARTICLE 19, an international human rights organisation which works to protect and promote the right to freedom of expression and information. Ms. Joris' work focuses on among others on freedom of expression in armed conflicts and freedom of expression issues relating to national security and privacy. Prior to joining ARTICLE 19, Ms. Joris worked at a public international law firm, where she represented States and private entities before international and domestic courts and tribunals, including the International Court of Justice, and advised on public international law matters.

Mr. Laurent Gisel is the Head of the Arms and Conduct of Hostilities Unit at the Legal Division of the International Committee of the Red Cross (ICRC) in Geneva. He leads the development and promotion of the ICRC's strategies and activities to reaffirm, clarify, and strengthen international humanitarian law with regard to weapons of humanitarian concern, new technologies of warfare and the conduct of hostilities. Laurent worked in the ICRC Legal Division in various positions since 2008, including Legal Adviser to Operations, and Senior Legal Adviser and Cyber Team Leader. From 2013 to 2020, he was the file holder for the rules governing the conduct of hostilities under international humanitarian law, including their application during urban warfare, cyber operations, and outer space operations, on which he publishes regularly. Laurent began his career at the ICRC in 1999 and held several positions in conflict areas, in Israel and the Occupied Territories, Eritrea, Afghanistan, and as Deputy Head of Delegation in Nepal. He served as Diplomatic Adviser to the ICRC Presidency from 2005 to 2008. Prior to joining the ICRC, Laurent became attorney-at-law in Geneva and worked at the Public and Administrative Law Court of the Canton de Vaud. He holds a Degree in Law from the University of Geneva and a Masters in International Law from the Graduate Institute of International Studies (Geneva, Switzerland).

Day 2: Friday, 14 November 2025

Panel 4: Standing up for IHL at sea: taking stock of protection challenges in contemporary naval warfare

Prof. Tom Ruys is a professor of international law at Ghent University and founder of the Ghent Rolin-Jaequemyns International Law Institute (GRILI). Since October 2023, he has been serving in NATO Headquarters, Brussels, in the Office of Legal Affairs. He was a member of the Brussels bar (2009–2023) and is a reserve officer with the Belgian armed forces. He holds degrees from Ghent, Nottingham, and Leuven, including a Ph.D. from Leuven (2009), and has been a visiting researcher or professor at Yale, Cambridge, and Vienna. His research spans public international law, including the law on the use of force, law of armed conflict, State responsibility, immunities, and sanctions law. He has taught general and advanced courses at Ghent University, supervised the law of armed conflict moot court, and published extensively, including the monograph Armed Attack and articles in AJIL, EJIL, BYIL, and ICLQ. He has held leadership roles with the International Law Association, JUFIL, the Military Law and Law of War Review, and the Belgian Society of International Law.

Commander Peggy McGregor took the helm of the Law of armed conflict office in July 2025 after serving for two years as special adviser for naval and maritime law to the Head of the French Armed forces legal department in Paris. CDR Mc Gregor also served as a legal advisor to the Commander of the joint operations center at the strategic level in Paris (CPCO) and as a senior advisor for law enforcement at sea and International Relations in Abu Dhabi to ALINDIEN (Admiral responsible for French joint and naval operations in the Middle East and in the Indian Ocean). She was recently deployed as the senior legal advisor of EU maritime operations EUNAVFOR IRINI (2022) and EUNAVFOR ASPIDES (2024). CDR Mc Gregor graduated from Sciences Po Paris and the French war College.

Dr. Alexander Lott works as a research professor (forsker I) at the Norwegian Centre for the Law of the Sea, UiT – The Arctic University of Norway. He has also taught various courses at the University of Tartu, Estonia at all study levels. Dr. Lott is the author of the books "Hybrid Threats and the Law of the Sea" (Brill, 2022) and "The Estonian Straits: Exceptions to the Strait Regime of Innocent or Transit Passage" (Brill, 2018) as well as the editor and co-author of the anthology "Maritime Security Law in Hybrid Warfare" (Brill, 2024). He has published widely on the law of the sea, human rights, international security law, administrative law, and environmental law and serves as the General Editor (with Nilüfer Oral) of the book series International Straits of the World. Dr. Lott has been awarded the Marie Skłodowska-Curie individual fellowship (2022) by the European Commission and the Estonian President's Young Scientist Award (2022). His previous work experience includes five years as a legal adviser at the constitutional review and administrative law chambers at the Estonian Supreme Court and the Ministry of Justice as well as legislative drafting pertaining to the law of the sea and national defense.

Ms. Romina Morello recently joined the legal division at Headquarters to work on the Global Initiative on IHL, focusing on the overarching objective of galvanizing political commitment on IHL. Prior to this, Ms. Morello worked as Regional Legal Coordinator for the Americas where she promoted the national implementation and dissemination of IHL in the continent together

with the legal advisors of the region. In addition, Ms. Morello was part of the ICRC Regional Resource Network where she works together with other regional colleagues on transversal matters including the missing, migration and detention. Prior working at the ICRC, Ms. Morello worked at the External Relations and International Judicial Cooperation Unit for the International Criminal Court, where she handled relations with ICC situation countries, drafted, negotiated and concluded cooperation agreements and developed strategies to enhance relations with States, regional and international organizations on international justice matters. In addition, Ms. Morello was the Managing Officer and Legal Advisor of the International Law and Human Rights Program of Parliamentarians for Global Action (PGA) and prior to that, she worked at the Office of the Prosecutor in Argentina, the Office of the Public Counsel for the Victims of the ICC and Greenpeace. Ms. Morello is a qualified lawyer with an LLM on Public International Law and was adjunct professor of Public International Law at the Catholic University of Córdoba Law School, ICC mootcourt Judge of the Spanish and Chinese competition and supervising attorney of a project on international criminal law for Advocates Harvard Law School. Moreover, Ms. Morello has given conferences in more than 20 countries on different topics of international law to a diverse audience including governmental officials, diplomats, armed forces and police, the judiciary, public prosecutors and law students.

Panel 5: Standing up for IHL before, during, and after conflict: creating pathways for peace

Mr. Itonde Kakoma is the President and CEO of Interpeace. Prior to Interpeace, he most recently served as the Permanent Representative of the International Federation of the Red Cross & Red Crescent Societies (IFRC) to the African Union and International Organizations (2021-2023). In this capacity, Mr. Kakoma advanced continental wide humanitarian diplomacy initiatives with the African Union in public health security; climate change; disaster risk management; food security; and humanitarian affairs. Mr. Kakoma served in various leadership capacities on matters of international peace mediation, including as Director for Global Strategy and member of the leadership team at CMI Martti Ahtisaari Peace Foundation. Over a period of eight years at CMI, he steered mediation support teams for both official and informal peace processes, and advanced high-level peace mediation and dialogue undertakings in the Great Lakes, the Horn, and wider Red Sea region. Previously, Mr. Kakoma was the Assistant Director for the Conflict Resolution Program at The Carter Center, managing a portfolio of the Center's peace initiatives and supporting former President Carter's backchannel diplomatic efforts. He was an international observer for The National Referendum on the Right to Self Determination for the People of South Sudan; and served as an advisor and report writer for the Liberian Truth and Reconciliation Commission. Mr. Kakoma serves as a member of the Steering Group of the International Gender Champions, sits on the Governing Board of both the Geneva Peacebuilding Platform and the Principles for Peace Foundation; and is a member of the Global Future Council on Geopolitics at the World Economic Forum.

Mr. Frank Meeussen is Deputy Director of the Arms Control, Disarmament and Non-proliferation Division at the Belgian Ministry of Foreign Affairs. He also serves as a member of the Ethical Advisory Board of the Royal Higher Institute for Defence, which evaluates research proposals for dual-use or military applications on ethical and legal grounds. Mr. Meeussen previously worked for eight years as advisor on foreign affairs and defense to two Deputy Prime Ministers in the Belgian government. At the European External Action Service (EEAS), he

served for four years as alternate chair of the EU Council Working Group on Arms Exports, which oversees the arms export policies of EU Member States. He began his career in civil society, working for organizations such as Pax Christi and Amnesty International. Mr. Meeussen is an expert in international security, with a focus on human rights, international humanitarian law, conflict prevention, and arms control. He studied in Antwerp and Strasbourg and holds a Master's degree in International Relations. Mr. Meeussen lives north of Antwerp, is married, and has two children.

Ms. Romina Morello recently joined the legal division at Headquarters to work on the Global Initiative on IHL, focusing on the overarching objective of galvanizing political commitment on IHL. Prior to this, Ms. Morello worked as Regional Legal Coordinator for the Americas where she promoted the national implementation and dissemination of IHL in the continent together with the legal advisors of the region. In addition, Ms. Morello was part of the ICRC Regional Resource Network where she works together with other regional colleagues on transversal matters including the missing, migration and detention. Prior working at the ICRC, Ms. Morello worked at the External Relations and International Judicial Cooperation Unit for the International Criminal Court, where she handled relations with ICC situation countries, drafted, negotiated and concluded cooperation agreements and developed strategies to enhance relations with States, regional and international organizations on international justice matters. In addition, Ms. Morello was the Managing Officer and Legal Advisor of the International Law and Human Rights Program of Parliamentarians for Global Action (PGA) and prior to that, she worked at the Office of the Prosecutor in Argentina, the Office of the Public Counsel for the Victims of the ICC and Greenpeace. Ms. Morello is a qualified lawyer with an LLM on Public International Law and was adjunct professor of Public International Law at the Catholic University of Córdoba Law School, ICC moot court Judge of the Spanish and Chinese competition and supervising attorney of a project on international criminal law for Advocates Harvard Law School. Moreover, Ms. Morello has given conferences in more than 20 countries on different topics of international law to a diverse audience including governmental officials, diplomats, armed forces and police, the judiciary, public prosecutors and law students.

Prof. Vaios Koutroulis is a professor of public international law at the Faculty of Law and Criminology of the Université libre de Bruxelles (ULB), where he teaches, among others, international humanitarian law and international criminal law. He has given numerous lectures on these subjects, including in training courses for members of the armed forces, humanitarian aid workers and other professionals. He has several publications to his credit on international humanitarian law, international criminal law and jus contra bellum. Vaios Koutroulis is a member of the International Humanitarian Fact-Finding Commission, the only permanent treaty-based body dealing with compliance with the 1949 Geneva Conventions and their First Additional Protocol.

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